

(2016) 03 DEL CK 0303

In the Delhi High Court

Case No : MAC.APP. No. 1284 of 2012

Bajaj Allianz General Insurance Co. Ltd.

APPELLANT

Vs

Izhar Ahmad

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)(a)(ii), Section 166

Citation : (2017) ACJ 510 : (2016) 1 TNMAC 752

Hon'ble Judges : Mr. R.K. Gauba, J.

Bench : Single Bench

Advocate : Mr. Rajnish K. Jha, Advocate, for the Respondent Nos. 1 to 4 in MAC.APP. No. 1285 of 2012; Mr. A.K. Soni, Advocate, for the Appellant in MAC.APP. No. 1285 of 2012; Mr. A.K. Soni, Advocate, for the Respondent in MAC.APP. No. 417 of 2015; Mr. Rajnish K. Jha

Final Decision : Disposed Off

Judgement

R.K. Gauba, J.(Oral) - On 13.03.2011, Raisuddin Ansari @ Rais Ansari along with his friend Izhar Ahmad were moving on a scooter bearing registration no. DL-7AU-2036 (the scooter) which met with an accident at about 04:30 PM in the area opposite ITI Dheerpur, Burari, Outer Ring Road, Delhi on account of collision against bus bearing registration no. HR-67-5872 (the offending vehicle). While both of them suffered injuries, Raisuddin Ansari @ Rais Ansari died in the consequence.

2. Two claim petitions were brought before the motor accident claims tribunal (the tribunal), one by the widow, children and father of Raisuddin Ansari @ Rais Ansari (hereinafter referred to as the deceased), it being registered as suit no.196/2011 and other by Izhar Ahmad, it being registered as suit no.195/2011. In both the claim petitions presented under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act), the claimants impleaded the driver and owner respectively of the offending vehicle in addition to Bajaj Allianz General Insurance Co. Ltd. (appellant in MAC appeal nos. 1284/2012 & 1285/2012).

3. The tribunal held inquiry in both the cases together and decided them by a common judgment dated 27.09.2012 awarding compensation in the sum of Rs. 33,54,400/- in the case arising out of death and Rs. 16,703/- in the case relating to injuries, adding interest at the rate of nine percent (9%) per annum from the date of filing of the petition till realization.

4. In the course of the inquiry before the tribunal, the insurance company (the insurer) had taken the plea that the driver of the offending vehicle was not holding a valid or effective driving licence and, thus, there was a breach of terms and conditions of the insurance policy. It pointed out that a driving licence purporting to have been issued by the licensing authority, Mathura, UP had been submitted to the investigating officer (IO) of the corresponding criminal case but the same, upon verification, was found to be not genuine.

5. The plea was contested by the driver who appeared in his own evidence (RW1), inter-alia, stating that he is known by the name of the Prakash @ Om Prakash s/o Jug Lal. He submitted the driving licence (Ex.RW1/2) issued by the licensing authority (at Hardoi, Uttar Pradesh) stating that this would show that he was competent to drive the offending vehicle on the date of the accident. On behalf of owner, SDITM, College of Technology and Management, Singara Singh (RW2) appeared to state on oath that at the time of the driver being engaged, the driving license issued by the licensing authority at Hardoi (Ex.RW1/2) had been seen and, thus, there was no breach of terms and conditions of the policy. Anil Kumar Shukla, senior clerk of the Office of Assistant Regional Transport Office, Hardoi, UP (RW3) was also examined during the inquiry, his evidence, inter-alia, confirming that the driving license (Ex.RW1/2) had actually been issued by the said transport authority in favour of the driver and it was valid including for purpose of heavy transport vehicle on the date of the accident. It may be added here that the driver also produced his voter identity card which confirmed that he is known by the name of Om Prakash, description by which the driving license had been issued.

6. On the basis of above evidence, the plea of the insurance company that there had been breach of terms and conditions of policy was rejected and it was called upon to indemnify, holding the driver and owner responsible jointly and severally.

