(2014) 02 J&K CK 0047

In the Jammu And Kashmir High Court

Case No : C.I.M.A. No. 192 of 2012 and Cross-Appeal No. 29 of 2013

National Insurance Co. Ltd. — APPELLANT

Vs

Raja Begum and Others — RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Citation : (2015) 3 ACC 258

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Advocate : J.A. Kawoosa, Advocate for the Appellant; B.A. Tak and Salman, Advocate for the Respondent;

Final Decision : Disposed off

Judgement

Hasnain Massodi, J.

1. Raja Begum, respondent No. 1 herein, was on 29.3.2007 at 10.30 a.m. hit by a speedily driven vehicle bearing registration No. JK 04-8157 at

Haber Mod, Khag. She suffered injuries in the accident, was treated at Bone & Joint Hospital, Barzalla, Srinagar and left disabled for rest of her

life. She laid a claim petition under Section 166, Motor Vehicles Act, before the Motor Accident Claims Tribunal, Srinagar (hereinafter referred to

as 'the Tribunal'), claiming Rs. 43,90,000 as compensation on account of permanent disablement suffered by her in the accident as also on account

of medical expenses, transportation, shock, special diet, attendant and other pecuniary and non-pecuniary loss. Her case was that due to accident

her pelvic bone was dislocated and her uterus was damaged, making it impossible for her to conceive and give birth to a child. The claim petition

was resisted by the appellant Insurance Company on the ground that vehicle No.

JK 04-8157 having insurance cover under policy No.

421003/31/6300, was not involved in the accident. It was farther pleaded that as driver of the offending vehicle was not holding valid and effective

driving licence at the time of accident, the appellant is absolved of its liability to indemnify the owner of offending vehicle.

2. The owner of the offending vehicle denied involvement of his vehicle in the accident. He further insisted that driver was employed by him after

satisfying himself that he was holding a valid and effective driving licence and authorised to drive insured vehicle. The owner of vehicle maintained

that compensation, if any, was to be paid by Insurance Company and not owner as vehicle had insurance cover with appellant Insurance

Company.

3. The Tribunal after going through pleadings settled following issues:

(1) Whether on 29.3.2007, Fayaz Ahmad Dar, respondent No. 1, was plying offending vehicle (Tata Sumo) bearing registration No. JK 04-8157

rashly and negligently as a result of which at Haber Mod, Khag, it hit petitioner who was walking on her correct side of road, as a result of which

she sustained multiple grievous injuries rendering her permanently disabled?

--OPP

(2) Whether the driver of the offending vehicle was not holding a valid and effective driving licence on the date of accident and the vehicle was

without valid R/P and other vehicular documents, as such the insured-owner had committed willful breach of policy conditions and, therefore, no

liability can be saddled on the Insurance Company?

--OPR

(3) In case issue No. (1) is proved in affirmative, what amount of compensation the petitioner is entitled to, from whom and in what proportion?

--OPP

4. The parties were afforded an opportunity to adduce evidence to discharge the onus to prove issues burden whereof was placed on them

respectively. Respondent No. 1-claimant appeared in the witness-box and examined Abdul Gaffar Hajam, Ghulam Hassan and Dr. Manzoor

Ahmad Halwai to substantiate her case. Appellant Insurance Company on the other hand examined Harish Raina, Administrative Officer, and

Mohammad Sultan Shangoo, Junior Assistant, in the office of R.T.O., Kashmir, in support of their case.

5. The Tribunal, on going through the pleadings and evidence brought on record, decided all the issues in favour of respondent No. 1-claimant and

against appellant. The Tribunal, while holding that driver of offending vehicle was not having valid and effective driving licence on the date of

accident, did not give any benefit to appellant Insurance Company as the Tribunal found driver to have had valid and effective driving licence from

10.11.2002 to 9.11.2005 and thereafter from 23.4.2007 to 19.11.2008. The Tribunal relying on law laid down in National Insurance Co. Ltd.

Vs. Mahadev Rawat and Another, , held that once driver of offending vehicle is found to have basic driving licence, failure on his part to renew

driving licence would not free Insurance Company from its duty to indemnify owner of vehicle, as driver is to be taken to have an ability to drive

vehicle even if he fails to get licence renewed. The Tribunal concluded that as driver of offending vehicle had a valid and effective driving licence

before the accident and licence was renewed after the accident, appellant Insurance Company was not to derive any benefit from his failure to get

driving licence renewed after its expiry.

6. The Tribunal, on perusal of evidence on the file and in particular the testimony rendered by Dr. Manzoor Ahmad Halwai, assessed the

compensation at Rs. 3,10,000 inclusive of interim relief and directed the appellant Insurance Company to pay compensation assessed with 6 per

cent interest to respondent No. 1. The compensation assessed included Rs. 1,80,000 on account of medical treatment, surgery, transport,

attendant and other expenses, Rs. 1,00,000 on account of loss of income and Rs. 30,000 on account of pain, suffering and trauma undergone by

respondent No. 1 due to the accident.

