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(2020) 06 JH CK 0034

In the Jharkhand High Court

Case No : M.A. No. 40 Of 2020

Future Generali India Insurance Co. Ltd. APPELLANT

Vs

Sachidanand Prasad And Ors RESPONDENT

Date of Decision : 25-06-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 157, 166
Motor Vehicles Act, 1939 — Section 193A

Citation : (2020) 06 JH CK 0034

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Ashutosh Anand

Final Decision : Disposed Of

Judgement

1. Heard, learned counsel for the appellant- Future Generali India Insurance Co. Ltd..

2. Future Generali India Insurance Co. Ltd. is the appellant before this Court. The appeal has been preferred against the award dated 13.02.2019 passed under Section 166 of the Motor Vehicles Act in Motor Accident Claim Case No. 278 of 2014 passed by learned Presiding Officer, Motor Vehicle Accident Claims Tribunal, Ranchi whereby the claimants, have been awarded compensation to the tune of Rs.44,16,540 to the applicants through account payee cheque drawn in the name of applicant No.1, Sachinand Prasad, the husband of the deceased within 30 days from the date of the Award along with interest @9% per annum from the date of filing of the claim application i.e. 20.11.2014 till its realization.

3. Learned counsel for the appellant-Insurance Company has submitted that the deceased-Urmila Kumari was working and posted as A.N.M. at P.H.C., Burmu, Sub- Centre Thakurgao, Block-Burmu district- Ranchi, who lost her life on 05.08.2014 while she was travelling in the offending vehicle i.e. Tempo bearing registration No. JH-01AP-3840 which turned turtle due to rash and negligent

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driving. A police case was lodged for the alleged accident. The claim application was filed by the claimants.

4. The fact of the case is that the tempo bearing registration No. JH-01AP-3840 was initially purchased by opposite party no. 1/ respondent no.3 (Haldhar Mahto) herein and he sold his vehicle to opposite party no. 2 /respondent no.4 Vinod Kumar Singh and both have been noticed by the learned Tribunal, but even after due service of summons, they did not appear and the case was fixed ex-parte hearing against them vide order dated 09.10.2015.

5. The insurance company- Future Generali India Insurance Co. Ltd. , appellant herein, appeared before the learned Tribunal and filed written statement stating therein that the vehicle was insured with the opposite party No.1, but the R.C. Book stands in the name of Viond Kumar Singh, Opp. Party No.2 though the person who has paid premium is Haldar Mahto and no intimation was given as contemplated under Section 193 A of the Motor Vehicles Act (old) or under Section 157 of the Motor Vehicles Act , 1988 (New) regarding the transfer of the ownership.

6. Mr. Ashutosh Anand, learned counsel for the appellant has assailed the impugned award on different counts:-

(i) Ownership of the vehicle was changed from Haldar Mahto to Vinod Kumar Singh and no intimation was given to the insurance company, as contemplated under Section 157 of the Motor Vehicles Act, as such, insurance company is not liable to indemnify the award.

(ii) Learned tribunal has wrongly deducted the income tax at the rate of Rs. 500/- per month which is equal to Rs.6000/- per annum for annual income of Rs. 5,15,400/-.

(iii) The permit of the vehicle has not been produced before the learned Tribunal.

(iv) The future prospect of the deceased has been wrongly calculated and

(v) The compensation amount of Rs.44,16,540 has been awarded with 9 per cent interest from the date of filing i.e. 20.11.2014 till its realisation.

Point No.(i)

7. Learned counsel appellant, Mr. Ashutosh Anand appearing for Future Generali India Insurance Co. Ltd. drawn attention of this Court on his first point regarding insurance coverage of motor vehicle after sale to second owner from Haldar Mahto to Vinod Kumar Singh and relied upon the judgment passed by the Apex court in the case of Rikhi Ram and Anr. Vs. Sukhrania (Smt.) and Others, reported in (2003) 3 SCC 97 and the reliance has been placed upon paragraph nos.4 to 8 which have been profitably quoted herein :-

"4. A perusal of Sections 94 and 95 would further show that the said provisions do not make compulsory insurance to the vehicle or to the owners. Thus, it is

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manifest that compulsory insurance is for the benefit of third parties. The scheme of the Act shows that an insurance policy can cover three kinds of risks i.e. owner of the vehicle, property (vehicle) and third party. The liability of the owner to have compulsory insurance is only in regard to the third party and not to the property. Section 95(5) of the Act runs as follows:-

"95. (5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person."

