IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

MISC. APPEAL No. 1462 of 2015

NATIONAL INSURANCE COM.LTD.

Versus

ABHAY PODDAR AND OTHERS

Appearance:

Shri R.K. Jain, learned counsel for the appellant.

Shri J.P. Bansal, learned counsel for the respondents.

JUDGMENT

Reserved on: 02/09/2024

Pronounced on: 20/09/2024

The present appeal has been filed under Section 173 of Motor Vehicles Act arising out of award dated 25/04/2015, whereby the owner of motor vehicle has been awarded an amount of Rs.2 Lakhs for injuries and permanent disability sustained in the incident.

2. The incident as stated to have occurred on 07/04/2008 when the respondent No.1- claimant was travelling by his Maruti car at 2.10 hours in early morning from Rajnandgoan to Jabalpur and near village Medataal the driver of his own car namely Narendra Jaiswal (present respondent No.2) drove the car rashly and negligently and dashed the car against a tree as a result of which the appellant, his wife and two children sustained injuries. The appellant sustained fractures in femur bone of left leg and also in left hand as well as sustained injury in the other parts of the body. It was stated that the appellant was running a jewellery shop and earning Rs.8,000/- p.m. It was further alleged that he was given primary treatment in District Hospital Mandla and thereafter, shifted to Jabalpur for better treatment where his hand and leg were operated upon. It was contended that despite operation there has been some temporary disability in the left leg so also an amount of Rs.50,000/- was spent in treatment. Making such averment, an amount of Rs.5,70,00/- was claimed as compensation with interest. The claims tribunal awarded an amount of Rs.2 Lakhs as compensation with interest.

3. Learned counsel for the appellant-Insurance Company argued the appeal on three grounds. The first ground was pressed that the personal accident cover of the owner was restricted to Rs.2 Lakhs which has been duly accepted by the tribunal but that Rs.2 Lakhs should have been awarded in case of 100% disability and

in the present case as disability assessed by the tribunal was 25% permanent disability, therefore, the claim amount should have been reduced on prorata basis to the maximum amount of Rs.2 Lakhs which was the personal accident cover under the policy. The second ground was pressed that the license of the driver was not proved by the owner and since the owner was also appearing and in fact the owner was the claimant therefore, the burden shifted to the insured when owner was also on record and driver was also served before the tribunal. It was the duty of the owner to have established that his driver was duly having the driving license because it is not a case of the driver being stranger to the claimant but it is a case where the driver was an employee of the claimant and therefore, the claimant should have come up before the Court with clean hands.

4. It was also argued that the claim of injury of owner is not maintainable under Section 163-A of Motor Vehicles Act.

5. The aforesaid grounds were countered by learned counsel for the respondent No.1-claimant on the ground that the personal accident cover was Rs.2 Lakhs and it cannot be reduced on prorata basis on the basis of percentage of disability caused by the accident. It was further contended that the burden to prove violation of policy condition is on insurance company and the insurance company failed to discharge the aforesaid burden. It was also pointed out that the seizure memo in the criminal case is on record as Ex.P/5 before the claims tribunal and as per the said seizure memo the license of driver has been seized which was valid upto 30/09/2023. It is further argued that it was not a case under Section 163-A of Motor Vehicles Act so as to exclude the owner out of the purview of claimant but it was a case under Section 166 of Motor Vehicles Act where the owner would be within the purview of claimant. On these assertions, the appeal was prayed to be dismissed.

6. Heard.

7. So far as the issue of maintainability of claim case is concerned, it was not a case under Section 163-A of Motor Vehicles Act rather it was a case under Section 166 of Motor Vehicles Act. The language of Section 163-A as contradicted to the language of Section 166 of Motor Vehicles Act is altogether different as the scope of compensation and the person who can claim is altogether different. The aforesaid issue was considered by the Supreme Court in the case of ***Ningamma v. United India Insurance Co. Ltd. (2009) 13 SCC 710***, wherein the Supreme Court held as under:

> *23. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion*

that the said provision is not applicable to the facts and circumstances of the present case.

