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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 2nd February, 2016

+ **MAC.APP. 348/2004**

ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. L.K. Tyagi , Adv.

Versus

HARISH CHAND ANAND & ORSRespondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Harish Chand Anand (the first respondent herein) had filed the petition under Section 166 of Motor Vehicles Act, 1988 (MV Act) before the Motor Accident Claims Tribunal (the tribunal), which registered it as Suit No. 67/2003, seeking compensation for injuries suffered in a motor vehicular accident that had occurred on 21.8.99 around midnight while travelling in motor vehicle bearing registration No. HR 38C 4790 (hereinafter the offending vehicle).

2. The case as presented by the first respondent before the tribunal was that the offending vehicle was owned by Bhagat Ram (the second respondent herein) and was driven in a rash/negligent manner at the time of accident by Agya Ram @ Teja (the third respondent herein). The offending vehicle concededly was insured against the third party risk for the period in question, with the appellant insurance company, it having been impleaded before the tribunal as party respondent No.3.

During the inquiry, the insurance company, *inter alia*, pleaded that the first respondent (the claimant) was a gratuitous passenger in the offending vehicle and since the vehicle was a goods transport vehicle, the insurance company could not be held liable. Noticeably, the claimant had claimed to be the representative of the owner of the vehicle which fact was disputed by the latter. The defence taken by the insurance company referred to the said denial of the status by the insured to seek to be absolved.

3. The tribunal, upon inquiry, found that the claimant was entitled to the compensation of ₹ 4,24,400/- which was granted along with interest @ 7.5 % per annum from the date of filing of the petition. The contention of the insurance company to above effect was rejected and it was called upon to indemnify the insured.

4. The insurance company brought this appeal under Section 173 of the MV Act contending that since the claimant had claimed to be an employee of the owner he could not be covered under the insurance policy and would be entitled to claim compensation only under the Workmen Compensation Act, 1923 (now known as Employees Compensation Act, 1923).

5. The learned Single Judge of this Court while hearing on the appeal by order dated 5.3.2009 took note of the contention of the insurance company in appeal that the liability of the insurance company must be restricted to ₹ 2,17,644/- which would be the amount of compensation payable in view of the disability certified to the extent of 75%. It was further submitted at that stage that the learned tribunal had fallen into error by treating the disability affecting the loss of earning capacity to the extent of 100%. For some reasons, the matter kept

getting adjourned before it reached the stage of hearing yet again on 23.3.2015 when it was submitted on behalf of the appellant insurance company that the question for consideration essentially is as to whether the claimant was travelling in the offending vehicle as an owner of the goods or representative of the owner of goods or as an employee who is entitled to compensation and would be governed by the provisions of Employees Compensation Act, 1923.

6. Before coming to the contentions raised in this appeal, it needs to be noted that the first respondent (the claimant) has generally shown dis-interest in assistance in the hearing on the appeal at hand. Notices were issued by order dated 11.08.2004 to all the three respondents in appeal which include the driver, the owner, and the claimant. The claimant appeared for the first time through counsel on 4.5.2005 and thereafter has appeared or not appeared as per own convenience. The second respondent (the owner of the vehicle or the person insured) appeared in response to the notice on 4.5.2005 and after participating in the proceedings on some of the subsequent dates, and similarly appeared or not appeared as per own choice or convenience. The third respondent (the driver) was served on 23.8.2006 but chose not to appear at all.

7. The appeal has come up for hearing against the above backdrop, more than 11 years after it having been preferred. Since none was present for the respondents on the last date and none has appeared even today, given the old pendency, there is no reason to defer the matter once again.

8. The tribunal considered the contentions of the insurance company in above regard in the impugned judgment in the following manner:-

“The counsel for insurance company has argued at length on the point that Insurance Company is not liable to pay any compensation as the petitioner was a gratuitous passenger in vehicle no. HR-38-G-4790. It is not disputed that offending vehicle was duly insured. It is also a matter of record that offending vehicle is goods vehicle. The certified true copy of insurance policy which has been proved as Ex.RW1/A only proves that Insurance Company is only liable to public and the legal liability for paid driver/workman no. 1 has been added to it.

It is a settled proposition that in view of the law laid down in M/s National Insurance Co. Ltd. vs. Baljeet Kaur & Ors. 2004 (1) Scale, the Apex Court has settled that U/s 147 Motor Vehicle act besides third party only the owner of the goods or his authorised representatives travelling in the goods vehicle is covered under the policy. It further clarifies that it does not extend to cover the class of cases where gratuitous passenger for whom Insurance Policy was not envisaged and for whom no insurance premium was paid, employed the goods vehicle as a medium of conveyance. It was further held that in case of gratuitous passenger the owner of the vehicle shall be liable to satisfy the decree. However, in the interest of victims the insurer was directed to pay to the claimants if not already paid and this decision was held to be prospective in nature.

