

(2019) 03 J&K CK 0135

In the Jammu And Kashmir High Court

Case No : Civil Ist Misc Appeals (MA) No. 487 Of 2013, IA No. 310 Of 2014, 926 of 2013

Bajaj Allianz General Insurance Company Ltd

APPELLANT

Vs

Ashok Kumar & Ors

RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(15), 2(21), 2(48), 10, 10(2)(d), 10(2)(e), 10 (2)(f), 10 (2)(g), 10 (2)(h)
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 279, 304A

Citation : (2019) 03 J&K CK 0135

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Sanjay K. Dhar, Vir Ranshor

Final Decision : Disposed Off

Judgement

1. This appeal has been filed by the Bajaj Allianz General Insurance Company Limited, appellant herein, against the judgment and award dated 20.09.2013 passed by the Learned 2nd Additional District Judge, Jammu in File No.23/Claim titled ?Ashok Kumar & anr. v. Kamaljeet Singh & ors.? The accident involving death of Smt. Shashi Devi took place on 09.09.2011 when the matador bearing registration No. JK-02-AL-8871 hit her while she was standing by the side of the road waiting for the vehicle. The amount of compensation as awarded by the Tribunal is Rs. 4,41,000/- along with interest @7.5% per annum. The claimants are husband and daughter of the deceased, Smt. Shashi Devi and the claimants/petitioners claimed Rs.13,50,000/- as compensation.

2. The only question involved in this appeal by the appellant-Insurance Company Bajaj Allianz General Insurance Co. Ltd. is whether the driver of the offending vehicle was holding a valid driving license at the time of the accident.

3. It is not disputed that the deceased was working in Kashmir Walnut Industry and earning Rs.4000/- per month besides she was also engaged in stitching

clothes at her home. The Tribunal, however, took Rs.4000/- per month as her salary and taking her age as 46 and applied the multiplier of 13 and after deducting 1/3rd income of the deceased towards her personal expenses, awarded Rs.4,41,000/- as compensation under the following heads:

"1. For loss of dependency: Rs.4,16,000/-

2. Funeral Expenses : Rs. 5000/-

3. For loss of Estate : Rs. 10,000/-

4. For loss of consortium : Rs. 10,000/-

to petitioner No.1

Total : Rs.4,41,000/-

4. The amount was to be paid with interest @ 7.5% per annum. The Tribunal, from the pleadings of the parties, framed the following issues:

1. Whether on 9.9.11 at 5.35 p.m, an accident took place near Luthra Academy situated at Talab Tillo, Jammu, falling within the jurisdiction of Police Station Domana, by driving the vehicle bearing No. JK-02-AL-8871 (Mini Bus) rashly and negligently by respondent No.2, namely, Amarjeet Singh and thereby caused death of the deceased, namely Shashi Devi? OPP

2. If issue No.1 is proved in affirmative, whether petitioners are entitled to compensation, if so, to what shall be amount of compensation and from whom?

OPP

3. Whether there is a violation of terms and conditions of Insurance Policy, as per provisions of M.V.Act as the respondent No.1 namely Kamaljeet Singh, driver of the offending vehicle, was not holding valid, effective and proper Driving License at the time of accident?

OPR-3

4. Relief."

5. PW-Madhu Bala deposed that the deceased was the co-worker with her and both of them were working at Kashmir Walnut Factor at Bohri Talab Tillo. On 09.09.2011, after working hours, she and the deceased was standing on Kacha Road and were waiting for Matador, which came very fast from the side of Jewel, the driver lost control over it and hit the deceased, who suffered serious injuries. She denied the suggestion that the deceased was crossing the road at the time of the accident. The Tribunal relied on the statement of the witness and certified copy of the challan and postmortem report. The statement made by the witness was corroborated by the copy of the challan produced in the court charging the

driver under Section 279/304-A RPC.

6. So the conclusion of the Tribunal on Issue No.1 cannot be faulted and as confirmed because the driver has not cleared towards the version of the statement.

7. Learned counsel appearing for the petitioner has relied on 2006 ACJ, 1336, 2008 ACJ, 627 and 2009 ACJ 141, to support his arguments that the driver of the offending vehicle was not possessed a valid driving license and therefore, the owner is not entitled to indemnify by the Insurance.