7. Award dated 29.9.2012 is questioned by appellant Insurance Company in civil first miscellaneous appeal on hand, on the ground that the

Tribunal has erroneously held appellant Insurance Company liable to pay compensation notwithstanding the finding that driver of offending vehicle

was not holding valid and effective driving licence at the time of accident. Appellant placing reliance on law laid down by the Apex Court in Ram

Babu Tiwari Vs. United Indian Insurance Co. Ltd. and Others, , wherein the driving licence held by driver of offending vehicle though valid from

11.2.1990 to 10.2.1993 and 7.2.1996 to 6.2.1999, was not valid on the date of accident, i.e., 27.1.1996. Reliance has also been placed on law

laid down in National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, , where driving licence was valid before the accident and

renewed after accident, but not valid on the date of accident. In both the cases, according to appellant, Insurance Company was held not liable to

indemnify owner and pay compensation to the victim of accident.

8. Respondent No. 1, not satisfied with the quantum of compensation, has filed objections treated as cross-appeal, being No. 29 of 2013.

Respondent No. 1 insists that compensation awarded by the Tribunal is much below compensation due to her on account of pecuniary and non-

pecuniary losses suffered because of accident. It is pleaded that the Claims Tribunal as against Rs. 43,90,000 claimed by the respondents has

awarded paltry and meager amount of Rs. 3,10,000. The compensation awarded, according to the respondent No. 1, cannot be termed as just

compensation within the meaning of Section 168, Motor Vehicles Act.

9. I have gone through the pleadings and have heard learned Counsel for parties.

10. It is well settled law that insurer will be absolved of its obligation to indemnify owner, where owner is found to have handed over vehicle to

driver not authorised to drive the vehicle. The owner of vehicle is required to engage a driver to ply/drive vehicle, who has effective and valid

driving licence. The word 'effective' would imply that driver must have licence to drive particular type of vehicle for which he is engaged. Cases can

be visualised where a person is authorised to drive a particular type of vehicle under the driving licence issued in his favour, he drives a different

type of vehicle. In such a case insurer may escape liability to indemnify owner on the ground that driver employed by him was not authorised to

drive particular type of vehicle. To illustrate, a person may have licence to drive scooter, he would not be competent/authorised to drive a heavy

goods vehicle and vice versa. In such a case licence held by him would be taken not to be 'effective', enabling Insurance Company to wriggle out

of its liability to indemnify owner. There are cases where driving licence held by a person, driving offending vehicle, is fake, forged, granted by

incompetent authority or has outlived its validity. In such a case driving licence would be invalid and insurer not responsible to indemnify owner on

account of breach of one of the conditions of insurance policy.

11. It is pertinent to point out that in terms of insurance contract, owner of the vehicle is under obligation to hand over vehicle only to driver having

valid and effective driving licence. In both cases, however, it is only factum of ineffective and invalid driving licence that would clinch the matter.

The breach of one of the conditions of insurance contract implies an element of negligence on the part of owner of vehicle. The owner of vehicle

may be tempted by, say, lesser salary demanded by a driver not in possession of valid and effective driving licence and, therefore, knowing well

that the driver he is going to employ does not have effective and valid licence, still hands over vehicle to such driver. Owner may be careless or

negligent and makes no effort to examine driving licence and subject it to some kind of verification to satisfy himself that the driving licence held by

the person he is employing is valid and effective. However, there may be a case where owner of vehicle makes all efforts expected of a man of

ordinary prudence to satisfy himself that driving licence held by such a person is valid and effective. But the driving licence may, nonetheless, come

out to be invalid or non-effective. In the first two cases, the Insurance Company would be within its rights to insist that it cannot be saddled with

the liability to indemnify owner. However, in last case, i.e., where evidence brought on record substantiates that owner of vehicle as a man of

ordinary prudence examined and verified driving licence, produced before him by his employee and only thereafter entrusted vehicle to him, the

insurer would continue to be liable to indemnify the owner. To conclude whether insurer would escape liability on account of breach of condition of

insurance contract, in such case, would depend on the stand taken by owner of vehicle and evidence adduced by him in support of such stand. In

case owner of vehicle does not respond to summons from the Tribunal or stays away from proceedings without disclosing his stand, the Tribunal

would be left with no option but to declare owner of vehicle liable to pay compensation assessed and free the insurer from any liability to indemnify

owner.

