(2022) 12 JH CK 0025

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 235 Of 2016

National Insurance Co. Ltd APPELLANT

Vs

Mridula Pramanik And Others RESPONDENT

Date of Decision : 22-12-2022

Acts Referred:

Citation : (2022) 12 JH CK 0025

Hon'ble Judges : Dr. S.N.Pathak, J

Bench : Single Bench

Advocate : Alok Lal, Tejo Mistry, Amit Das, Sahay Gaurav Piyush, Tapeshwarnath Mishra, Prachi Mahato

Final Decision : Dismissed

Judgement

Dr. S.N.Pathak, J

1. Heard the parties.

2. This appeal has been preferred by the appellant against the Award/ Judgment dated 05.02.2016, passed by learned District Judge-III- cum-Motor Accident Claims Tribunal, Jamshedpur in Compensation Case No. 142 of 2012.

3. As per the factual matrix, the compensation case was filed by the Claimants before the learned District Judge-III-cum-Motor Vehicles Accident Claims Tribunal, Jamshedpur for payment of compensation on account of death of one Sukra Pramanik, who died in a road accident, which happened due to rash and negligent driving by the driver of the Indigo Car bearing Reg. No. JH-22B-1909(T). It was also pleaded before the learned Court below that at the time of death, the said Sukra Pramanik was earning Rs.40,000/- per month as salary and he was a government employee. It was further pleaded that the offending vehicle was insured with National Insurance Co. and the motorcycle of the deceased was insured with the ICICI Lombard General Insurance Co. It was also pleaded that at the time of accident the deceased was a government employee and hence, while computing the compensation amount, the future

prospects should also be taken into consideration and the claim application be allowed with interest.

4. On being noticed, the ICICI Lombard General Insurance Co. appeared through his counsel and it has been submitted that at the time of accident, the motorcycle of the deceased was insured with this Insurance Co. and hence, the deceased was not a third party to be compensate by the present Insurance Co. Further, it was submitted that charge-sheet was submitted against the driver of the Indigo Car.

5. Learned counsel for the National Insurance Co. has submitted that Car was insured with this Insurance Co., however, there was violation of terms and conditions of the Insurance Policy and accident took place due to rash and negligent driving by the driver of the motorcycle. It was further submitted that there was no prove of income of the deceased and there was no future prospect. It was also submitted that the applicants are claiming exorbitant compensation, which is not legally permissible.

6. Learned Tribunal, on perusal of the documents brought on record and after hearing counsel for the parties and upon going through the written statement as well as other documents, framed following issues for proper and just adjudication of the case:-

i) Whether this case is maintainable in present form or not and whether the deceased died due to rash and negligent driving by the driver of vehicle no. JH-05AQ-5708 Or is it a case of contributory negligence?

ii) Whether vehicle was insured with respective OP Insurance Companies and whether OP Insurance Companies are liable to make payment of compensation?

iii) Whether owners of the vehicle has violated any terms and conditions of the Insurance Policy including requirement of valid Driving License?

iv) Whether applicants are entitled to get compensation if so what would be quantum of compensation?

v) Whether applicants are entitled to get any other relief or reliefs?

7. Learned Court below after hearing the parties and after perusing the exhibited documents and oral evidences, elaborately dealt the issues framed and thereafter, found that the claimants are entitled to receive compensation amount. Resultantly, the learned Tribunal directed the National Insurance Co. to draw account payee cheque for 80% of the compensation amount of Rs.27,46,340/- in name of Mridula Pramanik, who would receive this cheque also on behalf of minors Applicant Nos. 2, 3 and 4. OP National Insurance Co. is further directed to draw another cheque for remaining 20% of the compensation amount in the name of Sumitra Pramanik who is mother of the deceased. All cheques should be drawn with upto date interest @ 8% per annum from the date of filing of this claim case till payment and cheques should be handed over to

applicants within 30 days of this order.

