

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.1147 OF 2007

Sangita Baban Kore & Ors. ..Petitioners.  
Vs.

Shri Vijaykumar L. Kenre & Anr. ..Respondents.

Mr.T.S.Ingale, adv. for the Petitioners.

Mrs.S.S.Deshpande, adv. for the Respondent No.2.

CORAM : J.H.BHATIA, J.

DATE : SEPTEMBER 29, 2007.

ORAL JUDGMENT:

1. Rule.

2. Rule made returnable forthwith. With consent of the learned counsel for the Parties, matter is taken up for final hearing immediately.

3. The petitioners are the legal representatives of the deceased Baban Laxman Kore. According to the petitioners, the deceased Baban was driving a scooter no.MH-10-J/1445, which was owned by and registered in the name of respondent no.1 Vijaykumar. The scooter was insured with the respondent no.2 United India Insurance Company Ltd. While driving the vehicle, it met with an accident on 19-1-1996 at about 11.00 p.m. In the said accident, he suffered fatal injuries. When he was taken to the hospital, he was declared dead.

The petitioners filed Motor Accident Claim No.256 of 1996 under Section 140 of the Motor Vehicle Act claiming compensation of Rs.50,000/- on the principle of "No Fault - Liability".

4. Respondent No.2 Insurance Company filed written statement Exhibit 21. In paragraph 2 of the Written Statement, the respondent no.2 contended that the insurance policy was issued in the name of opponent no.1 in respect of Bajaj Scooter Model Super of 1995. The said policy was issued on the basis of engine and chassis number and, therefore, the respondent no.2 was unable to confirm whether the said insurance policy pertains to vehicle no.MH-10-J/1445 alleged to have been involved in the said accident for want of relevant documents, RC and TC book. Having said so, the insurance company also contended that the insurance policy was issued only in respect of third party risk and the deceased, who was himself driving the vehicle was not covered under the insurance policy.

5. The learned Member, Motor Accidents Claim Tribunal, Sangli framed certain issues and held that the deceased had died due to the accident, which had occurred due to the use of the said scooter bearing no.MH-10-J/1445. The Tribunal also held that the vehicle was owned by the respondent no.1 and was

insured with the respondent no.2. The learned Member of the Claims Tribunal passed an award against the respondent no.1, who is the owner of the vehicle, alone to pay compensation of Rs.50,000/- on principle of "No Fault Liability". However, no such award was passed against the respondent no.2 Insurance Company. Petitioners have filed this present writ petition to the extent of refusal to pass an award against the insurance company.

6. Heard the learned counsel for the Parties. Perused the copies of the relevant documents and the impugned judgment.

7. The learned Tribunal clearly held that the deceased Baban had died in an accident, which had occurred due to the use of Bajaj scooter no.MH-10-J/1445. The learned Tribunal dealt with the issue no.2 which is as follows:

"2. Do they prove that, the said scooter was owned by the opponent no.1 and insured with the opponent no.2 at the relevant time ?"

This issue was answered in affirmative. It shows that the trial Court came to conclusion that the vehicle was insured with the respondent no.2. In paragraph 9 of

the judgment, the learned Member of the Tribunal observed that in order to have indemnification as provided in Chapter XI of the Motor Vehicles Act to impose liability on the insurance company, jointly or severally, it is necessary to establish or to be found from the record that the deceased was "Third Party" for both 'No Fault Liability Claim' and 'Fault Claim'. Having said so, the learned Member dealt with the facts of the case and came to conclusion that the deceased himself was at fault and the respondent no.1, the owner of the vehicle was liable for 'No Fault Liability'. The learned Member gave no reason as to why the Insurance Company could not be held liable to pay compensation. Even though in the written statement, the insurance company had pleaded that only third party cover was taken, and, therefore, the vehicle driver could not be covered under third party risk, the copy of the insurance policy clearly shows that it was not mere third party insurance policy but it is a comprehensive policy. As per the Clause I.M.T. 71, the driver other than paid driver is covered under the said insurance policy. It is nobody's case that the deceased was a paid driver. This aspect has not been considered by the Tribunal. In view of this, the insurance company was liable to pay compensation to the deceased.

8. As far as Section 140 of the Motor Vehicles Act is concerned, it is now well settled legal position that it is not necessary to prove fault of anybody. Section 140 provides for payment of compensation on the principle of 'No Fault Liability' and the present petition was filed under Section 140 on the principal of 'No Fault Liability' only. It is irrelevant as to who was at fault in the said accident. Even though the deceased himself may be at fault still his legal heirs may claim compensation under Section 140. I find support from authorities in **K.Nandakumar v. Thanthai Periyar Transport Corporation Ltd. AIR 1996 ACJ 555, Shivaji Patil v. Vatschala Uttam More AIR 1991 Supreme Court 1769, Raphik Mehbub Pakhali v. Anantkumar 1996(1) Maharashtra Law Journal 106.**

9. It appears that the learned Member of the Claims Tribunal misdirected himself while observing that the Insurance Company has no liability under Section 140 of the Motor Vehicles Act. Therefore, in my opinion, the petition deserves to be allowed.

10. In the result, petition is allowed and the impugned order stands modified as follows:

Respondent Nos.1 and 2 shall be jointly and severally liable to pay an amount of Rs.50,000/-

to the petitioners/claimants with interest at the rate of 7.5% per annum from the date of filing the petition till the realisation of the amount.

11. Rule made absolute accordingly.

[J.H.BHATIA, J.]