SUPREME COURT OF INDIA

New India Assurance Co. Ltd.

Vs.

New India Assurance Co. Ltd.

C.A.No.1799 of 2009

(S.B. Sinha and P.Sathasivam JJ.)

ORDER

1. Leave granted.

2. The Insurance Company is before us, aggrieved by and dissatisfied with the judgment and order dated 07th February, 2006 passed by a Division Bench of the High Court of Madhya Pradesh, Indore Bench, Indore in M.A. No.1377 of 2003, whereby and whereunder the High Court has modified the judgment of the Motor Accident claims Tribunal, Indore (for short 'the Tribunal') exonerating the Insurance Company- appellant herein from paying any amount of compensation passed in Claim Case No. 285 of 1997 awarding a total sum of Rs.3,12,000/- with interest to the claimants for the death of one Israel, in a motor vehicle's accident holding that the Insurance Company is liable to pay the compensation to the claimants.

3. Facts of the case giving rise to this appeal are:

4. The deceased-Israel was travelling in a Jeep bearing No.MPA-09-1658 on 26.08.1995. The said Jeep collided with a truck bearing No.MPF 07158 and Israel died of the injuries suffered by his at the site of accident. His family members filed an application under Section 166, 140 of the *Motor Vehicles Act* (for short 'the Act') before the Tribunal for compensation.

5. The appellant raised a contention in the said proceeding that since the driver of the jeep was not responsible for causing the said accident, it was not liable to pay any compensation to the claimants.

6. The Tribunal by reason of the aforementioned award, inter alia, held in paras 22 & 23 as under:

> "22. Therefore due to want of averments of Petitioners in the application and from the certified copy of charge sheets Ex.P-1 to Ex.P-5 produced by the Petitioners, the Petitioners remained successful in proving that accident occurred due to rash and negligent driving of truck by opposite party No.4.

> 23. Therefore on the basis of evidence produced, the Petitioners remained successful in proving their case against opposite party No.3 and 4 in lieu of opposite party No.1 and 2, and as per the record the jeep owner Raees Khan and Insurance company cannot be held accountable to pay the compensation amount as the driver of jeep Israeel was not driving his jeep rashly and negligently and he had no fault."

7. It was also held by the Tribunal that as the Insurance Company is not held accountable for payment of compensation amount, it is entitled to receive the amount of Rs.25,000/-, deposited with the Tribunal by an interim order, from the claimants with interest at the rate of 9% per annum. However, an award for a sum of Rs.3,12,000/- was passed against the driver and owner of the truck in question.

8. Claimants, however, preferred an appeal against the said award.

9. The High Court by reason of the impugned judgment set aside that part of the order of the Tribunal whereby the appellant herein was exonerated from payment of any liability for reimbursement of the claim so far as the driver and owner of the jeep were concerned, stating:

> "7. So far as finding in relation exonerating of Insurance Company is concerned, we are inclined to reverse the same in favour of claimants. Firstly, no evidence in rebuttal was led by the Company and then for all practical purposes remained exparte in the sense that except to file written statement, they did nothing. On the other hand, the claimants led evidence and discharged their initial burden. Israel was neither owner of the offending Jeep, not insurer. He was, therefore, third party, as one of the person sitting in Jeep. Ajij was the driver.
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> There is nothing on record to hold that Jeep was responsible for causing accident and hence, claimants are not entitled to get any compensation. The driver of Truck was not examined. We cannot conclude on the strength of evidence that Jeep was responsible for the accident.
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> 8. In this view of the matter, we set aside the finding of the Tribunal on this issue and modify the impugned award by passing the same also against the insurance company i.e. respondent No.3/non applicant No.3."

10. A bare perusal of the order clearly shows that no reason whatsoever has been assigned in support thereof. The finding of the learned Tribunal and the material noticed by it for the said purpose has not been considered by the High Court.

11. The question as to whether the driver of the jeep or the truck and/or both of them were responsible for negligence in driving their respective vehicles, which led to the said accident is essentially a question of fact. While reversing the said finding of fact, so as to fasten the liability on the insurance company, the High Court was required to assign sufficient and cogent reasons. No such finding to the effect that both driver as also the jeep contributed to

the negligence having been recorded by the High Court, the question of fastening the joint liability by the insurance company did not arise. Only because the truck was not insured, the same by itself did not mean that the appellant-insurance company can be held liable to reimburse the claim to the claimants wherefor liability had been incurred by the owner and driver of the truck and, thereofore, no liability has been incurred by the driver and owner of the jeep is concerned. The Tribunal has categorically recorded a finding that the driver of the jeep was not driving his jeep rashly and negligently and he was not at fault and that the accident occurred due to rash and negligent driving of truck by its driver.

12. Since, the High Court has not reversed this finding of the Tribunal, fastening of the liability on the insurance compnay which is the insurer of the jeep did not arise.

13. Even otherwise, the insurance company cannot be held liable to pay compensation to the claimants in view of the decision of this Court in *Oriental Insurance Company Limited v. Sudhakaran K.V. & Ors.*[1] wherein this Court opined:

> "11. This Court in a catena of decisions has categorically held that a gratuitous passenger in a goods carriage would not be covered by a contract of insurance entered into by and between the insurer and the owner of the vehicle in terms of Section 147 of the Act. [See *New India Assurance Co. Ltd. v. Asha Rani*[2]]
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> 12. A Division Bench of this Court in United India Insurance Co. Ltd., Shimla v. Tilak Singh and Ors. extended the said principle to all other categories of vehicles also, stating as under:
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> In our view, although the observations made in Asha Rani case 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.
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> Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

14. It was held:

> "14. The provisions of the Act and, in particular, Section 147 of the Act were enacted for the purpose of enforcing the principles of social justice. It, however, must be kept confined to a third party risk. A contract of insurance which is not statutory in nature should be construed like any other contract.
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> 15. We have noticed the terms of the contract of insurance. It was entered into for the purpose of covering the third party risk and not the risk of the owner or a pillion rider. An exception in the contract of insurance has been made, i.e., by covering the risk of the driver of the vehicle. The deceased was, indisputably, not the driver of the vehicle.

16. The contract of insurance did not cover the owner of the vehicle, certainly not the pillion rider. The deceased was travelling as a passenger, stricto sensu may not be as a gratuitous passenger as in a given case she may not be a member of the family, a friend or other relative. In the sense of the term which is used in common parlance, she might not be even a passenger.

In view of the terms of the contract of insurance, however, she would not be covered thereby."

15. For the aforementioned reasons, the impugned judgment cannot be sustained and it is set aside accordingly. The appeal is allowed. No costs.

[1]*[(2008) 7 SCC 428]*
[2]*(2003) 2 SCC 223*