5. The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the subject-matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

6. On an analysis of Sections 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and the other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance with the provisions of the Act. However, so far as third-party injured or victim is concerned, he can enforce liability undertaken by the insurer.

7. For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of the insurer does not cease so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act.

8. For the aforesaid reasons, the appeal is allowed. We set aside the order and judgment under challenge. It is hereby directed that the insurer shall pay compensation to the victims within eight weeks along with the interest @ 11% p.a. from the date of incident and it will be open to the insurer to recover the said amount either from the insured or from the transferee of the vehicle. However, there shall be no order as to the costs."

8. Learned counsel for the appellant has thus submitted that at least right to recovery may be given in favour of the insurance company either from the previous owner,Haldar Mahto or from the present owner Viond Kumar Singh.

9. Learned counsel for the appellant, Mr. Ashutosh Anand in support of his submission has further put reliance upon the judgment passed by Single Judge of High Court Judicature at Madras on the similar issue in the case of M. Jeyakodi and Ors. vs. I. Soundarapandi and Ors. in C.M.A. No.2640 of 2014 in which

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reliance has been placed upon the judgment of Hon'ble Apex Court passed in the case of Firdaus Vs. Oriental Insurance Company Ltd. & Ors., reported in 2017(2) TN MAC 505 (SC)/ (2017) 15 SCC 674, and has submitted that in that case also the Hon'ble Court has given liberty to recover the same from respondent no.1 (I. Saunderpandi) by adopting the share and recover procedure.

10. This Court has considered all the judgment relied upon by learned counsel for the appellant. The fact of the present case is different than the fact of those cases, referred before this Court. This court has considered that Urmila Kumari- the deceased working as ANM was a third party to the accident. Even if the ownership has changed, but no intimation has been given under Section 157 of the Motor Vehicles Act, the insurance company is still liable to pay the same. The same view has been followed by this Court which has been enunciated by the Apex Court in the case of Rikhi Ram and Anr. vs. Sukhrania (Smt.) and Ors., reported in (2003) 3 SCC 97, as such, this Court differs to give the right of recovery in favour of the insurance company in absence of any positive evidence brought on record, with regard to violation under Section 149 (2) of the Motor Vehicles Act, though the owner of the vehicle has not appeared, but in the written statement filed by insurance company nothing has been brought on record nor any evidence has been led by insurance company which suggests either to this Court or to the learned tribunal that there is violation of Section 149(2) of the Motor Vehicles Act.

Point No.(ii)

11. So far the tax of Rs.500/- per month or Rs.6000/- per annum is concerned, for the income of Rs. 5,15,400/-, this Court has gone through the judgment reported in 2013 (3) JCR 197 SC/ (2013) 7 SCC 476, in the case of Vimal Kanwar and Ors. Vs. Kishore Dan and Ors., in which the issue has been dealt with. The relevant fact has been discussed in paragraph 23 which is profitably quoted hereunder :-.

"23. In view of the finding as recorded above and the provisions of the Income-tax Act, 1961, as discussed, we hold that the High Court was wrong in deducting 20% from the salary of the deceased towards income- tax, for calculating the compensation. As per law, the presumption will be that employer-State Government at the time of payment of salary deducted income tax on the estimated income of the deceased employee from the salary and in absence of any evidence, we hold that the salary as shown in the Last Pay Certificate at Rs.8,920/- should be accepted which if rounded off comes to Rs.9,000/- for calculating the compensation payable to the dependent(s)."

Under the aforesaid circumstances, the second issue raised by the learned counsel for the appellant is against the law laid down by Apex Court in the case of Vimal Kanwar (supra).

