

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.152 of 2017

Date of decision : 13.11.2017

Anil Kumar

.....Appellant

versus

Roop Kumar Sharma and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

PRESENT : Mr. Naveen Daryal, Advocate for the appellant.

**Brig. B.S.Tanque, Advocate for respondent
No.2-Insurance Company.**

RAJBIR SEHRAWAT, J. (ORAL)

This is an appeal filed by the owner of the vehicle challenging the Award dated 01.12.2016 passed by Motor Accidents Claims Tribunal, Kurukshetra, in so far as it absolves the Insurance Company from the liability of payment of the compensation.

Brief facts of this case are that on 14.06.1995, Kamal Sharma, along with 54 other pilgrims, left Kurukshetra at about 8.00 AM. They had to go to Haridwar, Ayodhya, Nepal and Jagan Nath Puri etc. They were in the Bus bearing registration No.UP-10B-0939, which was being driven by one Raju Karki, resident of Delhi. It is claimed in the claim petition that the bus was taken for journey after getting permission from

Regional Transport Controller, Haridwar as well as from Managing Director, Garhwal Vikas Nigam, Haridwar. On the intervening night of 17/18.06.1995, the bus in question was on its way to Kathmandu via Sonali. At about 2.00 AM, when the said bus, in which the deceased-Kamal Sharma was travelling along with other pilgrims, reached in the area of Chitwan, District Chandi Bhajan, Village Vikas Samiti, Ward No.5, situated in Parevar Bhir near bridge No.2, at the distance of two kilometers from Naraingarh, the driver of the Bus lost control and the bus in question fell in Trishuli Nadi. All the 54 persons died in the accident. No dead body of the any pilgrim could be traced as the said river was about 30 meters deep. On account of death of these persons, several claim petitions were filed, one of them was of Sona Devi and others. The present petition was filed by Roop Kumar Sharma on account of death of Kamal Sharma.

The parties led their evidence. The owner of the bus produced in evidence, the cover note of the insurance of the vehicle in question along with the schedule of the policy. The Insurance Company also produced the alleged copy of insurance policy as Ex. R-4.

After hearing the counsel for the parties and perusing the record, the Tribunal determined the quantum of compensation to be Rs.4,34,500/-.

However, relying upon the policy Ex. R-4, the Tribunal absolved the Insurance Company from making the

payment of the compensation on the ground that the policy did not cover the operation of the bus in Nepal. Since the accident occurred in Nepal so the Insurance Company is not liable.

While arguing the case, the counsel for the appellant submits that there was no limitation for use of the vehicle in terms of geographical area; as per the policy issued for this vehicle, the schedule of which is also produced on record along with the cover note as Ex R-3.

The next argument of learned counsel for the appellant is that Ex. P-12 is permit of the said bus, which authorised the bus to travel to area of Nepal. It is further submitted that the issue, whether the claim petition can be filed in India; if the accident occurred in Nepal, has already been considered by this Court in *FAO No.429 of 1998* decided on *30.11.2010* titled as *Sona Devi versus Amit Kumar and others*. Counsel for the appellant submits that in that case, the Tribunal held that the claim petition is not maintainable in India, if the accident had taken place out of India. However, this Court remanded the matter to the Tribunal for the decision of the same, on merits, after holding that claim petition can be filed in India.

Counsel further submits that since there is no restriction in the policy regarding the use of the vehicle outside geographical territory of India, therefore, the Insurance Company is liable to make the payments.

On the other hand, learned counsel for the

respondent-Insurance Company has submitted that since the policy produced on record as Ex. R-4 is limited to cover the vehicle to be used only in the geographical area of India, therefore, the Insurance Company is not liable for payment of compensation on account of any accident occurring outside India.

After hearing learned counsel for the parties and perusing the records, this Court is of the considered opinion that the submissions made by learned counsel for the appellant deserve to be accepted.

Motor Vehicles Act has made elaborate provisions regarding compulsory insurance of vehicle qua damage to the third party in any accident involving the insured vehicle at any public place. Likewise, the liability of the Insurance Company to indemnify the insured has also been made compulsory by the Act. Section 146 of the Act makes the provision for necessity of insurance of vehicle before taking it out on road. Section 147 of the Act determines the extent of liability of the Insurance Company. A perusal of Section 147 of the Act clarifies the limits of liability of Insurance Company and the requirements of policy of insurance.

A bare perusal of Sections 146 and 147 of the Act makes it clear that the insurance policy is attached to the 'vehicle' in question and not to Geographical expense of the area of operation of the vehicle in question. The only requirement for coming in operation of the policy liability is; the use of vehicle

in any public place. Therefore, the Insurance Company cannot avoid its liability to pay the compensation only on the ground that the vehicle was used in any particular city, state or a particular geographical area. Once a vehicle is insured qua third party it is insured for all geographical areas as per the provisions of the Act. Only plea the Insurance Company can take to avoid its liability qua third party can be; that the vehicle was not being plied in a particular geographical area in accordance with the provisions of the Act, if any, prescribed for that purpose. Every extent of liability qua third party is covered by the consolidated amount of premium required to be paid for insurance qua third party only. Therefore to cover liability qua third party in any particular geographical area the insured cannot even be asked to pay any extra premium under the provisions of the Act. So the Insurance Company cannot even avoid its liability qua third party, on the ground that it can charge extra premium to cover any particular geographical area and that the insured has not paid that extra premium to cover that particular geographical area. Once insured, the vehicle is insured to cover all geographical areas; where the vehicle is authorised by the authorities to travel.

