ORIENTAL INSURANCE CO. LTD. A

v.

SUDHAKARAN K.V. & ORS.

(Civil Appeal No. 3634 of 2008)

MAY 16, 2008 B

[S.B. SINHA AND LOKESHWAR SINGH PANTA, JJ]

Motor Vehicles Act, 1988:

s.147 – Claim in respect of death of a pillion rider on a scooter – Liability of insurer – Held : Pillion rider in a two wheeler was not treated to be a third party when accident took place owing to rash and negligent riding of the scooter and not of the driver of another vehicle – Judgment of High Court upholding the liability of insurer set aside. C

A petition was filed before the Motor Accident Claims Tribunal claiming compensation for death of a pillion rider, who fell from the scooter of respondent no.1 and succumbed to the injuries. The Tribunal held that the accident took place due to rash and negligent riding of respondent no.1. It awarded a sum of Rs. 1,18.900/- with 12% interest from the date of filing of the claim petition till the realization, holding that since existence of insurance policy was admitted, the insurance company was also liable. The Division Bench of the High Court having upheld the award, the insurance company filed the instant appeal. D E F

The question for consideration before the Court was: whether the pillion rider on a scooter would be a third party within the meaning of Section 147 of the Motor Vehicles Act, 1988? G

Allowing the appeal, the Court

HELD: 1.1 The provisions of the Motor Vehicles Act, 1988 and, in particular, Section 147 of the Act were en-

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A **acted 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. In the instant case, the contract of insurance was entered**
B **into on or about 2.12.1992. It was 'A policy for act liability' meaning thereby a third party liability and not covering the risk of the owner or a pillion rider. Indisputably, a distinction has to be made between a contract of insurance in regard to a third party and the owner or the driver of**
C **the vehicle. 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. In view of the terms of the contract of insurance, however, she would not be covered thereby.**
D **[para 7, 10,14-16] [371-G; 372-F-G; 373-F-G; 374-C]**

1.2 The law which emerges from the decisions of the Court is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid
E **for covering his/her risk (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash**
F **and negligent riding of the scooter and not on the part of the driver of another vehicle. [para 19] [375-H; 376-A-B]**

United India Insurance Co. Ltd., Shimla v. Tilak Singh and Ors. **[(2006) 4 SCC 404];** *National Insurance Co. Ltd. v. Laxmi Narain Dhut* **[(2007) 3 SCC 700],** *Oriental Insurance*
G *Co. Ltd. v. Meena Variyal* **[(2007) 5 SCC 428] and** *New India Assurance Co. Ltd. v. Ved Wati* **(2007) 9 SCC 486**

United India Insurance Company Ltd. v. Serjerao & Ors. **2007 (13) SCALE 80;** *Ghulam Mohammad Dar v. State of J&K and Ors.* **(2008) 1 SCC 422;** *The New India Insurance*
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Company v. Darshana Devi & Ors. **2008 (2) SCALE 432; and** *United India Insurance Co. Ltd. Shimla v. Tilak Singh and Ors.* ***(2006) 4 SCC 404 – referred to.***

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3634

From the final Judgment and Order dated 22.3.2006 of the High Court of Kerala at Ernakulam in M.F.A. No. 536 of 1999

Anchal Jain, Santosh Paul and M.J. Paul for the Appellant.

Purnima Bhat and K. Sarada Devi for the Respondents.

The Judgment of the Court was delivered by

S.B.SINHA.J: Leave granted.

1. This appeal is directed against a judgment and order dated 22.3.2006 passed by the High Court of Kerala at Ernakulam in M.F.A. No. 536 of 1999 whereby and whereunder the appeal preferred by the appellant herein from the judgment and award dated 31.10.1998 passed by the Motor Accident Claims Tribunal, Perumbavoor awarding a sum of Rs.1,18,900/-(Rupees One lakh eighteen thousand and nine hundred only) together with interest thereon at the rate of 12% p.a. from the date of the filing of the claim petition till date of realization of the amount against the appellant as also against the owners of the vehicle was dismissed.

