(2019) 04 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : MA No. 12 Of 2017, IA No. 01 Of 2017

Future General Life Insurance Co. Ltd APPELLANT

Vs

Shafiqu Begum And Ors RESPONDENT

Date of Decision : 26-04-2019

Acts Referred:

Citation : (2019) 04 J&K CK 0003

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Baldev Singh, A.A.Hamal

Judgement

1 The Future General Life Insurance Company Ltd., is in appeal against the award dated 28.10.2016 passed by the Motor Accident Claims Tribunal, Kishtwar (for short 'Tribunal') in File No.60/Claim titled Shafiqa Begum and ors vs. Future General India Insurance Company Ltd, whereby respondent Nos. 1 to 9 herein have been held entitled to compensation of Rs.40,72,200/-along with interest @ 7.5% per annum from the date of institution of the claim petition till its realization.

2. Before dealing with the grounds of challenge urged in the appeal, it would be apt to briefly note few facts leading to the filing of the instant appeal.

On 8th July, 2014 at 10.30 am, a motor vehicular accident took place at Wander Narh near Sinthontop in which apart from others, one Irshad Ahmed Wani, a Stock Assistant serving in the Animal Husbandry Department also died. The accident occurred due to rash and negligent driving of the vehicle by its driver. The offending vehicle was covered by insurance policy issued by the appellant with a licensed carrying capacity of seven persons excluding the driver for the period w.e.f 19th July, 2013 to 18th July, 2014. Respondent Nos. 1, the wife of the deceased, Respondent Nos. 2 to 7, the minor sons and daughters of deceased, respondent Nos. 8&9, the father and mother of the deceased filed a claim petition before the Tribunal seeking compensation to the tune of

Rs.37,34,850/- from the appellant. In the claim petition, respondent Nos. 1 to 9 claimed that the deceased, at the time of accident, was 44 years old and was getting monthly salary of Rs.22,110. The appellant-Insurance Company contested the claim of the respondents and challenged the maintainability of the petiton on some legal issues as well as on merits. On the basis of the pleadings of the parties, the Tribunal framed the following issues:

1. Whether on 08.07.2014 at about 10 am at Wander Narh Sinthan Top the death of the deceased Irshad Ahmed Wani s/o Ghulam Mohd Wani was caused in a Motor Vehicle accident, due to the rash and negligent driving of offending vehicle Tata Sumo Ambulance bearing registration No.JK17-0840 by its driver and owned by respondent No.2 and insured with respondent No.1?OPP

2. In case issue No.1 is proved in affirmative, whether the claimants are entitled to compensation, if so to what amount and from whom? OPP

3. Whether the driver of the offending vehicle was not holding valid and effective driving licence at the time of accident ?OPR1

4. Whether the vehicle in question was being driven in violation of the terms and conditions of the policy of insurance, if so, what is its effect?OPR1

5. Relief. OP Parties.

3. The parties went to the trial. On behalf of respondent Nos. 1 to 9, witnesses namely Noor Din, Din Mond and Dr. Khursheed Ahmed Bhat were examined. Respondent No.1 also entered the witness box. The appellant-Insurance Company, however, chose not to lead any evidence, oral or documentary. On the basis of the pleadings of the parties and the evidence led before it, the Tribunal decided issue No.1 in favour of respondent Nos. 1 to 9 and against the appellant. The Tribunal held that the motor vehicular accident in which Irshad Ahmed Wani had died was caused due to the rash and negligent driving of the offending vehicle by its driver which was insured with the appellant. Issue Nos. 3 and 4 also decided in favour of respondent Nos. 1 to 9 and against the appellant. The findings of the Tribunal on the issue Nos. 3 and 4 are noteworthy and the same are reproduced hereunder:

"The issues Nos. 3 and 4 are inter connected, so both the issues are decided together. The respondent No.1, Insurance Company in its objection has taken a plea that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident and the offending vehicle was being plied by its driver in violation of the terms and conditions of the Insurance Policy. The burden to prove these issues was upon the respondent No.1, but the Insurance Company has not led any evidence to prove these issues. So except the plea taken in the objection by the respondent No.1, no evidence has been produced to prove these issues. It is settled law that the person who alleges breach of any terms and conditions must prove the same. The breach of a condition of the policy has to be proved to have been committed by the insured for avoiding liability by the Insurance company. Thus as per the settled law, the Insurance Company is required to establish the breach of conditions of the policy by cogent and reliable evidence. In the present case, as is evident from the perusal of the record on the file, the Insurance Company has not led any evidence to prove issue Nos. 3 and 4 and thus the respondent No.1 has failed to prove these issues in order to avoid the liability of paying compensation to the claimants. Therefore, the issue Nos. 3 and 4 are decided in favour of the claimants and against the respondent No.1, Insurance Company."