12. In the present case, driver of offending vehicle admittedly did not have valid and effective driving licence at the time of accident. His driving

licence expired on 9.11.2005, and the accident occurred on 29.3.2007 after the driving licence ceased to be effective. He did not renew his

driving licence for 1 1/2 years, but got it renewed after the accident. Owner of vehicle cannot press into service Section 15, Motor Vehicles Act,

to insist that as in terms of Second Proviso to Sub-section (4) of Section 15, licence would be renewed within five years after it ceases to be

effective without subjecting driver to any fresh driving test, driver of offending vehicle is to be presumed to have valid and effective driving licence

at the time of accident. In terms of first proviso to Section 15(1) where an application for renewal of licence is made more than 30 days after

licence ceases to be effective, renewal of licence would be from the date of its renewal. It implies that where application for renewal of driving

licence is made within 30 days from the date it ceased to be effective, the date of renewal will be from the date driving licence ceases to be

effective. A conjoint reading of all sub-sections of Section 15 would lead to the conclusion that where an application for renewal of driving licence

is made more than 30 days after it ceased to be effective, driver would be taken to be without driving licence from the date it ceased to be

effective till date of its renewal. Second proviso to Sub-section (4) of Section 15 confers power on licensing authority to refuse its renewal unless

driver undergoes a fresh driving test where application for renewal is made 5 years after licence ceased to be effective. It, however, does not imply

that driving licence would continue to be valid and effective even after it ceased to be effective, in terms of last date endorsed on it. This is made

amply clear by first proviso to Sub-section (1) of Section 15 where it is laid down that in such case licence would be renewed not from the date it

ceased to be effective but from the date of its renewal. The law on the subject has been settled in authoritative pronouncement by Apex Court in

Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, .

13. The owner of vehicle in the case in hand did not take a stand before the Tribunal that he had taken all steps, as expected of a man of ordinary

prudence, to examine and verify licence held by driver of offending vehicle to satisfy himself that such licence was valid and effective. Owner of

vehicle has not stepped in witness-box let alone examined any witness in this regard. The insurer, therefore, is free from an obligation to indemnify the insured.

14. Viewed thus the Tribunal was not right in holding appellant Insurance Company liable to pay compensation assessed to claimant-respondent

No. 1. However, as accident had taken place about seven years back and respondent ever since prosecuting the matter and appellant Insurance

Company has already deposited the amount with the Registry, it would be unjust to ask respondent to chase the owner of vehicle for recovery of

compensation. It would be just and proper to release the compensation amount deposited by appellant Insurance Company in favour of

respondent, giving the appellant liberty to recover the amount in accordance with law. This takes us to the question whether compensation

awarded is just compensation within the meaning of Section 168, Motor Vehicles Act.

15. The Claims Tribunal while assessing compensation payable to Raja Begum, respondent No. 1, has been alive to parameters to be observed to

work out the just compensation. The Tribunal has rightly divided the exercise into two parts. Firstly, the Tribunal has made an effort to work out

'pecuniary loss' suffered by respondent. The Tribunal had before it evidence in the shape of statement of Dr. Manzoor Ahmad Halwai,

Orthopaedician, who operated respondent after the accident as also Exh. PM issued by the witness. Testimony of respondent No. 5 was also

before the Tribunal. The injured was the best person to depose regarding expenditure with which she was burdened because of the accident and

also impact the accident had on her life and day-to-day activities. The Tribunal dealt with subject of future loss separately and again fell back upon

the testimony of Orthopaedician, respondent and her witnesses Abdul Gaffar Hajam and Ghulam Hassan. The Tribunal thereafter proceeded to

assess 'non-pecuniary loss', suffered by respondent because of the accident. Here again, reliance was rightly placed on the testimony of

respondent, witnesses examined by respondent as also Orthopaedician, who treated her after the accident. To sum up, the Claims Tribunal has

made threadbare discussion of all the relevant factors while assessing the compensation. Claims Tribunal proceeded to award an amount of Rs.

3,10,000 in favour of the claimant-respondent in the appeal. This included Rs. 1,30,000 on account of pecuniary loss and balance Rs. 1,80,000 on account of non-pecuniary loss. The awarded amount was to carry interest at the rate of 6 per cent per annum till the amount was realized. The

Tribunal for the reasons discussed cannot be faulted for assessment of compensation over and above what was due to respondent or less than just

compensation within the meaning of Section 168, Motor Vehicles Act. The interest awarded by the Tribunal on the amount awarded is also

reasonable and in accordance with the law laid down by the Supreme Court. The compensation pressed, therefore, does not call for any

interference.

16. For the reasons discussed, the award is modified as under:

The appellant Insurance Company shall pay an amount of Rs. 3,10,000 with interest at the rate of 6 per cent per annum from the date of filing of

claim petition till realization of the award amount. The appellant Insurance Company shall have to recover the compensation paid to the

respondent-claimant from the owner of the offending vehicle in execution proceedings without filing a suit for recovery against owner of the vehicle.

Civil first miscellaneous appeal and cross-appeal are disposed of accordingly.