

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 457 of 2000

Appellant :- The Oriental Insurance Co. Ltd.

Respondent :- Parveen And Others

Counsel for Appellant :- Anil Srivastava

Counsel for Respondent :- Sanjay Kumar Rao, Gyan Prakash Pandey, Mohd. Navin Kidwai

Hon'ble Jaspreet Singh, J.

Heard Shri Anil Srivastava, learned counsel for the appellant-Insurance Company and Shri Sanjay Kumar Rao for the owner of the vehicle, respondent no.4. None has put in appearance on behalf of the claimant-respondents no.1 to 3.

The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 31.05.2000 passed by the Motor Accident Claims Tribunal/7th Additional District Judge, Faizabad in Claim Petition No.153 of 1998 whereby in a death case, a sum of Rs.7,30,000/- alongwith 6% interest per annum has been awarded in favour of the claimant-respondents no.1 to 3.

The record indicates that a Division Bench of this Court by means of order dated 20.10.2000 while admitting the appeal directed the appellant to deposit the entire sum under the award within one month from the said date. Half of the deposited amount was directed to be released in favour of the claimant-respondents without surety and the other half was directed to be invested in a fixed deposit scheme with the nationalized bank.

Shri Anil Srivastava has primarily assailed the award on a solitary ground that the deceased person was traveling in a goods vehicle and he was not the authorized representative of the goods owner, hence he is to be treated as an unauthorized traveler/gratuitous passenger and for the said reason the appellant company cannot be

saddled with the award.

In order to appreciate the contention of the learned counsel for the appellant, it will be relevant to take a glance at the facts giving rise to the instant appeal.

The claimant-respondents no.1, 2 and 3 filed Claim Petition No.152 of 1998 stating therein Shri Daheed Ahmad on 21.07.1997 at around 5.00 P.M. was traveling from Basti to Gorakhpur in a delivery van bearing number U P 53/E-4220. At the time when the delivery van in question reached Gram Peerganj, Police Station Khalilabad, its driver who was driving the said vehicle rashly and negligently hit a tree. In the said accident, Daheed Ahmad died on the spot and certain other persons who were also traveling in the said delivery van sustained grievous injuries. It was further stated that Daheed Ahmad was a registered Contractor and was earning Rs.10,000/- per month. Upon his death, his wife and two minor children who were dependent has suffered serious prejudice, accordingly the claim petition was filed.

The Insurance Company filed their written statement and had taken a plea that unless and until it was ascertained that the vehicle was duly insured and was being driven in accordance with the policy conditions the appellant-Company cannot be saddled with the liability of the award. The defendant no.6 Smt. Gumsuda Begum also filed a separate written statement who claimed herself also to be the wife of the deceased. The owner of the vehicle Smt. Renu Pal did not file any written statement despite service.

Upon exchange of pleadings, the Tribunal framed six issues and after considering the evidence available on record, the Claims Tribunal recorded a finding that Daheed Ahmad died on account of rash and negligent driving of the delivery van bearing number U P 53/E-420. The Tribunal also recorded that the vehicle in question was insured with the appellant company from 01.02.1997 till 31.01.1998 and since the accident occurred on 21.07.1997 the vehicle was squarely covered by the insurance policy. The Tribunal further went on

to hold that there was no negligence on the part of the deceased in the accident which was on account of rash and negligent driving of the delivery van. The Tribunal went on to compute the compensation and awarded a sum of Rs.7,30,000/- alongwith 6% interest per annum in favour of the claimant-respondents. It is in the aforesaid backdrop that the instant appeal has been preferred.

Learned counsel for the respondents stated that it was evident from the evidence and material on record that the vehicle in question was being utilized for commercial purpose while it was insured as a private vehicle. It has also been submitted that the said delivery van was carrying passengers and the vehicle was not authorized to take passengers in a goods vehicle. It is thus urged that the said vehicle was being plied against the policy condition, accordingly, the appellant cannot be saddled with the award rather the same should have been fastened upon the vehicle owner.

Shri Sanjay Kumar Rao, learned counsel appearing for the vehicle owner submitted that before the Claims Tribunal a document was placed on record which was a written statement filed in Claim Petition No.223 of 1997 before the District Judge, Basti (Tribhuvan Mang Tripathi Vs. Smt. Renu Pal). This written statement relating to the same accident wherein the other occupants of the same delivery van was injured wherein Smt. Renu Pal had contested the proceedings by filing her written statement denying the negligence of the driver of the delivery van number U P 53/E-4220.

The contention of Shri Rao learned counsel for the vehicle owner is that in the other claim petitions filed at Basti it was a specific case that the vehicle in question was a delivery van and its driver was a professional driver having a valid and a subsisting licence and that the vehicle was duly insured by the New India Assurance Company Ltd. In paragraph-5, she has specifically stated that the vehicle in question involved in the accident was not a Jeep but it was a delivery van and in view thereof, no liability can be fastened on the owner

rather it has to be met by the Insurance Company especially when it was insured for the driver and four others.

Having heard the learned counsel for the parties, the sole point for determination involved in the instant appeal is in respect of the liability under the award and who is required to indemnify it.

