

(2012) 09 DEL CK 0143
In the Delhi High Court
Case No : MAC. APP. 887 of 2011

ICICI Lombard General Insurance Co. Ltd.	APPELLANT
Vs	
Ganesh Ji Singh and Others	RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8
Motor Vehicles Act, 1988 — Section 149

Citation : (2012) 09 DEL CK 0143

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Rajat Brar, for the Appellant; Sanjeev Srivastava, for R-1 to R-4, for the Respondent

Judgement

G.P. Mittal, J.—The Appellant ICICI Lombard General Insurance Company Limited impugns a judgment dated 10.05.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 2,40,040/- for the death of Smt. Shakuntala Singh, aged 67 years held the Appellant Insurance Company liable to pay the compensation and declined recovery rights on the ground that the Appellant failed to prove the willful breach of the terms of the policy. The finding on negligence is not challenged by the Appellant Insurance Company.

2. There is twin challenge to the impugned judgment. First, that the compensation awarded is on the higher side. Second, that the Appellant successfully proved the breach of terms of policy and therefore was entitled to recovery rights.

3. During inquiry before the Claims Tribunal it was proved that the deceased Smt. Shakuntala Singh was a Graduate. She retired as a Vice Principal from Shishu Vihar Barauni, HFC Distt. Begusarai, Bihar. During his cross-examination PW-1 admitted that the deceased Smt. Shakuntala Singh was not getting any pension. Thus, loss to the Respondents No. 1 to 4 was with regard to gratuitous

services rendered by a housewife (that is as a wife and a mother). On this, the case is squarely covered by the judgment of this Court in Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors. MAC. APP. 590/2011, decided on 30.01.2012.

4. In Master Manmeet Singh this Court noticed following judgments of the Supreme Court:-

(i) General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others,

(ii) National Insurance Company Limited v. Deepika & Ors., 2010 (4) ACJ 2221,

(iii) Amar Singh Thukral v. Sandeep Chhatwal, ILR (2004) 2 Del 1,

(iv) Lata Wadhwa and Others Vs. State of Bihar and Others,

(v) Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others,

(vi) A. Rajam Vs. M. Manikya Reddy and Another

(vii) Morris v. Rigby (1966) 110 Sol Jo 834 and

(viii) Regan v. Williamson 1977 ACJ 331 (QBD England), and laid down the principle for determination of compensation on account of loss of gratuitous services rendered by a housewife. Para 34 of the judgment in Master Manmeet Singh (supra) is extracted hereunder:-

34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

(i) Minimum salary of a Graduate where she is a Graduate.

(ii) Minimum salary of a Matriculate where she is a Matriculate.

(iii) Minimum salary of a non-Matriculate in other cases.

(iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.

(v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.

(vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of dependency shall be 50% of the income as

per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.

(vii) There shall not be any deduction towards the personal and living expenses.

(viii) As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto Rs. 25,000/- (on present scale of the money value) towards loss of love and affection and Rs. 10,000/- towards loss of consortium, if the husband is alive, may be awarded.

(ix) Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate.

5. In this case, deceased Smt. Shakuntala Singh was a Graduate. Since she was aged 67 years on the date of the accident, her contribution towards gratuitous services rendered to the household would be 50% of the minimum wages as per her qualification, that is, Graduate. The Claims Tribunal also took the minimum wages of a Graduate and made 50% deduction while awarding loss of dependency. Thus, the loss of dependency of Rs. 1,93,440/- and the overall compensation of Rs. 2,40,040/- awarded by the Claims Tribunal cannot be said to be exorbitant and excessive.

6. The Claimants served a notice under Order XII Rule 8 CPC upon the insured. Asking him to produce the driving licence of the driver. He failed to respond to the notice. He as well as the driver preferred not to contest the proceedings before the Claims Tribunal and even before this Court.

7. The Claims Tribunal dealt with the question of breach of the terms of policy in Paras 19 and 20 of the impugned judgment which are extracted hereunder:-

19. The offending motorcycle admittedly was insured with Insurance Company. The plea of the Insurance Company is that driver of the motorcycle was without driving license. The Insurance Company has also examined Ms. Sunanda Nimisha as R3W1. The witness of the Insurance Company has produced a copy of the notice u/ O 12 Rule 8 CPC served by the Company on the insured to produce the DL of the driver of the offending vehicle.

20. Where a vehicle is insured the responsibility of payment continues with the Insurance Company. The Insurance Company in order to avoid the responsibility of payment of compensation has to show that Company has a valid defence u/s 149 MV Act. In this case this plea of no driving license is based on DAR Report submitted by the police which shows that driver of the motorcycle was having no license. However, notice under Order 12 Rule 8 CPC Ex.R3W1/1 in the present case has been issued by the Insurance Company to the insured alone. No such notice has been served Suit No. 474/10 7/9 upon the driver who was an effective person to throw light on this aspect. It is not the case that Insurance Company is not having address or particulars of driver. The Insurance Company in order to avoid the responsibility was to make all sincere efforts to serve driver also with the copy of the notice u/O 12 Rule 8 CPC asking him to produce his driving

license. Even if the notice has been served upon the owner/insured but in absence of any such notice given by the company to the driver, this exercise would only be considered as half hearted and Insurance Company cannot be absolved with responsibility of payment.

8. It is not the case of the Respondent No. 6 Mohd. Kafil, owner of the offending vehicle that he had seen the driving licence of the driver. He has not come forward with any explanation as to the circumstances under which he handed over the vehicle to Respondent No. 5.

9. In the circumstances non-service of the notice upon driver to produce his driving licence, particularly, when he was ex-parte, was not material because of failure of Respondent No. 6 (the owner) to respond to the notice under Order XII Rule 8 CPC and in the absence of any explanation from him. As stated earlier, an inference can be drawn that he had handed over the vehicle to a driver who did not possess any valid and effective driving licence.

10. The Appellant Insurance Company has thus successfully proved the breach of the terms of policy. The Claims Tribunal erred in not granting recovery rights to the Appellant.

11. On the basis of the report in Sohan Lal Passi Vs. P. Sesh Reddy and others, ; National Insurance Co. Ltd. Vs. Swaran Singh and Others, ; and United India Insurance Company Ltd. Vs. Lehu and Others, the Appellant Insurance Company would be entitled to recovery rights as it has successfully proved the breach of the terms of policy.

12. Thus, while declining to interfere with the amount of compensation, the Appeal is allowed to the extent that the Appellant would be entitled to recover the compensation paid from Respondents No. 5 and 6 without having recourse to independent civil proceeding in execution of this very judgment.

13. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company.

14. The Appeal is allowed in above terms. Pending Applications also stand disposed of.