HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-

M.A.C.M.A. No.2700 of 2006

JUDGMENT:

The United India Insurance Company Limited, who is respondent No.2 in O.P.No.1185 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad (for short, 'the Tribunal'), is the present appellant. Aggrieved by the order dated 08.09.2006, whereby and whereunder, a sum of Rs.40,000/- was granted as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the petitioner as a pillion rider in a road accident, the instant appeal is preferred by the Insurance Company contending that the policy is an Act policy, and, thus, does not cover the risk of the pillion rider and the Tribunal was not right in fastening liability on it.

2. Respondent No.1 herein is the petitioner, while respondent Nos.2 herein and the appellant, who are the owner and insurer of the accident vehicle respectively, were the respondents in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 21.12.2001 at about 7-50 a.m., the petitioner along with another person was coming from Kothapeta to go to Mahaboobnagar on his scooter bearing registration No.AP 22A 518 and the petitioner was riding the pillion, whereas the other person was driving the scooter in a rash and negligent manner at high speed dashed another person, as a consequence, he fell down and received grievous injuries and was shifted to Government Hospital, Wanaparthy. Therefore, he laid claim for the aforesaid amount against the respondent Nos.1 and 2, who are the owner and insurer respectively.

5. Before the Tribunal, 1st respondent filed counter, who is none other than the owner of the scooter on which the petitioner was riding pillion, denying the allegations that he was driving the scooter in a rash and negligent manner, however, he pleaded that in case the Court awards any compensation to the petitioner, the

same may be awarded against the 2nd respondent as his scooter was insured with the 2nd respondent vide policy No.051103/31/01/125130 valid from 15.09.2001 to 14.09.2002. Respondent No.2 resisted the claim. It has taken a specific plea that the policy was an Act policy, and, hence, the risk of the pillion rider was not covered, and, therefore, sought to exonerate it from liability.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

> "1. Whether the petitioner sustained injuries due to rash and negligent driving of the 1st respondent's scooter bearing No.AP 22A 518?
>
> 2. Whether the petitioner is entitled for compensation, if so to what amount and from whom?
>
> 3. To what relief?"

7. During enquiry, the petitioner examined herself as P.W.1 besides examining one N.Vijay Kumar as P.W.2 and marked Exs.A.1 to A.3; whereas, on behalf of the contesting respondent No.2, no witnesses were examined, but however, marked a copy of insurance policy as Ex.B.1 on consent.

8. The Tribunal, on appraisal of evidence on record, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioner finding that due to rash and negligent driving of the driver of the scooter, the accident had occurred. On issue No.2, the Tribunal basing on the nature of injuries sustained by the petitioner as in Ex.A.2 and the evidence of the doctor examined as P.W.2, granted a total compensation of Rs.40,000/-. Concerning the liability of 2nd respondent-Insurance Company, the Tribunal considering the decision of the Hon'ble Supreme Court in **United India Insurance Company Limited v. Tilak Singh and others** relied on by the learned counsel for the 2nd respondent-Insurance Company and also extracting the relevant portion, thus:

> "The Insurance Company is not liable to pay compensation for the death of the pillion rider as policy did not cover risk or death or bodily injury to the gratuitous passenger."

still, observing that the Insurance Company failed to file the policy, fastened liability on the Insurance Company also making it jointly and severally liable to pay compensation to the petitioner.

9. It is the aforesaid finding recorded by the Tribunal against the 2nd respondent-Insurance Company, which is under challenge in the instant appeal contending in the grounds of appeal that since the policy issued by it in favour of the petitioner was an Act policy relating to the accident vehicle, the Tribunal ought not to have fastened liability despite discussing latest decision of the Hon'ble Apex Court in **Tilak Singh's** case (1 supra) and despite marking the copy of insurance policy as Ex.B.1, but strangely observing that the Tribunal did not file the policy itself and fastened liability, which is incorrect and accounts for deviation in appreciation of evidence on record, and, therefore, sought to set aside the order and decree passed against it exonerating it from liability.

10. Heard Sri V.Sambasiva Rao, learned Standing Counsel for the appellant-Insurance Company, Sri G.Ramesh Kumar, learned counsel for the 2nd respondent herein, who is the petitioner. Despite service of notice, none appears for respondent No.1 herein, who is owner of the scooter.

11. Learned counsel for the appellant-Insurance Company placed reliance on a decision of a Division Bench of this Court in **Branch Manager, United India Insurance Company Limited, Kamareddy, Nizamabad District vs. Kondakotla Saroja and others**. While observing that in an Act policy when no extra premium was paid to cover extra passengers who travelled in the accident jeep, the Insurance Company cannot be made liable to pay compensation for the death of a passenger who travelled in the goods vehicle, held in paragraph-15 extracting the observations of the Hon'ble Apex Court in **Tilak Singh's** case (1 supra), thus:

> "The Supreme Court in *United India Insurance Co. Ltd. v. Tilak Singh*, 2006(3) ALD 75 (SC) = (2006) 4 SCC 404, after referring to the judgment in *T.V.Jose (Dr.) v. Chacko P.M.,* (2001) 8 SCC 748 = 2002 SCC (Cri) 94, wherein *Variava,* J., had an occasion to survey the law with regard to the liability of Insurance Companies in respect of gratuitous passengers, held as under:
>
> > "In our view, although the observations made in *New India Assurance Co. Ltd. v. Asha Rani*, 2003(1) ALD 18 (SC) = (2003) 2 SCC 223 = 2003 SCC (Crl) 493, were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also."