24. However, the question remains as to whether an application for demand of compensation could have been made by the legal representatives of the deceased as provided in Section 166 of the MVA. The said provision specifically provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of the legal representatives of the deceased; or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

25. When an application of the aforesaid nature claiming compensation under the provisions of Section 166 is received, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of Section 162, by determining the amount of compensation, which is found to be just. Person or persons who made claim for compensation would thereafter be paid such amount. When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs.

26. In this context, reference could be made to relevant paras of Section 147 of the MVA which read as follows:

"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 a 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.

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(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

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(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

27. Section 147 of the MVA provides that the policy of insurance could also cover cases against any liability which may be incurred by the insurer in respect of death or fatal injury to any person including owner of the vehicle or his authorised representative carried in the vehicle or arising out of the use of vehicle in the public place.

28. When we analyse the impugned judgment of the High Court in terms of aforesaid discussion, we find that the counsel for the Insurance Company himself contended before the High Court that the policy of insurance was an Act policy and the risk that is covered is only in respect of persons contemplated under Section 147 of the MVA. It is the finding of fact which we have also upheld in this judgment that the deceased was authorised by the owner of the vehicle to drive the vehicle.

29. When we examined the facts of the present case in view of the aforesaid submission made, we are of the opinion that such an issue was required to be considered by the High Court in the light of the facts and evidence adduced in the case. On consideration of the judgment and order passed by the High Court we find the same to be sketchy on the aforesaid issue as to whether the claim could be considered under the provisions of Section 166 of the MVA.

30. In this connection, reference can be made to the judgment of this Court in Oriental Insurance Co. Ltd. v. Rajni Devi [(2008) 5 SCC 736 : (2008) 3 SCC (Cri) 67] wherein it was held that where compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof.

31. Recently, this Court in Raj Rani v. Oriental Insurance Co. Ltd. [(2009) 13 SCC 654] wherein one of us (Hon'ble S.B. Sinha,

J.) has taken the view that it is not necessary in a proceeding under the MVA to go by any rules of pleadings or evidence. Section 166 of the MVA speaks about "just compensation". The court's duty being to award "just compensation", it will try to arrive at the said finding irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not.

32. It was further observed in Raj Rani case [(2009) 13 SCC 654] that although the multiplier specified in the Second Schedule appended to the MVA are stricto sensu not applicable in a case under Section 166 of the MVA, it is not of much dispute that wherever the court has to apply the appropriate multiplier having regard to several factors in mind. The Court has placed reliance on earlier judgment of this Court in Nagappa v. Gurudayal Singh [(2003) 2 SCC 274 : 2003 SCC (Cri) 523] wherein it was observed as follows in para 7: (SCC p. 279)

"7. Firstly, under the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as 'the MV Act') there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is — it should be 'just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. The other important part of the said section is sub-section (4) which provides that 'the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an

application for compensation under this Act'. Hence, the Claims Tribunal in an appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed."

33. *There are indeed cases like New India Assurance Co. Ltd. v. Sadanand Mukhi [(2009) 2 SCC 417 : (2009) 1 SCC (Cri) 815] wherein the son of the owner was driving the vehicle, who died in the accident, was not regarded as third party. In the said case the Court held that neither Section 163-A nor Section 166 would be applicable.*

34. *Undoubtedly, Section 166 of the MVA deals with "just compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "just compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty-bound and entitled to award "just compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not.*

35. *However, whether or not the claimants would be governed by the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court. While entertaining the appeal, no effort was made by the High Court to deal with the aforesaid issues, and therefore, we are of the considered opinion that the present case should be remanded back to the High Court to give its decision on the aforesaid issues.*

36. *The High Court was required to consider the aforesaid issues even if it found that the provision of Section 163-A of the MVA was not applicable to the facts and circumstances of the present case. Since all the aforesaid issues are purely questions of fact, we do not propose to deal with these issues and we send the matter back to the High Court for dealing with the said issues and to render its decision in accordance with law.*

8. In view of the aforesaid it cannot be said that the claim petition under Section 166 of Motor Vehicles Act would not be maintainable at the instance of owner, therefore, the ground as to maintainability of the claims petition is hereby rejected and the claim petition is held to be maintainable.

