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(2019) 05 J&K CK 0037

In the Jammu And Kashmir High Court

Case No : Civil Ist Misc Appeals (MA) No. 194 Of 2012

Bajaj Allianz Gen. Insurance Co. Ltd @APPELLANT@Hash Lal Dei And Others

Date of Decision : 17-05-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2)(a)(ii)

Citation : (2019) 05 J&K CK 0037

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Baldev Singh, D. K. Khajuria, Raghu Mehta,

Final Decision : Allowed

Judgement

RAJESH BINDAL, J

1. This order will dispose of a bunch of appeals bearing MA Nos. 194, 197, 199, 200, 201, 202, 203 and 204 of 2012. All the appeals have been filed by the Insurance Company against common award of the Motor Accident Claims Tribunal, Kishtwar, arising out of same accident.

2. One Tata Sumo vehicle bearing registration No. JK14A-2029 met with an accident on 13.08.2006 at Koterna, Chingam. All the claim petitions were filed by the claimants whose predecessor-in-interest died in the said accident. The factum of accident is not denied by the appellant-Insurance Company.

3. Brief facts in each of the appeal are summed up as under :

MA No. 194/2012 (Claim Petition No. 140/Claim)

Raj Kumar, who was 16 years of age, died in the accident. The claimants are mother and sisters of the deceased. His father had already expired. The Claim Petition No. 140/Claim, seeking compensation of Rs. 7,50,000/- was filed.

The Tribunal awarded a sum of Rs. 3,00,000/- along with interest @ 7% per annum from the date of filing of the claim petition.

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MA No. 197/2012 (Claim Petition No. 145/Claim)

Deepu son of Duni Chand, aged 6 years died in the accident. The claimants are father, mother, sister and brothers of the deceased. Claim Petition No. 145/claim, seeking compensation of Rs. 4,40,000/- was filed. The Tribunal awarded a sum of Rs. 3,00,000/- along with interest @ 7% per annum from the date of filing of the claim petition.

MA No. 199/2012 (Claim Petition No. 144/Claim)

Om Parkash son of late Jai Ram, aged 35 years died in the accident. His sons, widow, mother and uncle, had filed Claim Petition No. 144/claim, seeking compensation of Rs. 20,70,000/-. The Tribunal awarded a sum of Rs. 9,43,000/- along with interest @ 7% per annum from the date of filing of the claim petition.

MA No. 200/2012 (Claim Petition No. 138/Claim)

Sham Lal son of late Daya Ram aged 40 years died in the accident. The claimants are mother, widow, daughter and sons of the deceased, who had filed Claim Petition No. 138/claim, seeking compensation of Rs. 12,70,000/-. The Tribunal awarded a sum of Rs. 9,46,600/- along with interest @ 7% per annum from the date of filing of the claim petition.

MA No. 201/2012 (Claim Petition No. 142/Claim)

Santosha Devi daughter of late Chaman Lal, aged 22 years died in the accident. The claimants are mother, brothers and sister of the deceased, who had filed Claim Petition No. 142/claim, seeking compensation of Rs. 22,70,000/-. The Tribunal awarded a sum of Rs. 5,59,000/- along with interest @ 7% per annum from the date of filing of the claim petition.

MA No. 202/2012 (Claim Petition No. 141/Claim)

Duni Chand son of Udham Ram, aged 30 years died in the accident. The claimants are widow, father, mother, daughters and son of the deceased, who had filed Claim Petition No. 141/claim, seeking compensation of

Rs. 18,70,000/-. The Tribunal awarded a sum of Rs. 10,61,800/- along with interest @ 7% per annum from the date of filing of the claim petition.

MA No. 203/2012 (Claim Petition No. 143/Claim)

Duni Chand, aged 52 years died in the accident. His widow, sons and daughter had filed Claim Petition No. 143/claim, seeking compensation of Rs. 14,20,000/-. The Tribunal awarded a sum of Rs. 6,85,000/- along with interest @ 7% per annum from the date of filing of the claim petition.

MA No. 204/2012 (Claim Petition No. 139/Claim)

Sat Lal son of Late Rama, aged 45 years died in the accident. The claimants are widow, sons and daughter of the deceased. They filed Claim Petition No. 139/

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claim, seeking compensation of Rs. 16,70,000/-. The Tribunal awarded a sum of Rs. 8,35,000/- along with interest @ 7% per annum from the date of filing of the claim petition.

