(2023) 04 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 307 Of 2003

Bhanwari Devi And Others — APPELLANT

Vs

National Insurance Company Ltd And Others — RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2023) 04 RAJ CK 0029

Hon'ble Judges : Kuldeep Mathur, J

Bench : Single Bench

Advocate : Ayush Gehlot, Lalit Parihar

Final Decision : Allowed

Judgement

Kuldeep Mathur, J

The present misc. appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 03.08.2002 passed by the learned Judge, Motor Accident Claims Tribunal, Ratangarh (hereinafter referred to, 'the Tribunal') in Civil Misc. Claim No.77/1998 whereby the Tribunal partly allowed the claim petition and awarded Rs.3,98,000/- as compensation to the appellants/claimants and exonerated the respondent-Insurance Company from its liability.

The appellants/claimants being aggrieved and dissatisfied with the compensation awarded to them by the Tribunal vide its judgment and award dated 03.08.2002 have preferred the present misc. appeal praying for enhancement of the compensation amount.

Briefly stated facts of the case are that appellant No.1 is wife of deceased-Gangadhar Choudhary whereas appellant Nos.2 and 3 are mother and brother of deceased-Gangadhar Choudhary. In the claim petition preferred before the Tribunal, it was pleaded that on 27.09.1998, the deceased-Gangadhar Choudhary, aged about 23 years was hit by a tanker bearing No.DL-1G-0396, which was being driven rashly and negligently by one Shri Angrej son of Hariya. It was further pleaded in the claim petition that in the road accident which occurred on 27.09.1998, deceased-Gangadhar Choudhary died on the spot. As per the claim petition, the deceased was a young and healthy person and used to earn Rs.4,000/- per month. The appellants/claimants in the claim application filed under Section 166 of the Motor Vehicles Act, prayed that compensation to the tune of Rs.31,72,000/- may be awarded in their favour.

The Insurance Company in its reply before the Tribunal pleaded that at the time of unfortunate accident in which deceased-Gangadhar Choudhary died, the tanker No.DL-1G-0396 was being driven rashly and negligently by the driver (Angrej S/o of Hariya) without having a valid and effective driving license. The Insurance Company pleaded that since there was fundamental breach of the terms and conditions of the insurance policy in question, the claim made by appellants/claimants was not payable. It was further pleaded that at the time of accident, driver of the tanker was not driving the vehicle in connection with his employment under respondent No.2 i.e. Harender Singh-owner of the vehicle.

It is apposite to note here that the driver of the offending vehicle (Angrej Singh) and owner (Harinder Singh) did not appear before learned Tribunal thus, learned Tribunal vide order dated 03.11.1999 initiated ex-parte proceedings against them.

After hearing the parties, the Tribunal came to the conclusion that the accident occurred on account of rash and negligent driving by the driver of the tanker but the Insurance Company has successfully proved that the driver was not having valid license and thus, it was not liable for the payment of compensation as claimed by the appellants/claimants. The Tribunal vide its judgment and award dated 03.08.2002 while absolving Insurance Company from the liability to pay compensation to appellants/claimants, held the owner and driver of tanker No.DL-1G-0396 jointly and severally liable for the compensation to the tune of Rs.3,48,000/- in favour of the appellants/claimants.

Learned counsel for the appellants/claimants submitted that the impugned judgment and award suffers from gross illegality as the Tribunal failed to take into consideration the correct monthly income of the deceased. It was further submitted that the component of rise in income of the deceased-Gangadhar Choudhary by future prospects while evaluating the compensation awarded to the claimants has not been taken into consideration by the Tribunal. Learned counsel placed reliance on the judgment of Hon’ble the Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & Ors. reported in (2017) AIR (SC) 5157.

Lastly, it was argued that the principle of ‘pay and recover’ will apply and compensation awarded has to be paid by the Insurance Company who may recover it later. To strengthen the argument, judgment of Parminder Singh Vs. New India

Assurance Company Limited & Ors. reported in (2019) 7 SCC 217 was cited before the Court.

Per contra, learned counsel for the Insurance Company submitted that the Tribunal after thorough examination of the evidence and documents placed before it, had recorded a finding of fact that at the time of accident, the driver was not having a valid license. Learned counsel submitted that when it is established that the driver was not having a valid license, no liability to pay compensation could be fastened upon the Insurance Company and thus, the Tribunal vide its judgment and award dated 03.08.2002 had rightly absolved the respondent-Insurance Company from the liability to pay compensation. Learned counsel submitted that the principle of 'pay and recover' will not apply in the facts and circumstances of the present case. Lastly, it was submitted that the judgment and award passed by the Tribunal is just and proper and the same does not call for any interference.

Heard learned counsel for the parties and perused the material available on record.