The undisputed fact which can be seen from the record of the instant appeal at hand is the fact that Smt. Renu Pal the owner of the vehicle did not file any written statement to contest the instant proceedings. Though in the claim petition, the claimants have described the offending vehicle bearing number UP 53/3-4220 as Jeep but in light of the document filed on record which was copy of the written statement filed by Smt. Renu Pal in another Claim Petition No.223 of 1997 filed before the Motor Accident Claims Tribunal, Basti, she categorically stated that the vehicle in question was not a Jeep but a delivery van. Thus, in so far as the nature of the vehicle involved in the accident is concerned, it would be clear that the vehicle was a delivery van and was not a Jeep for private use.

It is not disputed between the parties that the vehicle in question was duly insured on the date of the accident and even the driver of the said vehicle had a valid and a subsisting licence. The only issue in the aforesaid context which requires consideration is whether the award is to be indemnified by the insurance company or the owner.

During the entire trial of the claim petition, neither the owner appeared by filing a written statement nor any evidence was led. It is the insurance company who had filed the copy of the written statement filed by Smt. Renu pal in the claim petition before Motor Accident Claims Tribunal, Basti and in view thereof it has raised a plea that since the vehicle involved was the delivery van and apparently the occupants including the deceased was a gratuitous passenger and was not the person authorized to accompany the goods in the said delivery van, hence no liability can be

fastened.

In this regard, the law has been settled by the Apex Court in ***National Insurance Co. Ltd. Vs. Cholleti Bharatamma and others (2008) 1 SCC page 423*** wherein in paragraphs 8 to 11, the Apex Court has to be after noticing the earlier decision including that of ***New India Assurance Co. Ltd. Vs. Asha Rani, (2003) 2 SCC 223*** and it has been held that in goods carrier it is only the owner of the goods or a person authorized by the owner to accompany the goods who must travel only in the cabin of the vehicle can be covered under Section 147 of the Motor Vehicle Act of 1988.

In light of the aforesaid dictum, it would be seen that even though the vehicle was duly insured and its driver had a licence but the fact remains that the owner/driver did not contest the proceedings nor entered into the witness-box to lead any evidence. Once the vehicle involved is a goods vehicle and there is no evidence from the side of the owner/driver to indicate that the deceased was traveling in the goods vehicle as the owner of the goods or the authorized representative of the goods till then the deceased being a gratuitous passenger cannot be covered under Section 147 of the Motor Vehicle Act, 1988 and apparently the vehicle was being driven contrary to the policy condition.

The contention of Shri Rao that it was the burden of the insurance company to have proved that the deceased Daheed Ahmad was the authorized owner of the goods and traveling alongwith it is not quite correct; inasmuch as the insurance company steps into the shoes of the insured. The insured has to prima facie discharge his onus by making a positive statement or bringing evidence on record to the effect that in the goods vehicle the deceased was traveling as an authorized person of the goods or was its owner. In absence of any pleadings or evidence to that effect there is nothing that the insurance company has to disprove or discredit. The insurance company did raise this plea by amending their written statement and there was material on record in the

shape of written statement filed by Smt. Renu Pal in the other claim petition pending at the relevant time in District Basti stating that the vehicle was a delivery van, hence in the aforesaid light of the material available on record and there being no contrary material filed by the owner of the vehicle, the inescapable conclusion is that the deceased was a gratuitous passenger traveling in a delivery van without any authority from the owner of the goods nor there is any material to suggest that he was the owner of the goods in the said vehicle rather the contention of the pleadings of the claimants is that Daheed Ahmad alongwith others were traveling in the said vehicle.

In light of the aforesaid, since there is no challenge to the finding regarding rash and negligent driving or the quantum as awarded, this Court is satisfied that the finding in respect thereto is based on proper appreciation of evidence and is not liable to be disturbed. Since the vehicle was being driven against the policy condition, accordingly considering the facts and circumstances including that the appeal has been pending before this Court since 2000, this Court is of the clear view that ends of justice can be met by modifying the award dated 31.05.2000 passed in Claim Petition No.152 of 1998 only to the extent that the insurance company shall service the entire award but shall have the right of recovery from the vehicle owner as the vehicle was being driven against the policy condition.

The appeal is, accordingly, **partly allowed**. The award dated 31.05.2000 passed in Claim Petition No.152 of 1998 shall stand modified to the extent that the awarded sum of Rs.7,30,000/- alongwith 6% interest per annum shall be payable by the insurance company to the claimant-respondents and thereafter it shall have the right to recover the same from the vehicle owner respondent no.4 in accordance with law as laid down by the Apex Court in ***Oriental Insurance Com. Ltd. Vs. Nanjappan and others (2004) 13 SCC 224.***

Any amount deposited before this Court shall be remitted to the Tribunal to be released in favour of the claimant-respondents in accordance with the

award. Any short fall, if any, it shall be made good by the insurance company and thereafter it may recover the same from the owner-respondent no.4. Costs are made easy. The record be returned forthwith.

Order Date :- 15.12.2023

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