One can come across a thought that the Motor Vehicles Act extends only to 'whole of India' as per its section 1, so it does not cover the area outside India. However, this rational also does not exempt the Insurance Company from liability arising from the usage of the vehicle outside the

geographical area of the Union of India. This section also implies that the Act would be applicable to all the citizens and subjects of India qua all the Motor Vehicular aspects in India. It does not exclude the liability of one citizen or entity of India qua the other citizen of India even if the same is incurred outside the geographical area of Union of India, particularly, when the liability is arising from the use of vehicle registered and insured in India. The extra-territorial jurisdiction of a sovereign nation state over its citizen and their rights and liabilities is well recognised concept of jurisprudence. The sovereign Nation State has plenary powers to make law regarding its citizens and subjects; irrespective of territorial limits, may be, for enforcement of such law in another country the reciprocity may be required. Extra-territorial jurisdiction of a nation state is, jurisprudentially valid on the basis of the 'causes and effects' qua the territory, citizens, subjects and objects of a nation state. Indian Parliament too has this power to legislate for extra-territorial causes and effects, as clarified by Article 245 of the Constitution of India. Hence the Motor Vehicles Act shall also govern the rights and liabilities of citizens and subjects of India; arising from the provisions of Motor Vehicles Act, irrespective of territorial limits.

This intention of the Parliament to give extra-territorial effect to the provisions of this aspect of the Act is further clarified by the provisions; as contained in Sections 139 and 149 of the Motor Vehicles Act. Section 139 gives powers to

the Government of India to make rules regarding the travelling of the vehicles registered in India to other countries. Section 149 (3) makes the Insurance Company liable to satisfy the decree or award for the accidents occurring outside India, even if the same is passed by a foreign Court, but according to provision of Section 149. If the award of a foreign Court passed as per provisions of Section 149 of the Act is enforceable against an Insurance Company in India, then there is no question of the liability of Insurance Company being excluded in Courts in India on the ground that accident occurred outside India.

It is not even disputed by learned counsel for the respondents that the bus in question had the necessary permission to ply in the area of Nepal. Therefore, its insurance policy would be deemed to be validly permitted to travel in the area of travel of the bus. Hence, for the liability arising from the accident involving the vehicle entitled to ply in Nepal, the insurer of the vehicle would be very much liable to make the payment.

Still further, the bare perusal of the policy shows that the policy and the schedule produced on record by the appellant do not show any restriction of geographical area in terms of exclusion of the liability of the insurer. The policy produced on record by the appellant shows that this policy does not have any restriction against plying the vehicle outside India. In the name of limitation as to use, only organised racing, reliability test and speed testing have been excluded; in terms of

the Motor Vehicles Act. There is no such clause mentioned; as excluding liability of the Insurance Company; for an accident happening outside India.

Although, the copy of the insurance policy produced on record by the Insurance Company as Ex. R-4 contains a vague writing, which speaks "Geographical area/zone India". However, comparison of the policies Exhibits R-3 and R-4 show that the policy numbers on these two policies are different. The policy Ex. R-4 carries different details regarding the premium paid and even regarding the details of the vehicle insured. So, it is obvious that the Insurance Company has tried to place on record the insurance policy not pertaining to the bus in question to avoid its liability. This attempt has been made by the Insurance Company; only for one reason that this policy contains stipulation regarding the 'geographical area/zone' which mentions 'India', whereas the original policy/cover note produced by the appellant does not show any such restriction. Therefore, on the basis of this policy Exhibit R-4, which is not even proved to be the policy of the bus in question, the Insurance Company can not avoid its liability to make the payment of the compensation, awarded on account of accident involving the vehicle in question.

Faced with this situation, learned counsel for the respondent-Insurance Company submits that the limitation for liability of insurance qua area of operation outside India has been defined by 'India Motor Tariff' and therefore, Insurance

Company cannot be held liable for any accident which occurred outside the territorial limits of Union of India.

For that purpose, the counsel relies upon the document Ex. R-7, which contains a specimen of the endorsement advised to be included in the policy. However, this document itself is not a legal document to exclude the statutory liability of Insurance Company. This is only a suggestion of the Advisory Committee. This was required to be included in the policy by individual Insurance Company, if at all considered appropriate and desirable by it, while insuring a vehicle. This document in itself is not sufficient to exclude the liability of the Insurance Company in an accident which occurred outside the territorial jurisdiction of India.

As stated above, nothing has been placed on record by the Insurance Company to show that the insurance policy regarding this particular vehicle contained this stipulation and endorsement as advised by 'India Motor Tariff'. Moreover, it is not on record; as to since when the respondent-Insurance Company started to follow this 'India Motor Tariff' Advisory, if at all, it follows the same.

Moreover, the competence of 'India Motor Tariff' to issue such instruction to limit the liability of Insurance Company in terms of geographical area has not been shown by the Insurance Company. No such instructions; which run counter to or dilute the liability of Insurance Company as defined under Sections 146 to 149 of the Act can be countenanced by the

Court.

A perusal of the record also shows that all these objections were not even raised by the Insurance Company while filing the written statement. On the contrary, in the written statement, the Insurance Company has taken the stand that their liability is limited to the extent of Rs.50,000/- only. Therefore, the argument of learned counsel for the Insurance Company, otherwise also, is beyond the pleadings. Hence, the same can not be accepted by this Court.

In view of the above, the findings of the Tribunal, to the extent of the exclusion of the liability of the Insurance Company, and the consequent Award to that extent, is set aside. It is ordered that the liability to make the payment of the awarded amount shall be of the Insurance Company.

Hence, the appeal is allowed.

November 13, 2017

sahil soni

**(RAJBIR SEHRAWAT)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No