4. The Tribunal has categorically held that the Appellant-Insurance Company failed to discharge the burden to prove issue Nos. 3&4 . The breach of conditions of the policy as alleged in the objections by the Appellant-Insurance Company, therefore, remained unsubstantiated before the Tribunal.

5. So far as issue No. 2 is concerned, in the light of the law laid down in the case of Sarla Verma and ors vs Delhi Transport Corporation and anr, AIR 2009 SC 3104, respondent Nos. 1 to 9 were held entitled to compensation to the tune of Rs.40,72,200/-- along with interest. Aggrieved, the appellant has assailed the impugned award, inter alia, on the following grounds:

"(1). That as per the insurance policy issued by the Appellant-Insurance Company with respect to the offending vehicle i.e, Tata Sumo which was converted into Ambulance, the insurance cover was extended to Driver plus one and, therefore the passengers exceeding one were in the nature of gratuitous passengers. That being so, the Appellant-Insurance Company could not have been held liable to indemnify the owner qua the gratuitous passengers.

(ii) That the award of compensation is not in consonance with the settled position of law and an exorbitant amount has been awarded by the Tribunal purely on speculation"

(iii) That, the learned Tribunal has erred in not deducting the 50% of the last pay drawn by the deceased for a period of ten years as per SRO 94 dated 15.04.2009 "

6. I have heard learned counsel for the parties and perused the record. The plea of the appellant, that as per the policy the insurance cover was extended to the driver and one passenger and, therefore, all others travelling in the offending vehicle were gratuitous passengers, is without any substance for the reason that neither such plea was ever taken before the Tribunal nor any evidence was led to prove the policy. The policy cover available on the record of the Tribunal clearly reveals that the offending vehicle was insured along with its licensed carrying capacity of seven persons excluding the driver. I could not find such plea even taken in the memo of appeal. The plea was raised by the appellant for the first time during the course of arguments.

7. In view of the fact that plea with regard to the exclusion of liability on account of breach of terms and conditions of the policy was neither taken by the

appellant before the Tribunal nor the same was substantiated by leading any evidence, I see no reason to upset the findings of fact retuned by the Tribunal on issue Nos. 3 and 4.

8 So far as the quantum of compensation is concerned, it is seen that the deceased at the time of accident was serving as Stock Assistant in the Sheep Husbandry Department and was getting monthly salary of Rs.22,110/-. His age, at the time of accident, was 44 years and was a permanent Government employee. Since the deceased was paying Rs.10/- per month as service tax, therefore, his monthly income was taken as Rs.22100/- per month. This is the income which has been accepted by the Tribunal for computing the compensation. Since the deceased was a permanent Government employee and, therefore, there should have been an increase by 30% of the actual income towards future prospectus. This is the dictum of law laid down in Sarla

Verma's case (supra) and affirmed by a Constitution Bench in the case of National Insurance Co. Ltd vs Pranay Sethi, 2017 ACJ 2700. The deduction on account of personal and living expenses of the deceased, however, has been correctly applied by the Tribunal taking into account the fact that the deceased was survived by nine dependents. 1/5th amount was, thus, deducted from the income of the deceased. There is no dispute with regard to the operative multiplier of 14 which was applicable in the instant case.

9. The Tribunal has awarded a sum of Rs.1,00,000/- for loss of consortium to wife, Rs.1,00,000/- for loss of love and affection and Rs.25000/- towards funeral expenses which sums are not in consonance with the law. The Tribunal has taken monthly salary of the deceased at Rs.22,100/- as such 50% of the last pay received or receivable for ten years by respondent Nos. 1 to 9 would work out to Rs.11050x12x10=13,26,000/-. This amount is liable to be deducted from the amount awarded by the Tribunal on account of loss of dependence. The loss of dependence would, thus, work out to Rs.38,47,200-Rs.13,26,000/- =Rs.25,21,200/-.

10. Since the claimants-respondents are satisfied with the amount awarded by the Tribunal and have not preferred any appal to seek enhancement of the amount awarded in their favour, this Court cannot increase the compensation in the absence of any appeal or cross-objection seeking enhancement of compensation. Accordingly, the award of the Tribunal is modified and the amount of compensation to which respondent Nos. 1 to 9 are entitled to shall be in the following manner:

1. Loss of dependency= Rs.25,21,200/-

2. Funeral expenses= Rs.15,000/-

4. Loss of consortium payable to wife i.e respondent No.1=Rs.40,000/-

Total= Rs.25,76,200/-

11. The appeal is, accordingly, allowed. The awarded amount be released in favour of the claimants forthwith. The appellant-Insurance Company shall be entitled to the refund of the amount, if any, deposited in excess of the awarded amount payable under this order.