ARGUMENTS OF THE APPELLANT

4. Learned counsel for the appellant-Insurance Company submitted that the driver of the Tata Sumo, which met with accident, was not having a valid driving license. Hence, the Insurance Company could not be burdened with the liability to pay compensation. He further submitted that the onus to prove that the driving license was genuine or fake will arise only if the same is produced on record. In the case in hand there is no driving license placed on record by the legal representatives of the deceased driver of the vehicle. In the absence thereof, the Insurance Company could not have verified about its genuineness. The primary onus to prove the driving license is on the driver and owner of the vehicle involved in the accident. Thereafter it shifts on the Insurance Company. In support of his plea reliance was placed on judgment of Hon'ble the Supreme Court in Pappu and others vs. Vinod Kumar Lamba and another, 2018 ACJ 690.

5. As far as quantum of compensation is concerned, in Claim Petition No. 139, he submitted that deceased Sat Pal was between 40-45 years of age. His income was taken as Rs. 6,000/- per month and multiplier of 15 was applied

whereas in view of judgment of Hon'ble the Supreme Court in Sarla Verma vs. Delhi Transport Corporation, 2009 ACJ 1298 the multiplier applied could be only 14. Similar issue with regard to multiplier was raised in Claim Petition Nos. 138, 141 and 144.

6. As far as other claim petitions are concerned, learned counsel for the appellant did not raise any issue on the quantum of compensation and the only argument raised therein was regarding the driving license.

ARGUMENTS OF THE CLAIMANTS

7. On the other hand learned counsels appearing for the claimants submitted that the factum of accident in the present case is not in dispute. The onus to prove that the driver of the vehicle was not carrying a valid driving license was on the Insurance Company, which it has failed to discharge. The Tribunal also while framing issue regarding the driving license had placed onus on the Insurance Company. In the alternative it was submitted that even if the issue of driving license was decided in favour of the appellant-Insurance Company, still the claimants cannot be made to suffer. The Insurance Company should be directed to satisfy the award as the insurance of the vehicle is not in dispute. The Insurance Company can only be given recovery rights from the owner of the vehicle.

8. It was further submitted that even if the issue raised by the Insurance Company regarding application of multiplier is accepted, there are other heads under which no compensation had been awarded to the claimants. If the amount

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is considered in that light, the claimants may be entitled to more compensation, however, they having not filed any appeal, in any case the amount does not deserve to be reduced.

9. Heard learned counsel for the parties and pursued the paper book.

DISCUSSIONS

10. It remained undisputed that Tata Sumo bearing Registration No. JK14A-2029 met with an accident on 13.08.2006. As a result of which eight persons died. Claim Petitions were filed. All were clubbed together and disposed of by the Tribunal vide common award, which has been impugned in the present set of appeals by the Insurance company. The amount of compensation awarded by the learned Tribunal in different claim petitions, is summed up here under:-

Claim Petition No. 138/claim:

(i) Compensation on account of total = Rs. 9,21,000/-

future loss of dependency:

(ii) Compensation on account of loss of = Rs. 10,000/-

consortium :

(iii) Compensation on account of loss of = Rs. 10,000/-

estate:

(iv) Compensation on account of funeral = Rs. 5,000/-

expenses: _______________

Total: = Rs. 9,46,000/-

Claim Petition No. 139/claim:

(i) Compensation on account of total = Rs. 8,10,000/-

future loss of dependency:

(ii) Compensation on account of loss of = Rs. 10,000/-

consortium to petitioner No.1 Premi

Devi:

(iii) Compensation on account of loss of = Rs. 10,000/-

estate:

(iv) Compensation on account of funeral = Rs. 5,000/-

expenses: _______________

Total: = Rs. 8,35,000/-

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Claim Petition No. 140/claim:

(i) Compensation on account of pecuniary = Rs. 1,50,000/-

Damages (Loss of dependency):

(ii) Compensation on account of loss of = Rs. 75,000/-

future prospects of deceased:

(iii) Compensation on account of non- = Rs. 75,000/-

pecuniary damages:

____

Total: = Rs. 3,00,000/-

Claim Petition No. 141/claim:

(i) Compensation on account of total future loss of dependency: = Rs. 10,36,800/-

(ii) Compensation on account of loss of consortium: = Rs. 10,000/-

(iii) Compensation on account of loss of estate: = Rs. 10,000/-

(iv) Compensation on account of funeral expenses: = Rs. 5,000/-

Total: = Rs. 10,61,800/-

Claim Petition No. 142/claim:

(i) Compensation on account of total future loss of dependency: = Rs. 5,44,000/-

(ii) Compensation on account of loss of Estate: = Rs. 10,000/-

(iii) Compensation on account of funeral expenses: =Rs. 5,000/-

Total: = Rs. 5,59,000/-

Claim Petition No. 143/claim:

(i) Compensation on account of total future loss of dependency: =Rs. 6,60,000/-

(ii) Compensation on account of loss of consortium to petitioner No.1 Bothi Devi (wrongly written as Bhag Devi): = Rs. 10,000/-