2. The basic fact of the matter is not in dispute. Thankamani (hereinafter referred to as the deceased) was travelling as a pillion rider on a scooter on 20.10.1993. She fell down from the scooter and succumbed to the injuries sustained by her. In regard to the said accident, a claim petition was filed.

Appellant having been served with a notice, in its written statement, inter alia, raised a contention that she being a pillion rider and, thus, a gratuitous passenger, the insurance policy did not cover the risk of injury or death of such a passenger and, thus, it was not liable to reimburse the owner of the scooter therefor.

A It was, furthermore, contended that the accident had taken place at a private place.

By reason of the impugned award, the tribunal, however, opined:

B (i) The accident had taken place due to rash and negligent riding of the scooter by Sebastian P.V.- respondent No.1 to the claim petition;

(ii) Keeping in view the monthly income of the deceased which was estimated at Rs. 1200/- per month as
C also age of the deceased assessed at 50 years; claimants were entitled to compensation for a sum of Rs.1,05,600/-. A sum of Rs.5,000/- was allowed towards compensation for pain and suffering; a sum of Rs.100/- was allowed towards damage of clothing
D and articles, a sum of Rs.5,000/- was allowed towards loss of love and affection and a sum of Rs.1,000/- was allowed towards mental shock and agony.

3. As regards liability of the appellant it was held as the
E existence of the insurance policy in respect of the offending scooter is admitted, it was also liable.

4. Aggrieved by the said award, the appellant filed an appeal before the High Court of Kerala under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act"). On the question
F as to whether the Insurance Company would be liable in a case of this nature, the Division Bench opined as under:

"1. The appellant is the third respondent in O.P.(MV) 119/94 on the file of the motor Accident Claims Tribunal, Perumbavoor. Appellant was directed to pay
G compensation for the death of the pillion rider of a motor cycle. The vehicle was insured with the appellant.

2. It was contended that the pillion rider would not come within the coverage of the Act policy. The Tribunal repelled that contention. Hence this appeal.
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3. The question whether the pillion rider is covered by an Act policy stands settled by the decision of the Full Bench of this Court in Oriental Insurance Co.Ltd. Vs. Ajay Kumar(1999 (2) KLT 886. Hence the appellant cannot successfully take up a contention contrary to the above proposition in this appeal..."

5. Ms. Aanchal Jain, learned counsel appearing on behalf of the appellant, submits that as the deceased was in a vehicle which was not covered by the contract of insurance must be held to be a gratuitous passenger and as such the impugned judgment cannot be sustained.

Strong reliance, in this behalf, has been placed on *United India Insurance Co. Ltd., Shimla v. Tilak Singh and Ors.* [(2006) 4 SCC 404].

6. Mrs. Purnima Bhat and Mrs. K.Sarada Devi, learned counsel appearing on behalf of the respondents, on the other hand, would urge:

(i) the principles of law deduced by this Court as regards gratuitous passenger should not apply in a case of this nature;

(ii) in any event this Court should exercise its jurisdiction under Article 142 of the Constitution of India directing the appellant to pay the claimed amount to the claimants and recover the same from the owner of the scooter.

7. Before embarking on the rival contentions, we may notice the insurance policy. The contract of insurance was entered into on or about 2.12.1992. It was 'A policy for act liability' meaning thereby a third party liability.

The relevant clauses of the said contract of insurance are as under:

"1. Subject to the Limit of liability as laid down in the Motor Vehicles Act the Company will indemnify the insured in the

A event of accident caused by or arising out of the use of Motor Vehicle any where in India against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of death or bodily injury to any person and/or damage to any property of
B Third Party.

Exception

Except so far as necessary to meet the requirements of the Motor Vehicles Act the Company shall not be liable in re-
C spect of death arising out of and in the course of employment of person in the employment of the insured or in the employment of any person who is indemnified under this Policy or bodily injury sustained by such person arising out of and in the course of such employment."

D 8. In terms of Section 147 of the Act only in regard to reimbursement of the claim to a third party, a contract of insurance must be taken by the owners of the vehicle. It is imperative in nature. When, however, an owner of a vehicle intends to cover himself from other risks; it is permissible to enter into a contract
E of insurance in which event the insurer would be bound to reimburse the owner of the vehicle strictly in terms thereof.