8. The submission of learned counsel appearing for the petitioner that since the driver at the time of the accident was holding license meant for driving only the Light Motor Vehicle and therefore, he was not holding a valid driving license. The statement of the driver is that he was in possession of the driving license. The Hon'ble Supreme Court in *Mukund Dewangan v. Oriental Insurance Co. Ltd.* reported as (2017) 14 SCC, 663 in which four questions were referred for decision to the larger Bench in view of the conflict in plethora of decisions. These questions are reproduced in para (3) of the judgment, which read as under:

"3. Following questions have been referred for decision to the larger Bench:

(1) What is the meaning to be given to the definition of 'light motor vehicle' as defined in section 2 (21) of the Motor Vehicles Act? Whether transport vehicles are excluded from it?

(2) Whether 'transport vehicle' and 'omnibus' the 'gross vehicle weight' of either of which does not exceed 7,500 kg would be a 'light motor vehicle' and also motor car or tractor or a road-roller, 'unladen weight' of which does not exceed 7,500 kg and holder of a licence to drive the class of 'light motor vehicle' as provided in section 10 (2) (d) would be competent to drive a transport vehicle or omnibus, the 'gross vehicle weight' of which does not exceed 7,500 kg or a motor car or tractor or road-roller, the 'unladen weight' of which does not exceed 7,500 kg?

(3) What is the effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10 (2) which contained 'medium goods vehicle', 'medium passenger motor vehicle', 'heavy goods vehicle' and 'heavy passenger motor vehicle' by 'transport vehicle'? Whether insertion of expression 'transport vehicle' under section 10 (2) (e) is related to said substituted classes only or it also excluded transport vehicle of light motor vehicle class from the purview of sections 10 (2) (d) and 2 (21) of the Act?

(4) What is the effect of amendment of Form 4 as to the operation of the provisions contained in section 10 as amended in the year 1994 and whether the procedure to obtain the driving license for transport vehicle of the class of 'light motor vehicle' has been changed?"

9. Since the petitioner was holding a valid driving license for driving the Light Motor Vehicle according to the judgment of the larger Bench, the decision has changed after the amendment made in the Motor Vehicles Act.

10. Their lordships answered these questions in para 60.1 to 60.4 in the judgment but for the purposes of present appeal, para 60.1 and 60.2 would suffice and is, thus, extracted below:-

"60.1. "Light motor vehicle" as defined in Section 2 (21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2

(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994.

60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a road roller, "unladen weight" of which does not exceed 7500 kg and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or road roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2) (d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form."

11. Since the driver possessed a Passenger Vehicle License of the Light Motor Vehicle, he was competent to drive a transport vehicle or a Omni Bus provided the unladen weight of which does not exceed 7000 Kgs.

12. It is not the case of the appellant that the weight of the offending vehicle exceeded 7500 Kgs, therefore, the Tribunal was justified in holding that the owner is to be indemnified by the appellant.

13. Since the compensation which is to be awarded is to be just, therefore, in view of the law laid down by the Hon?ble Apex Court in case titled National Insurance Company Limited v. Pranay Sethi and others, reported as 2017 (16) SCC 680. Para 59.8 of which reads as under:-

"59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

and in para 61 (iii) reads as under:-

"61 (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition

should be 30%, if the age of the deceased was 48 between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

14. The respondents/claimants are entitled to the compensation in accordance with the judgment rendered in *Pranay Sethi (supra)* the deceased was 46 years old and had a permanent job, therefore, addition of 30% was to be made in the income of deceased making Rs. 4000 + Rs. 1200 = 5200, 1/3 was deducted towards her personal expenses, therefore, the monthly dependency would be Rs. 3467 and annual dependency were be Rs. 3467 x 12= Rs. 41,604/-. The multiplier was rightly adopted as 13, therefore, Rs.5,40,852/- is the loss of dependency, the claimants are also entitled to Rs.15,000/- as loss of estate, Rs.40,000 as loss of consortium and Rs.15000/- as loss of funeral expenses, thus, the claimants are entitled to Rs.6,10,852/- as compensation with 6% interest from the date of filing of the petition.

15. In view of the above, this appeal is disposed of and the award of the Tribunal dated 20.09.2013 is modified in the above terms.

16. This appeal is disposed of in the above terms.