(iii) Compensation on account of loss of

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estate:
=Rs. 10,000/-

(iv) Compensation on account of funeral expenses: =
Rs. 5,000/-

Total: Total: = Rs. 6,85,000/-

Claim Petition No. 144/claim:

(i) Compensation on account of total future loss of dependency: = Rs. 9,18,000/-

(ii) Compensation on account of loss of Consortium to petitioner No.3 Bhag Devi: = Rs. 10,000/-

(iii) Compensation on account of loss of estate: = Rs. 10,000/

(iv) Compensation on account of funeral expenses: = Rs. 5,000/-

Total: = Rs. 9,43,000/-

Claim Petition No. 145/claim:

(i) Compensation on account of pecuniary = Rs. 1,50,000/-

damages(loss of dependency):

(ii) Compensation for loss of future = Rs. 75,000/-

prospects:

(iii) Compensation for loss of = Rs. 75,000/-

non-pecuniary damages: _______________

Total: = Rs. 3,00,000/-

11. The main issue sought to be raised by the learned counsel for the Insurance Company is that the driver of the vehicle involved in the accident was not carrying a valid driving license, hence, the Insurance Company cannot be made liable to pay the compensation.

12. The learned Tribunal opined that the onus to prove that the driving license possessed by the driver of the vehicle was not genuine, was on the Insurance Company. The Insurance Company having not discharged that burden, it is liable to satisfy the award. While recording this finding the learned Tribunal had failed to appreciate the basic fact that primary duty to prove that the driver of the vehicle was having a valid driving license was on the driver of the vehicle. In the

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case in hand the driving license itself has not come on record. In the absence of the driving license on record, how the Insurance Company could discharge its burden to prove about the genuineness of the driving license, cannot be imagined. It was the primary duty of the driver of the vehicle to have at least produced the driving license on record when he possessed one, which was genuine and valid. Apparently, there was some lapse as the driver of the vehicle also expired in the accident.

13. In Pappu's case (supra), Hon'ble the Supreme Court opined that primary onus to prove that the driver of the vehicle was possessing a valid driving license is on the owner or driver of the vehicle and only thereafter the burden shifts on the Insurance Company. Relevant paragraphs of the judgment are extracted below:-

"11. The question is: whether the fact that the offending vehicle bearing No.DIL-5955 was duly insured by respondent No.2 Insurance Company would per se make the Insurance Company liable? This Court in the case of National Insurance Co. Ltd. (supra), 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. In the present case, the respondent No.1 owner of the offending vehicle merely raised a vague plea in the Written Statement that the offending vehicle 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, the respondent No.1 did not enter the witness box or examine any witness in support of this plea. The respondent No.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. The respondent No.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 the respondent No.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 the respondent No.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

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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. As in the case in hand no driving license was produced by the owner/driver or his legal representatives on record, the Insurance Company did not have any opportunity to verify its genuineness. Hence, onus cannot be put on the Insurance Company to prove genuineness of a document which is not existing on record. Hence, the Insurance Company cannot be held liable to pay compensation. However, keeping in view the opinion expressed by Hon'ble the Supreme Court in Pappu's case (Supra) referring to earlier judgment of Hon'ble the Supreme Court in National Insurance Company Ltd vs. Swaran Singh, 2004 ACJ 1 (SC), the Insurance Company is directed to satisfy the award and have recovery rights from the owner/driver of the vehicle regarding the amount of compensation paid to the claimants in accordance with law. As and when such a process is initiated, it shall be open to the legal representatives of the deceased owner/driver to produce the driving license so as to satisfy that there was no violation of the terms of the insurance policy.

15. As far as issue regarding quantum of compensation is concerned, no doubt in Claim Petition Nos. 138, 139, 141 and 144, issue regarding multiplier has been raised by the appellant which is more than what was prescribed in Sarla Verma's case (supra), however, the fact remains that in view the subsequent judgments awarding compensation under the heads of future prospects, consortium, funeral expenses, loss of estate, etc, I do not find any reason to interfere with the quantum of compensation awarded by the Tribunal. The claimants have a right to defend the amount of compensation awarded to them. Reference can be made to judgment of Hon'ble the Supreme Court in Ranjana Prakash and others vs. Divisional Manager and another, (2011) 14 SCC 639. There is no appeal filed by the claimants seeking further enhancement.

16. For the reasons mentioned above the appeals are partially allowed. The award of the Tribunal is modified to the extent that the Insurance Company shall not be liable to pay the compensation. However, at the first instance, the appellant- Insurance Company shall satisfy the award and shall have right to recover the same from the owner/driver as per law. In the process the owner/driver shall be entitled to produce and prove on record that the driver of the vehicle was carrying a valid driving license.

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