12. Learned counsel for the 2nd respondent herein, who is the petitioner-claimant, placed reliance on the following decisions to substantiate his stand that the pillion rider is also entitled to compensation as he has to be construed as third party:

1. **National Insurance Co. Ltd. v. Sheela** of Delhi High Court.
2. **New India Assurance Company Ltd. v. G.Nagaraju and others** of Karnataka High Court.
3. **United India Insurance Co. Ltd. v. Pramila Devi and others** of Chhattisgarh High Court.
4. **Nagar Palika Parishad, Muzaffar Nagar v. Shamshida and others** of Allahabad High Court.
5. **Satyanarayan v. Rameshwar and another** of Madhya Pradesh High Court at Indore Bench.

13. The fact-situation occurring in the instant case is not in dispute, but at the outset, it is to be observed that the Tribunal went wrong in observing that the 2nd respondent-Insurance Company has not filed copy of insurance policy, and, therefore, cannot raise such a ground and the decision of the Apex Court on which reliance was placed by the learned counsel for the 2nd respondent-Insurance Company before it was of any assistance in the absence of filing copy of insurance policy. In fact, that observation is wholly incorrect for the reason that Ex.B.1 is the copy of insurance policy marked on behalf of the 2nd respondent-Insurance Company, which would clearly indicate that it was marked by consent. Therefore, there was no need for the 2nd respondent-Insurance Company to lead any extraneous evidence to prove the contents of Ex.B.1. Thus, the Tribunal has completely went wrong and fastened liability on Insurance Company.

14. Now turning to the decisional law on which reliance has been placed by the respective counsel. The decision in **Kondakotla Saroja's** case (2 supra) relied on by the learned counsel for the Insurance Company, certainly, disentitles the petitioner from claiming any compensation from the 2nd respondent-Insurance Company as he was riding the pillion at the relevant time and the policy was an 'Act' policy. No extra premium is also paid to cover the pillion rider as can be gathered from Ex.B.1.

15. The decisions, on which the learned counsel for the petitioner relied on, when

read, they do not attract the fact-situation occurring in the instant case. The first decision in **Sheela's** case (3 supra), the Delhi High Court held that the pillion rider is covered as third party risk referring to the terms of the notification dated 25.03.1977 issued by the Tariff Advisory Committee, whereby the Insurance Companies have been liable even in case of pillion rider. In the second decision in **G.Nagaraju's** case (4 supra) also the pillion rider was treated as third party, but however, the said decision cannot be relied on to accede to the request of the petitioner. In **Pramila Devi's** case (5 supra), the policy was a package policy, therefore, it defers in fact-situation as in the instant case, which is an Act policy. In **Nagar Palika Parishad's** case (6 supra), the pillion rider was seeking compensation against the owner and Insurance Company of the truck which caused the accident and in that fact-situation, the Division Bench of Alahabad High Court held that the owner and Insurance Company of truck cannot avoid their liability on the ground that pillion rider is a gratuitous passenger. Thus, it differs from the fact-situation with the one occurring in the instant case. In **Satyanarayan's** case (7 supra) since the Insurance Company in its written statement did not raise the plea that it was not liable to pay compensation as the policy was an Act policy, held that the Tribunal did not err in exonerating the Insurance Company from its liability. Such is not the fact-situation in the instant case for the reason the Insurance Company, in the original petition in its counter, has taken a specific plea, thus:

> "This respondent company specifically submits that this respondent's company has issued a policy No. 051103/31/01/25130 in respect of the scooter No.AP 22A 518 under 'A' policy. As per the above policy this respondent has covered injuries to third party but not to the driver or owner or pillion rider. As such this respondent is not liable to pay compensation to the petitioner as he is a pillion rider on the above scooter."

16. Thus, not only the plea was raised by the Insurance Company resisting the claim made against it by the petitioner, but the same was also proved by exhibiting Ex.B.1 copy of insurance policy, which was admitted in evidence with consent given by the petitioner. Therefore, the finding recorded by the Tribunal in fastening liability on the Insurance Company is liable to be set aside.

17. Consequently, the instant appeal is allowed setting aside the order and decree passed by the Tribunal, by exempting the appellant-Insurance Company from

liability to pay compensation to the petitioner-2nd respondent herein ordered by the Tribunal, however, in all other respects, the order is confirmed. There shall be no order as to costs.

18. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

A. SHANKAR NARAYANA, J

26th March, 2015

siva