

SUPREME COURT OF INDIA

Anu Bhanvara

Vs.

Iffco Tokio General Insurance Company Limited

C.A.No.6231-6232 of 2019

(R.F.Nariman and Vineet Saran,JJ.,)

09.08.2019

JUDGMENT

Vineet Saran,J.,

SLP(Civil)No.19090-19092 of 2019

1. Leave granted.

2. These appeals are against the judgment and order dated 05.04.2016 passed by the High Court of Punjab and Haryana at Chandigarh relating to the claims for compensation in respect of injuries sustained by two gratuitous passengers in a jeep (goods vehicle). The Motor Accidents Claims Tribunal (for short “Tribunal”) had dismissed the claim petitions on the ground that the negligence the driver was not proved. However, the High Court, after holding that the accident was as a result of composite negligence of the driver of the jeep and the other offending vehicle, held that the owner and driver of the jeep would be liable for payment of compensation and exonerated the insurer of the jeep, on the ground that the vehicle was insured as a goods vehicle and the claimants, who had sustained injuries, were gratuitous passengers in the goods vehicle (Jeep) and would thus not be covered under the insurance policy as they were not travelling as owner of the goods. The insurance of the jeep, as a goods vehicle, has been found to be valid.

3. In F.A.O. No. 5460 of 2012 before the High Court, the case was of one Anu Bhanvara, aged about fifteen years at the time of the accident, who, because of injuries sustained, had to have amputation of wrist resulting in 55% disability. The Tribunal assessed total compensation of Rs.5,26,000/-, which was after assessing disability compensation of 55% at Rs.50,000/-, loss of prospect of marriage at Rs.1,00,000/- and cost of artificial limb at Rs.3,76,000/-. The High Court enhanced the compensation to Rs.6,41,750/-, after awarding additional compensation for medical expenses, pain and suffering, income loss etc. in addition to what was assessed by the Tribunal.

4. In the other F.A.O. No. 5461 of 2012 before the High Court, the case was of one Rohit

Kumar, aged about eighteen years at the time of accident, who, because of the injuries sustained in the accident, had to have his arm amputated below the elbow resulting in 70% disability. The Tribunal assessed total compensation of Rs.5,78,000/-, which was after assessing the disability compensation of 70% at Rs.50,000/-, income assessed at Rs.54,000/- and cost of artificial limb at Rs.3,90,000/-. The High Court enhanced the compensation to Rs.7,36,000/-, after awarding additional compensation for medical expenses, pain and suffering, income loss etc. in addition to what was assessed by the Tribunal.

5. Challenging the said judgments of the High Court, these appeals have been filed by the claimants for enhancement of compensation and also to direct payment of compensation by the insurer.

6. We have heard Mr. S. L. Gupta, learned counsel for the appellants and Ms. Shanta Devi Raman, learned counsel for the respondent no.1-insurer and have perused the material on record.

7. The questions now to be considered by this Court are two-fold; firstly, whether the amount of compensation awarded was adequate or not; and secondly, whether the payment of compensation is to be made jointly by the owner and driver of the vehicle, or by the insurer which could thereafter be recovered by the insurer from the owner and driver.

8. Having regard to the respective age of the two claimants and keeping in view that compensation has been awarded on all requisite heads by the High Court, we are of the opinion that no interference is called with regard to the quantum of compensation awarded to the two claimants.

9. The next question is as to which of the respondents, that is the owner and driver, or the insurer of the vehicle, would be liable for payment of such compensation. As regard the liability for payment of compensation, it has been contended by the learned counsel for the appellants that since the vehicle was admittedly insured with the respondent no.1-insurance company, the principle of pay and recover would be invoked even in case of a gratuitous passenger in a goods vehicle. The insurance company should thus be made liable for the payment of compensation to the appellants and in turn they would have the right to realise/recover the same from the owner and driver of the vehicle. In support of his submission, learned counsel for the appellants has relied on the following decisions of this Court, namely, *Manuara Khatoon v. Rajesh Kumar Singh*¹, *Puttappa v. Rama Naik*² (Civil Appeal No.4397 of 2016, disposed of on 2nd April, 2018); *Manager, National Insurance Co. Ltd. v. Saju P. Paul*²; *New India Assurance Co. Ltd. v. Vimal Devi*³, disposed of on 5th October, 2010); *National Insurance Co. Ltd. v. Challs Upendra Rao*⁴; *New India Assurance Co. Ltd. v. C. M. Jaya*⁵; *Amrit Lal Sood v. Kaushalya Devi Thapar*⁶.

10. Per contra, learned counsel for the respondent-insurance company has contended that since the claimants were gratuitous passengers in a goods vehicle, in which case the

liability for payment of compensation for death or body injury to the passengers of such goods vehicle would not be covered, hence the principle of pay and recover would not apply. It has thus been contended that the order of the High Court is perfectly justified in law and calls for no interference by this Court. In support of her submission, learned counsel has relied on following decisions, namely, *New India Assurance Co. Ltd. v. Asha Rani*⁷; *National Insurance Co. Ltd. v. Baljit Kaur*⁸; *National Insurance Co. Ltd. v. Kaushalya Devi*⁹; *National Insurance Co. Ltd. v. Rattani*¹⁰; *National Insurance Co. Ltd. v. Prema Devi*¹¹; *Bharat AXA General Insurance Co. Ltd. v. Adani*¹²; *Bajaj Allianz General Insurance Co. Ltd. v. Lai Singh*¹³.

11. We have heard learned counsel for the parties and perused the record as well as the various decisions cited by learned counsel for the parties. The insurance of the vehicle, though as a goods vehicle, is not disputed by the parties. The claimants in the present case are young children who have suffered permanent disability on account of the injuries sustained in the accident. Thus, keeping in view the peculiar facts and circumstances of this case, we are of the considered view that the principle of “pay and recover” should be directed to be invoked in the present case.

12. Accordingly, these appeals are disposed of with the direction that the respondent no.1 - insurance company shall be liable to pay the awarded compensation to the claimants in both the appeals. However, respondent no.1 - insurance company shall have the right to realize the said amount of compensation from the respondents no. 2 and 3 (driver and owner of the vehicle) in accordance with law.

13. There shall be no order as to costs.

Judgment Referred.

¹(2017) 4 SCC 0796

²(2013) 2 SCC 0041

³C.A.No.1578-1579 of 2004

⁴(2004) 8 SCC 0517

⁵(2002) 2 SCC 0278

⁶(1998) 3 SCC 0744

⁷(2003) 2 SCC 0223

⁸(2004) 2 SCC 0001

⁹(2008) 8 SCC 0246

¹⁰(2009) 2 SCC 0075

¹¹(2008) 5 SCC 0403

¹²MANU/TN/6503/2018

¹³(2015) SCC Online Del 7508