The Hon'ble Supreme Court in the case of Parminder Singh (supra) has held as under:-

7. On the issue of liability to pay the compensation awarded, we affirm the view taken by the High Court that the Respondent – Insurance Company is absolved of the liability to bear the compensation, as evidence has been produced from the office of the Regional Transport Office to prove that the drivers of the two offending trucks were driving on the basis of invalid driving licenses. It is also relevant to note that the owners and drivers of the offending trucks have not appeared at any stage of the proceedings, including this Court.

7.1. This Court in Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors., held that if the driver of the offending vehicle does not possess a valid driving license, the principle of 'pay and recovery' can be ordered to direct the insurance company to the pay the victim, and then recovery the amount from the owner of the offending vehicle.

7.2. We deem it just and fair to direct the Respondent – Insurance Company to pay the enhanced amount of compensation as indicated in Para. 6 above, to the Appellant within a period of 12 weeks from the date of this judgment. The Respondent – Insurance Company is directed to make out a Demand Draft in the name of the Appellant, which can be used for his care for the rest of his life. The Respondent – Insurance Company is entitled to recovery the amount from the owners and drivers of the two offending trucks.

8. The Civil Appeal is allowed in the aforesaid terms. All pending Applications, if any, are accordingly disposed of. Ordered accordingly."

Similarly, Hon'ble the Supreme Court in the case of Shamanna & Ors. Vs. The Divisional Manager, the Oriental Insurance Company Limited & Ors. reported in (2018) 9 SCC 650 held that if the driver of the offending vehicle does not possess a valid driving license, the principle of ‘pay and recover’ can be ordered to direct the Insurance Company to pay the victim and then recover the same from the owner of the offending vehicle.

This Court while dealing with a similar eventuality in the case of Baksha Ram vs. Ladu Singh and Ors. (S.B. C.M.A. No.626/2002), decided on 16.09.2019, held that the principle of ‘pay and recover’ is applicable in the cases where the driver of the vehicle is not in possession of a valid driving license.

In the present case, the issues of accident and of raising the liability had been decided by the Tribunal after taking into consideration all the evidence on record and the same have not been assailed before this Court by any of the respondents.

The Hon’ble Apex Court and this Court in the above cited judgments have clearly laid down that even if a driver of the vehicle does not possess a valid license, the Insurance company has to be liable to pay and then recover amount from the owner of the vehicle. The principle of ‘pay and recover’ is thus, fully applicable in the present case.

It is evident from the record of the case that no documentary evidence was produced by the appellants/claimants to prove the monthly income of the deceased to be ☐ 4000 per month. It is a settled law that in the absence of positive documentary evidence or salary certificate, the minimum wages notification should generally be applied as a yardstick to determine the income of the deceased.

In the considered opinion of this Court, the Tribunal rightly determined the monthly income of the deceased to be Rs.2,100/-per month by keeping in view the notifications prescribing minimum wages, issued by the Government from time to time. The compensation awarded by the Tribunal by applying minimum wages prevalent at the relevant time i.e. Rs.70 per day in favour of the appellants/claimants does not suffer from any infirmity whatsoever.

In the case of Pranay Sethi (supra), Hon’ble the Supreme Court was pleased to hold that if the deceased was self-employed or a person on a fixed salary and his age is between 21-25 years, then the multiplier of 18 should be applied in respect of claims filed under Motor Vehicles Act and the future prospects would be paid to the tune of 50% of the established income. The amounts awarded on account of other heads are also required to be changed and the amount of compensation in the present case is required to be computed as under:-

S.No.

Heads

Amount (Rs.)

1

Monthly Income

2,100/-

2

40% of the actual income as adjustment for future prospects.

840/-

3

Monthly income + 40% for future prospects

2,940/-

4

1/4 of income as deduction towards personal expenses

(735/-)

5

Annual Income after deduction towards personal expenses

2,205 x 12= 26,460/-

6

Age multiplier

26,460 x18 =4,76,280/-

7

Conventional heads namely Funeral Charges, Loss of consortium and Loss of Estate

70,000/-

8

Total Compensation

5,46,280/-

9

Amount awarded by the Tribunal

3,98,000/-

10

Enhanced amount

1,48,280/-

In light of the above observations and considering the tabular computation, the appeal is allowed in part. The total motor accident compensation of Rs.3,98,000/- awarded by the learned Tribunal to the claimants/appellants is increased by Rs.1,48,280/-to reach a new total of Rs.5,46,280/-. The enhanced amount of compensation shall be paid within two months along with interest @ 6% p.a. from the date of filing of claim petition. The proportion and disbursement shall remain same as ordered by the learned Tribunal and the amount of compensation is modified to the above extent.

However, the ‘pay and recover’ principle shall apply, the Insurance Company shall be liable to satisfy the award. It is also made clear that the liability of ‘pay and recover’ shall exclude the already paid amount by the owner/driver, if any, during the pendency of the present appeal.

The record of the case shall be transmitted to the Tribunal forthwith.