R.N.R.

Before K. Kannan, J.

RAJESH KUMAR (R.K. BHANOT),—*Petitioner*

versus

RAMINDER JAIN AND OTHERS,—*Respondents*

F.A.O. No. 935 of 1990

17th January, 2011

Constitution India, 1950—Art. 226—Circular No. 1 issued on 17th March, 1978 by Tariff Advisory Committee—Accident of a private car to avoid hitting a cyclist—Driver steering vehicle to one side and dashing against a tree—Tribunal finding no proof of negligence of driver and dismissing claim petition—Challenge thereto—Tribunal could not have taken fact of non-registration of complaint by police or evidence of driver as sufficient to hold that there was no negligence on part of driver—Driver of car held guilty of negligence—Responsible for accident—Issue of liability of Insurance Company—Depends on terms of insurance policy—Insurance Company held responsible for accident—Appeals allowed.

Held, that the matter cannot conclude without finding the issue of responsibility amongst the respondents for the claim emanating from the claims. If the driver of the car in which the claimants were travelling was responsible for the accident, then the issue of liability of the Insurance Company will have to depend on the terms of the insurance policy. The policy has been issued as a comprehensive policy for private car and a premium of Rs. 2826 had been collected. The commencement of the policy was on 24th February, 1989 and the accident had taken place during the currency of policy, namely, on 7th March, 1989. Through Section II(1)(a) specific incorporation has been made to cover the risk to an occupant being carried in a motor vehicle. The Insurance company is, therefore, fully responsible for the accident and the arguments of the insurer that the premium had been paid only for own damage to the vehicle is a wrong reading of the policy. The policy contains what was expressly stated in the circular No. 1 issued on 17th March, 1978 by the Tariff Advisory Committee to all Insurance Companies.

(Paras 5 & 6)

Om Parkash Sharma, Advocate, *for the appellant.*

Pritam Saini, Advocate and Rajnish Narula, Advocate, *for respondent No. 1.*

Paul S. Saini, Advocate and Anil Kumar, Advocate, *for the Insurance Company.*

K. KANNAN, J. (ORAL)

(1) Both the appeals are connected as they arise out of the same accident seeking for compensation in a case where the petitions were dismissed. The claimants were the passengers in a private car and driven by the brother of the owner of the vehicle. In an attempt to avoid hitting against a cyclist, the driver steered the vehicle to one side and ultimately dashed against a *neem* tree. No FIR was registered and the driver himself had given evidence to the effect that he was driving the vehicle carefully at the speed of 60 to 70 kilometer per hour and the accident had taken place only on account of his effort to avoid hitting against a cyclist. The Tribunal took that there was no proof of negligence of the driver and dismissed the petition.

(2) An attempt of a driver to prevent hitting against a cyclist ought merely result in steering clear to safety and still moving along the same road. If the driver himself ultimately finds that the vehicle could be stopped only by hitting against a tree, negligence of the driver is the obvious conclusion that one can come to. The Tribunal could not have taken the fact of non-registration of complaint by the police or the evidence of the driver as sufficient to hold that there was no negligence on the part of the driver. After all, a tree is, by the nature of things, stationary and ought to be so clearly evident for a person steering the vehicle to stop without coming into contact with the tree. Again a tree cannot be at the middle of the road. It ought to be beyond the extremity of the road and for any vehicle dashing against a tree, it must result in an inference of *res ipsa loquitur* situation that will pinpoint to the rash and negligent driving of the driver. I, therefore, set aside the finding rgarding the negligence and hold the driver of the vehicle in which the passengers were travelling as guilty of negligence.