Point No.(iii)

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12. Even for the sake of argument, if it is considered that permit was not produced, the same has been considered by the Hon'ble Apex Court in the case of Amrit Paul Singh and Another vs. Tata AIG General Insurance Company Limited and Others, reported in (2018) 7 SCC 558 and with regard to driving licence the Hon'ble Apex Court has held in the case of Nirmala Kothari Vs. United India Insurance Company, reported in 2020 SCC Online 286, that even if the driving licence was not valid which has not been agitated by insurance company before the learned tribunal then also in view of the recent judgment passed by the Apex court, the insurance company is duty bound to prove that the owner has knowledge that the driver had no valid and effective licence.

13. Under the aforesaid circumstances, this Court is not accepting the submissions of the learned counsel for the appellant with regard to blanket right to recover in favour of the appellant from the owner i.e. either from Haldar Mahto or Vinod Kumar Singh, present owner. This Court did not also put any restriction upon the insurance company to agitate this issue separately before the learned tribunal, if they requires so, but right of recovery can not be given without any material brought on record by the insurance company.

Point No.(iv)

14. So far as the future prospect of the deceased is concerned, learned counsel for the appellant has submitted that the deceased, aged about 51 years was working in the Government job which is permanent and her income was Rs.43,450/- per month and as per the evidence adduced by A.W. 2, Clerk of the office, her income would have enhanced up to Rs. 58,293/- per month, as such the principle which has been laid down by the Hon'ble Apex Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi and Ors., reported in (2017) 16 SCC 680 is to be read harmoniously with the evidence brought on record.

15. This court has examined the judgment passed by the Apex court in the case of Pranay Sethi (supra). So far as, the future prospect is concerned, the Hon'ble Apex Court has dealt the issue in paragraph 57. The future prospect of the income of the deceased in view of the standardization procedure would be 15% as the deceased was aged about 51 years, as such, no interference is required by this Court.

16. Under the aforesaid circumstances, this Court is rejecting the submissions with regard to Point no.(i) to (iv) of the learned counsel for the appellant. So far the right to recovery be given against previous owner or the present owner, Haldar Mahto or Vinod Kumar Singh, in absence of any case made out regarding violation under Section 149 of the Motor Vehicles Act the same is not tenable in the eyes of law.

However, the insurance company may pursue the litigation at its own cost to prove the same, as both the owners have not appeared before the learned tribunal even after due notice.

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Point No.(v)

17. So far as the rate of interest is concerned which has been awarded @ 9 % from the date of filing till the realisation. In my opinion, the consistence view taken by this Court, relying upon the judgment passed by the Apex Court, in the case of Dharampal & Sons Vs. U.P. Transport Corporation reported in 2008, JCR 4 79 SC/ (2008) 12 SCC 208, the rate of interest ought to have been @7.5 per cent or the prevalent rate of the interest of Nationalized Bank on the date of the award. Since this Court has taken a consistent view regarding rate of interest @ 7.5 per cent from the date of the filing till its realization, as such is inclined to notice the claimant on limited issue of rate of interest only.

18. Learned counsel for the appellant has submitted that the instant appeal has been filed with a delay of 260 days and for condonation of delay of 260 days, I.A. No. 3562 of 2020 has been preferred.

19. Let notice be issued to the claimant no.1 under both process i.e. Registered Cover with A/D and Ordinary process, for which requisites etc., must be filed within two weeks in limitation matter as well as on point No.(v) i.e. rate of interest awarded by the learned Tribunal @ 9% instead of 7.5%.

20. A stay petition vide I.A. No. 3402 of 2020 has also been filed by the appellant for stay of Misc. Case No. 63 of 2019, pending before the court of Motor Vehicles Accident Claims Tribunal, Ranchi.

21. This court perused the same and directs the the appellant-Insurance Company to deposit the awarded amount of Rs.44,16,540/- along with interest @7.5% from the date of filing of the claim application within 90 days before the learned tribunal and the learned tribunal shall pay the same to the claimants after taking an affidavit that he has already appeared before this Court in Misc. Application No. 40 of 2020.

22. Put up this case after service of notice.

23. I.A. No. 3402 of 2020 stands disposed of.

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