7. The insurer has filed appeals (MAC Appeal nos.1284/2012 & 1285/2012) against awards in both cases to plead that the findings recorded by the tribunal rejecting its plea of breach of terms and conditions of policy were wrong. It has been argued that the evidence of RW3, an official of the licensing authority, Hardoi, Uttar Pradesh would show that the licence had been got issued surreptitiously. It is pointed out that the driver is original resident of Panipat, Haryana and there was no occasion for him to go either to Mathura or Hardoi in Uttar Pradesh to secure driving license. The admission of the driver in the course of his testimony as RW1 about he having held two driving licenses at the same point of time is also referred to contend that the manner in which the license from Hardoi authority was secured is not above board. In the same context,

reference is made to the evidence of RW2 with the plea that he was not connected with the registered owner of the vehicle in question and, therefore, not in position to vouchsafe as to whether due diligence had been exercised at the time when the driver was engaged. On these submissions, the insurance company pressed for recovery rights against the registered owner (the insured) of the offending vehicle in the two cases.

8. In MAC Appeal no.1285/2012, which relates to the claim arising out of death, the insurance company also questions the computation of the compensation mainly taking exception to the element of future prospects to the extent of 30% having been added in the case where the deceased Raisuddin Ansari @ Rais Ansari was a self employed person. Reliance is placed on Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121 and Reshma Kumari v. Madan Mohan (2013) 9 SCC 65. It is also submitted that the father of Raisuddin Ansari @ Rais Ansari could not have been a dependant and, thus, deduction on account of personal and living expenses should have been made to the extent of one third rather than one fourth.

9. On the other hand, the claimants in the case arising out of death have come up with appeal (MAC appeal no.417/2015) to argue that instead of future prospects to the extent of 30%, addition of 50% of the income at the time of death should have been made to compute loss of dependency, this in view of the age (36 years) of the deceased at the time of accident. Reference in this context is made to the mode of calculation of future prospects as commended in case of Sarla Verma (supra) and Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54. It is also the grievance of the claimants that the award of Rs. 10,000/- each towards loss of consortium and loss of estate and Rs. 5,000/- towards funeral expenses besides Rs. 25,000/- towards love of affection is highly inadequate.

10. In the case of Sarla Verma (supra), Supreme Court ruled, inter-alia, that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon"ble Judges in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in Rajesh & Ors. v. Rajbir & Ors., (2013) 9 SCC 54, the issue was later referred to a larger bench, inter-alia, by order dated 02.07.2014 in National Insurance Company Ltd. v. Pushpa & Ors., (2015) 9 SCC166.

11. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (Sunil Kumar v. Pyar Mohd.), 2017 ACJ 22 (Delhi), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.) 2015 ACJ 2526 (Delhi), decided on 12.1.2015, presently taking the decision in Reshma Kumari (Supra) as the binding precedent, till such time the law on the subject of future prospects for those who are "self-employed" or engaged in gainful employment at a "fixed salary" is clarified by a larger

bench of the Supreme Court.

12. Since the deceased admittedly was a self employed person, the element of future prospects cannot be factored in. In these circumstances, loss of dependency has to be recomputed. The tribunal assessed the income of deceased at the time of accident Rs. 2,25,940/- per annum. This court does not accept the contention of the insurance company that the father (fourth claimant/ fourth respondent) could not have been treated as a dependant. During the inquiry when claimants had examined widow (PW1), no suggestions were put to such effect. In these circumstances, the tribunal has taken an appropriate view and, thus, the deduction towards personal and living expenses was rightly made to the extent of one fourth. In this view, the annual loss of dependency comes to $(2,25,940 \times \frac{3}{4})$ Rs. 1,69,455/-.

13. The tribunal adopted multiplier of 15 assuming the age of deceased (36 years). This, as pointed out by the claimants is not correct. The claimants have shown through high school certificate, the date of birth of deceased was 01.12.1975. Since the accident had occurred on 13.03.2011, he was a few months beyond the age of 35. Thus, the appropriate multiplier would be 16. Therefore, the total loss of dependency is calculated as $(1,69,455 \times 16)$ Rs. 27,11,280/-.

14. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 & *Shashikala v. Gangalakshamma* (2015) 9 SCC 150, non-pecuniary damages in the sum of Rs. 1,00,000/- each on account of loss of love & affection and loss of consortium and Rs. 25,000/- on account of loss of estate and funeral expenses are added.

15. Thus, the total compensation payable in the case is computed as $(27,11,280 + 2,50,000)$ Rs. 29,61,280/-, rounded off to Rs. 29,62,000/-.

16. The tribunal considered the contention of the insurance company with regard to the driving licence as under:

"Respondent no.3 has stated that respondent no.1 was not holding valid driving license on the date of accident in question and has examined R3W1 to this effect who stated that as per verification of driving license issued from Mathura Authority of respondent no.1 filed by IO, the same was not found to be genuine.

Respondent no.1 RW1 has stated that he was known as Prakash @ Om Prakash s/o Jug Lal was holding valid driving license on the day of accident in question and has produced his driving license Ex.RW1/2 issued from Licensing Authority, Hardoi. In cross-examination he admitted that he had only produced copy of driving license issued from Licensing Authority, Mathura to IO and had not produced the license issued from Licensing Authority, Hardoi. He admitted that he was holding two driving licence on the date of accident in question.

RW2 stated that he was attorney of respondent no.2 and at the time of employment of respondent no.1 had shown his driving license issued from

Licensing Authority, Hardoi which was already exhibited as Ex.RW1/2. They had also checked the skill of driving of respondent no.1 before employment and that they had no knowledge of any other license of respondent no.1 at the time of his employment. In cross-examination he stated that he had given the vehicle on contract to respondent no.2 who was paying him some money. Driving license Ex.RW1/2 of respondent no.1 was valid for motorcycle. LMV and HTV on the date of accident in question and no contrary report disputing genuineness is available.

RW3 official from RTO, Hardoi produced the record Ex.RW3/1 relating to license issued in name of respondent no.1 from RTA, Hardoi.

Respondent no.3 has further disputed the name of respondent no.1 shown on the license but respondent no.1 had produced his copy of election I-card showing his name as Om Prakash as mentioned in the driving license Ex.RW1/2. Accordingly, it is clear that respondent no.1 was driving the offending vehicle with a valid driving license to drive the offending vehicle on the date of accident in question and respondent no.2 had also not committed any wilful breach in regard to non capacity of respondent no.1 for driving the offending vehicle.

Accordingly, respondent no.1 & 2 are jointly and severally liable. Respondent no.3 to indemnify the claim."

17. This court finds no error in the view taken by the tribunal. Even if it were to be assumed that the driver had indulged in some manipulation to secure driving licenses from two different licensing authorities, it cannot lead to the conclusion that the registered owner/insured of the offending vehicle was privy or party to it. The fact remains that the driving license issued by the licensing authority at Hardoi is found to be genuinely issued. Since the said driving license was valid for purpose of the offending vehicle, there can be no finding returned about the breach of terms and conditions of the insurance company.

18. The prayer of the insurance company for right to recover to be granted in two cases is, thus, rejected.

19. The compensation in the case of Izhar Ahmad on account of his injuries has already been paid.

20. The insurance company had deposited 75% of the awarded compensation with the proportionate interest with the claim tribunal in terms of the order dated 17.12.2012 in MAC appeal no.1285/2012. The said amount has already been released to the claimants. Since the award of compensation in the case of death of Raisuddin Ansari @ Rais Ansari have been reduced, the insurance company is directed to deposit the balance in terms of the award as modified above with the tribunal within 30 days of this judgment whereupon it shall be released to the claimant in accordance with their respective shares.

21. The statutory deposit, if made, in its appeals shall be refunded.

22. The appeals are disposed of in above terms.