9. The liability of the insurer to reimburse the owner in respect of a claim made by the third party, thus, is statutory whereas other claims are not.
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10. The only question which, therefore, arises for our consideration is as to whether the pillion rider on a scooter would be a third party within the meaning of Section 147 of the Act.

Indisputably, a distinction has to be made between a
G contract of insurance in regard to a third party and the owner or the driver of the vehicle.

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 be-
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tween 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* (2003) 2 SCC 223]

12. A Division Bench of this Court in *United India Insurance Co. Ltd., Shimla v. Tilak Singh and Ors.* [(2006) 4 SCC 404] extended the said principle to all other categories of vehicles also, stating as under:

> "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. 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."

13. The submission of Mrs. Bhat, learned counsel, however, is that this Court should not extend the said principle to the vehicles other than the goods carriage. As at present advised, we may not go into the said question in view of some recent decisions of this Court, viz., *National Insurance Co. Ltd. v. Laxmi Narain Dhut* [(2007) 3 SCC 700], *Oriental Insurance Co. Ltd. v. Meena Variyal* [(2007) 5 SCC 428] and *New India Assurance Co. Ltd. v. Ved Wati* [(2007) 9 SCC 486].

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.

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

A 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 gratu-
B itous 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.

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

It is not necessary for us to deal with large number of precedents operating in this behalf as the question appears to be covered by a few recent decisions of this Court.

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17. In *United India Insurance Company Ltd. v. Serjerao & Ors.* [2007 (13) SCALE 80], it was held as under:

"7....When a statutory liability has been imposed upon the owner, in our opinion, the same cannot extend the liability
E of an insurer to indemnify the owner, although in terms of the insurance policy or under the Act, it would not be liable therefor.

17. In a given case, the statutory liability of an insurance company, therefore,either may be nil or a sum lower than
F the amount specified under Section 140 of the Act. Thus,when a separate application is filed in terms of Section 140 of the Act, in terms of Section 168 thereof, an insurer has to be given a notice in which event, it goes without saying, it would be open to the insurance company
G to plead and prove that it is not liable at all.

18. Furthermore, it is not in dispute that there can be more than one award particularly when a sum paid may have to be adjusted from the final award. Keeping in view the
H provisions of Section 168 of the Act, there cannot be any

doubt whatsoever that an award for enforcing the right under Section 140 of the Act is also required to be passed under Section 168 only after the parties concerned have filed their pleadings and have been given a reasonable opportunity of being heard. A Claims Tribunal, thus, must be satisfied that the conditions precedent specified in Section 140 of the Act have been substantiated, which is the basis for making an award.

19. Furthermore, evidently, the amount directed to be paid even in terms of Chapter-X of the Act must as of necessity, in the event of non-compliance of directions has to be recovered in terms of Section 174 of the Act. There is no other provision in the Act which takes care of such a situation. We, therefore, are of the opinion that even when objections are raised by the insurance company in regard to it liability, the Tribunal is required to render a decision upon the issue, which would attain finality and, thus, the same would be any award within the meaning of Section 173 of the Act."

It was furthermore held as under:

"8. So far as the question of liability regarding labourers travelling in trollies is concerned, the matter was considered by this Court in Oriental Insurance Company Ltd. Vs. Brij Mohan and Ors. (2007) 7 SCALE 753 and it was held that the Insurance Company has no liability..."

18. Yet again in *Ghulam Mohammad Dar v. State of J&K and Ors.* [(2008) 1 SCC 422], this Court opined that the words "injury to any person" as inserted by reason of the 1994 Amendment would only mean a third party and not a passenger travelling on a goods carriage whether gratuitous or otherwise. [See also *The New India Insurance Company v. Darshana Devi & Ors.* 2008 (2) SCALE 432]

19. The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the

A requisite amount of premium is paid for covering his/her risk (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place ow-
B ing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle.

20. For the views we have taken, it is not necessary to refer to a large number of decisions cited at the Bar as they are not applicable in a case of this nature.

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

R.P. Appeal allowed.