The question is that whether in the present case the petitioner was a gratuitous passenger or not. In case the petitioner is a gratuitous passenger, in view of the law laid down above the Insurance Company shall not be liable. But if the petitioner is not a gratuitous passenger at all, then the Insurance Company can avoid its liability. As I have discussed above the owner of the goods or his representatives is covered specifically stated on oath that he was the employee of R-1 who deals in readymade garments and plastic goods in patri Bazar in various areas of Delhi. The petitioner has further stated on oath that he used to work as helper on the stall of R.1 in patri Bazar, Pritam Pura. He further stated on

29/8/99 after closing the stall in night about 12.30 am he was going with R.1 in TSR no. HR-38G-4790 from Pritam Pura Patri Bazar to Rani Bagh (residence of R.1)

R.1 in his written statement has evasively denied this fact. However, he did not come forward to disprove that petitioner was not his employee nor did he come forward to depose that petitioner was not travelling in the TSR as his representative. The plea of the petitioner is that he was travelling in the TSR as an employee/representative of the owner of the goods. R.1 happens to be the owner of the offending vehicle.

This fact has not been repudiated either by the Insurance Company nor by R.1. R.1 contested the case only to the extent of filing the written statement and thereafter did not come forward to rebut the case of the petitioner. The Insurance Company on their part also did not lead any evidence so as to contradict the case of the petitioner. In the circumstances, there is no reason to disbelieve the version of the representative of the owner of the vehicle. Thus, Insurance Company shall be liable to pay the compensation.”

9. Whilst there is no reason to dissociate oneself from the finding recorded by the tribunal that the claimant was travelling in the offending vehicle as the representative of the owner of the vehicle, it is also clear from the pleadings of the claimant himself that he was an employee of the owner of the vehicle (i.e insured). In this view of the matter, as pointed out by the learned counsel for the appellant, the provision contained in the proviso to Section 147 (1) of MV Act would come into play. The said provision of law may be taken note of as under:-

147 Requirements of policies and limits of liability. —
(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—
(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. —For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

10. Similar question had arisen in case reported as *National Insurance Company Ltd. vs. Prembai Patel & Ors. II* (2005)ACC 365 (SC), wherein a bench of three Hon'ble Judges of the Supreme Court upheld similar contention raised by the insurance company in that case with observations (in para Nos. 16 & 17) to the following effect:-

“16. The High Court, in the impugned judgment, has held that if the legal representatives of the deceased employee approach the Motor Accident Claims Tribunal for payment of compensation to them by moving a petition under Section 166 of the Act, the liability of the insurance company is not limited to the extent provided under the Workmen's Act and on its basis directed the appellant insurance company to pay the entire amount of compensation to the claimants. As shown above, the insurance policy taken by the owner contained a clause that it was a policy for "Act Liability" only. This being the nature of policy the liability of the appellant would be restricted to that arising under the Workmen's Act. The judgment of the High Court, therefore, needs to be modified accordingly.

17. The judgment of the High Court insofar as it relates to quantum of compensation and interest, which is to be paid to the claimants (respondent Nos. 3 to 6 herein) is affirmed. The liability of the appellant insurance company to satisfy the award would be restricted to that arising under the Workmen's Act. The respondent Nos. 1 and 2 (owners of the vehicle) would be liable to satisfy the remaining portion of the award”.

11. It must be mentioned here that pursuant to the liberty granted, the first respondent (the claimant) had submitted on 13.10.2015, a brief synopsis of arguments, seeking to defend the view taken by the tribunal, referring in this contest to the view taken by Supreme Court in *National*

Insurance Company Ltd. vs. Baljit Kaur & Ors. 1(2004) ACC 259 (SC).

Upon perusal, it is found that the view taken in *Baljit Kaur & Ors(supra)* cannot come into aid either of the claimant or of the person insured in view of the observations to the following effect:

“.....It is therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree”.

12. Thus, this Court, finds that in view of the admitted position of the claimant that he was an employee of the owner of the offending vehicle (the person insured) and was travelling in the vehicle in such capacity, in the course of his employment, the liability of the insurance company in terms of the insurance policy would have to be restricted to the one enforceable under the Employees Compensation Act, 1923.

13. As pointed by the appellant insurance company, the compensation payable to the claimant under the provisions of Employees Compensation Act, 1923 would be to the tune of ₹ 2,17,644/-

14. Thus, the appeal is allowed. The directions given by the tribunal in the impugned judgment are modified to the effect that the insurance company would be liable to satisfy the award in favour of the claimant only to the extent of ₹ 2,17,644/- with proportionate interest at the rate levied by the tribunal in the impugned judgment, the liability to pay the balance being that of the registered owner of the vehicle (the person insured) i.e. the second respondent herein.

15. The appellant insurance company was directed by order dated 11.08.2004 to deposit the entire awarded amount with upto date interest in the court and out of the same amount 50% was allowed to be released in favour of the first respondent (the claimant), the balance having been kept in fixed deposit, interest bearing account for the specified period. The said deposit was transferred to the tribunal by order dated 5.3.2009. The tribunal shall calculate the balance liability of the insurance company in terms of the award modified as above and release the said amount in favour of the said first respondent and thereafter refund the remaining to the insurance company.

16. Needless to add, the claimant would be at liberty to take out appropriate execution proceedings to enforce the remaining liability against the owner of the offending vehicle in accordance with law.

17. The statutory deposit, if made, shall be refunded.

18. Lower Court record be returned.

**R.K. GAUBA
(JUDGE)**

FEBRUARY 02, 2016/nk