8. The correctness of the said award has been challenged in this appeal.

9. Mr. Alok Lal, learned counsel appearing for the appellant-Insurance Co., assailing the judgment of the learned Court below argues that award dated 05.2.2016 is bad in law as well as on fact and is contrary to the weights of evidence and material available on record and as such, the same is liable to be set aside. Learned counsel further argues that the learned Tribunal has applied incorrect method of computation of compensation under the Motor Vehicles Act and the reasoning assigned therein in deciding the issues are completely unknown to the settled principles of law and the same are liable to be set aside. Learned counsel further argues that liability should be fastened on the driver of the offending vehicle, since at the time of accident, he was not having the valid driving license to ply the vehicle. Learned counsel further argues that the learned Tribunal has erroneously considered future prospects of the deceased, which is not tenable in the eyes of law, since compassionate appointment has been given to the legal heir of the deceased, Sukra Pramanik.

10. To buttress his arguments, learned counsel for the appellant-Insurance Co. places heavy reliance on the following judgments:

(I) Himachal Road Transport Corp., Chamba Vs. Mrs. Inumoni Begum & Ors. [2018 SCC Online Gau 792];

(II) Bhakra Beas Management Board Vs. Kanta Aggarwal & Ors. [AIR 2008 SC 3118].

11. On the other hand, learned counsel appearing for the respondents justifies the impugned award and submits that the learned Tribunal has considered every aspects of the matter and decided each and every issue framed by it and thereafter, came to the conclusion that the opposite party-National Insurance Co. is liable to pay compensation amount of Rs.27,46,340/- to the claimants. Learned counsel further submits that no interference is required and the appeal is fit to be dismissed outrightly.

12. Having heard parties and considering facts and circumstances of the case, this Court is of the considered opinion that no interference is warranted in the impugned Judgment.

13. From perusal of the documents brought on record and going through the lower court record, it appears that the accident and death both are admitted. The learned counsel appearing for the respondents –

Insurance Company has tried to impress upon this Court that the liability of satisfying the Award is on the owner as driver was not having driving licence and as such there is violation of terms and conditions of the Insurance Company.

14. It was further argued that driver of the concerned vehicle was also not having proper registration as registration itself was temporary in nature and was

meant for movement from the show-room to house of owner of the vehicle.

From Issue Nos. 2 and 3, the Tribunal after appreciating evidence and examination of the record, has clearly held that the temporary registration which has been issued under Rule 48(2) was meant for movement from Seraikella to Jamshedpur and the accident took place in Ichagarh within the district of Seraikella. So the Indigo Car was not used for outside authorisation and as such there is no violation of terms and conditions of the Insurance Policy and admittedly the vehicle was insured which has not been denied.

The other arguments advanced by learned counsel for the Insurance Company that while computing compensation, the Tribunal ought to have considered the fact that the respondent no. 1 has got compassionate appointment in place of her husband after his death and as such in light of salary being paid to respondent no. 1.

It has also been argued that Award of sum equivalent to 50% in this case is not sustainable in view of the fact that the respondents have already been considered and granted compassionate appointment. Learned counsel places heavy reliance on the aforesaid Judgment.

This Court is of the view that the arguments advance by Mr. Alok Lal is totally misconceived and without any basis and has no legs to stand and as such turned down.

In paragraph-11 of the impugned Judgment it has been clearly held that there is no violation of terms and conditions of the Policy. Regarding the other issues, the same fell for consideration before the Hon'ble Apex Court in the case of Bimal Kawar and others Vs. Kishor Das and others (2013) 7 SCC 476, wherein the Hon'ble Court has held as under:

"20. The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction".

21. "Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependants, one of the dependants may request for compassionate appointment to maintain the family of the deceased employee who dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependants may be entitled for compassionate appointment but that cannot be termed as "pecuniary advantage" that comes under the periphery of the

Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act.”

15. In view of aforesaid legal proposition it can comfortably inferred that there is no illegality or any infirmity in coming to the finding for holding the Insurance Company liable for payment. The amount of compensation has rightly been considered which does not attract any interference. This Court has taken no other view other than what has been taken by the Tribunal.

16. As a cumulative effect of the aforesaid legal proposition and from perusal of the documents brought on record, no interference is warranted in the impugned order and the Insurance Company is directed to pay the quantum of compensation as per terms and conditions laid down by the Tribunal vide order dated 05.02.2016.

17. Let it be made clear that if any amount has already been paid, the same shall be deducted from the principal amount.

18. Resultantly, the appeal fails and is hereby dismissed.

19. The appellant-Insurance Co. is permitted to withdraw the statutory amount, if any, deposited with the learned Registrar General of this Court, after furnishing proper application, in accordance with law

20. Office is directed to send the LCR to the Court concerned at the earliest.