9. So far as, the issue of license being held by the driver is concerned, it is seen that in the present case the Insurance Company duly raised an objection in the written statement by stating in para 11 of the written statement that the driver did not possess a valid and effective driving license which amounts to breach of the terms and conditions of insurance policy. Learned counsel for the claimant-respondent No.1 contradicted by pointing out to seizure memo Ex.P/5 and stating that the driving license was also seized by the police during course of police investigation. However, the license was not produced before the claims tribunal by the claimants during course of their evidence. It is not a case of the driver being stranger to the claimant but it is a case where the owner of the vehicle was himself the claimant and the driver of the vehicle was employee of the claimant. In such a case adverse inference could not be drawn by the claims tribunal against the insurance company because it was the owner who was employer of the driver and the insurance company had raised a specific plea in the written statement that the driver did not have an effective and valid driving license. The seizure memo is on record but from perusal of the record of the claims tribunal it is seen that even a photocopy of driving license is not on record. Though, it was a specific ground taken by the insurance company before the claims tribunal and also that despite a specific objection being taken in written statement by insurance company in para 11, the owner did not produce the license of the driver on record. Even in this appeal, the driving license of the driver has not been produced which the claimant could have produced by exercising the provisions of Order 41 Rule 27 CPC.

10. In the case of **Pappu and others Vs. Vinod Kumar Lamba and another (2018) 3 SCC 208**, the Supreme Court held that the insurance company is entitled to take a defence that the offending vehicle was driven by unauthorized person and a person driving the vehicle did not have a valid license. The onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid driving license at the relevant time. In the present case the owner is the claimant and it was the duty of the owner to have come up with a specific case and to have placed license of the driver who was employee of the claimant himself on record.

11. The Supreme Court in the aforesaid case has held as under:

12. This Court in National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] has noticed the defences available to the insurance company

under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The insurance company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time.

13. In the present case, Respondent 1 owner of the offending vehicle merely raised a vague plea in the written statement that the offending Vehicle No. DIL 5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, Respondent 1 did not enter the witness box or examine any witness in support of this plea. Respondent 2 insurance company in the written statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. Respondent 1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring Respondent 2 insurance company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending truck was not enough for Respondent 1 to make the insurance company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The insurance company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the written statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The insurance company would become liable only after such foundational facts are pleaded and proved by the

owner of the offending vehicle.

14. In the present case, the Tribunal has accepted the claim of the appellants. It has, however, absolved Respondent 2 insurance company from any liability for just reasons. The High Court has also affirmed that view. It rightly held that there can be no presumption that Joginder Singh was driving the offending vehicle at the relevant time.

15. Be that as it may, no grievance about the quantum of compensation awarded by the Tribunal has been made by the appellant claimants (either before the High Court or before us in this appeal). Hence, that issue does not warrant any scrutiny. Similarly, the owner of the vehicle (Respondent 1) has not challenged the findings of the Tribunal as affirmed by the High Court in favour of the insurer (Respondent 2), including on the factum that the vehicle was driven by a person who did not have a valid driving licence at the relevant time.

16. The next question is : whether in the fact situation of this case the insurance company can be and ought to be directed to pay the claim amount, with liberty to recover the same from the owner of the vehicle (Respondent 1)?

17. This issue has been answered in National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] In that case, it was contended by the insurance company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, this Court held that even if the insurer succeeds in establishing its defence, the Tribunal or the court can direct the insurance company to pay the award amount to the claimant(s) and, in turn, recover the same from the owner of the vehicle. The three-Judge Bench, after analysing the earlier decisions on the point, held that there was no reason to deviate from the said well-settled principle. In para 107, the Court then observed thus : (SCC p. 340)

"107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued,

despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage."

12. As already noted above in the present case the owner has decided to remain elusive in the matter by not coming out with license of the driver who was his own employee. In such circumstances, the claims tribunal seems to have erred in disbelieving the defence of the tribunal only on the ground that burden was only on the insurance company to prove its defence.

13. Consequently, this claim petition deserves to fail as there is breach of mandatory policy condition of the driver not having a valid and effective driving license.

14. Resultantly, the appeal stands allowed and the claim petition filed by the respondent No.1 is dismissed.

(VIVEK JAIN)
JUDGE

RS