(3) The claim for compensation for the claimant namely Dr. J.P. Bhanot was assessed by the Tribunal notwithstanding the dismissal of the case and the Tribunal found that he had remained under treatment of one Dr. M.L. Kochar (PW7) and he had himself certified the claimant to have suffered 10% permanent disability and 5% temporary disability due to the injuries received by him. Dr. S.K. Moda (PW3) had also deposed for the injuries suffered by Dr. J.P. Bhanot and the treatment that he had given. The Tribunal, however, did not find it necessary to discuss the details since the petition had been filed under Section 110-A and compensation could not be possible without ascertaining rash and negligent driving. The Tribunal had also not decided on the assessment of compesnation of Rajesh Kumar Bhanot which is the subject of appeal in FAO No. 935 of 1990. Since the appeal relates to the year 1990 and the accident had taken place in the year 1989, I proceed to examine the issue of quantum also without needlessly putting it through the Tribunal for consideration only for this aspect. As regards the claim for Dr. J.P. Bhanot, the medical certificate revealed that he was admitted in the hospital on 7th March, 1989 till 21st March, 1989 and again from 21st March, 1989 to 2nd May, 1989. He was said to be working as Associate Professor in the department of Entomology of Haryana

Agricultural University. Hissar and he was drawing salary of Rs. 4,075 in the scale of 3,700—5,700. PW7 had stated that on account of injuries, the claimant had suffered shortening of limb by 1 cm and due to such shortening, there was 4% permanent disability and 6% permanent disability was due to mal-united fracture shaft femur left with lateral anulation. Having regard to the certification, he was advised rest till the 2nd July of 2009. I would take that he was unable to do duty for a term of 4 months and take the loss of income at Rs. 16,000 (Rs. 4,000 x 4 = 16,000). For a fracture that he has suffered and the prolonged treatment that he had suffered, I will provide towards pain and suffering Rs. 15,000. The evidence was that he had a fracture of the pelvis and the dislocation of the left shoulder and ribs all over the body. The fracture was reduced through plaster and for hospitalization for over 50/60 days, the evidence was that he had spent Rs. 10,000 towards medical expenses and Rs. 5,000 towards transport expenses. I grant the same to him. For the inconvenience and loss of amenities that he would have suffered by a permanent disability on a shorting of the limb, I will provide for Rs. 10,000. The total compensation will be Rs. 56,000 and it shall become payable by the Insurance Company with interest at 6% from the date of petition till date of payment.

(4) As regards the claim for compensation for Rajesh Kumar Bhanot, the evidence was that he had a bone deep injury of 2x2 cm on the right knee and his ribs under the chest region had been badly pressed and he had perfused bleeding from his nose. He gave evidence to the effect that he had been taken to the medical college at Rohtak and he was discharged. He complained that he still had pain in his right leg in case of running. He also stated that he had spent Rs. 2,000 and since his brother Dr. J.P. Bhanot had been admitted in the hospital used to come on alternate days and he had, therefore, suffered loss of income. He contended that he had lost monthly income of Rs. 2,000 to Rs. 5,000. I do not find that the loss of income was in any way established and I would provide to him a compensation of Rs. 5,000 for pain and suffering and for the short period of hospitalization, which will carry interest @6% from the date of petition till date of payment. The primary liability shall likewise be on the driver of the car to make the payment for the negligent act of his driving in causing the accident.

(5) The matter cannot conclude without finding the issue of responsibility amongst the respondents for the claim emanating from the claims. If the driver of the car in which the claimants were travelling was responsible for the accident, then the issue of liability of the Insurance Company will have to depend on the terms of the insurance policy. I have seen the insurance policy filed in Court and exhibited as PW8/B. The policy has been issued as a comprehensive policy for private car and a premium of Rs. 2,826 had been collected. The commencement of the policy was on 24th February, 1989 and the accident had taken place during the currency of policy, namely, on 7th March, 1989. I find, in this case, through Section II (1)(a) specific incorporation has been made to cover the risk to an occupant being carried in a motor vehicle in the following words :

> *"(a) death of or bodily injury to any person including occupants carried in the Motor Car provided that such occupants are not carried for hire or reward but except so far as it necessary to meet the requirements of section 92 A and section 95 of the Motor Vehicles Act, 1939 the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured."*

(6) The Insurance Company is, therefore, fully responsible for the accident and the arguments of the learned counsel appearing for the insurer that the premium had been paid only for own damage to the vehicle is a wrong reading of the policy. The policy contains what was expressly stated in the circular No. 1 issued on 17th March, 1978 by the Tariff Advisory Committee to all Insurance Companies.

(7) The Insurance Company will, therefore, be fully answerable to the claims arising from these two petitions.

(8) Both the appeals are allowed to the above extent.

R.N.R.