

(2014) 02 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : CIMA No. 192 Of 2012 and Cross Appeal No. 29 Of 2013

National Insurance Company Limited

APPELLANT

Vs

Raja Begum

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 15, 15(1), 166, 168

Citation : (2015) ACJ 790 : (2014) 3 JKJ 285

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

Judgement

Hasnain Massodi, J.—Mst. Raja Begum-respondent No. 1 herein, was on 29th March 2007 at 10.30 AM, hit by speedily driven vehicle

bearing Registration No. JK04/8157 at Herber Mod, Khag. She suffered injuries in the accident, was treated at Bone & Joint Hospital, Barzalla,

Srinagar, and left disabled for rest of her. She laid a claim petition under Section 166, Motor Vehicles Act, before Motor Accident Claims

Tribunal, Srinagar (hereinafter referred to as ""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 lion-

pecuniary loss. Her case was that due to accident her pelvic bone was dislocated and her uterus damaged, making it impossible for her to conceive

and give birth to a child. The claim petition was resisted by appellant insurance company on the ground that vehicle No. 8157/JK04 having

insurance cover under Policy No. 421003/31/06/6300, was not involved in the

accident. It was further pleaded that as driver of the offending vehicle was not holding valid and effective Driving License at the time of accident, the appellant is absolved of its liability to indemnify owner of offending vehicle.

2. The owner of 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 valid and effective Driving License and authorized to drive the 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 from appellant insurance company.

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

1. Whether on 29.03.2007, Fayaz Ahmad Dar respondent No. 1 was plying offending vehicle (Tata Sumo) bearing Registration No. JK04-8157

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 him permanently disabled? OPP

2. Whether the driver of the offending vehicle was not holding valid and effective driving license on the date of accident and the vehicle was without

valid R/P and other vehicular documents, as such the insured owner had committed wilful breach of policy conditions and therefore no liability can

be saddled on the Insurance Company? OPR4

3. In case issue No. 1 is proved in affirmative to 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 S/Shri Abdul Gaffar Hajam, Ghulam Hassan and Dr.

Manzoor Ahmad Halwai to substantiate her case. Appellant insurance company on the other hand examined Shri Harish Raina, Administrative

Officer, and Mohammad Sultan Shangoo, Junior Assistant, in the office of RTO Kashmir, in support of their case.

5. Tribunal, on going through 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 License on the date of accident, did not give any benefit to appellant insurance company as Tribunal found driver to have had valid and effective Driving Licence from 10.11.2002 to 9.11.2005 and thereafter from 23.04.2007 to 19.11.2008. 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 of 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. 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 testimony rendered by Dr. Manzoor Ahmad Halwai, assessed compensation at Rs. 3,10,000/- inclusive of interim relief and directed appellant insurance company to pay compensation assessed with 6% 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 29th September 2012 is questioned by appellant insurance company in Civil First Miscellaneous Appeal on hand, on the ground that 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 Driving Licence held by Driver of offending vehicle though valid from 11.02.1990 to 10.02.1993 and 07.02.1996 to 07.02.1999, was not valid on the date of accident i.e. 27th January 1996. Reliance has been

also 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. 19/2013.

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

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

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

within meaning of Section 168, Motor Vehicle 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 driver employed by 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, to ply 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 point out, that in terms of insurance contract, owner of vehicle is under obligation to handover 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 part of owner of vehicle. 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 handover vehicle to such driver. Owner may be careless or negligent

and make no effort to examine Driving Licence and subject it to some kind of verification to satisfy himself that 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 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, 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 9th November 2005, and accident occurred on 29th March

2007 after Driving Licence ceased to be effective. He did not renew his Driving Licence for 1 = years, after the accident. Owner of vehicle cannot press into service Section 15, Motor Vehicle 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 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. 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 05 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 when it lays 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 appellant liberty to recover the amount in accordance with law. This takes us to question whether compensation awarded is just

compensation within meaning of Section 168, Motor Vehicle Act.

15. Tribunal while assessing compensation payable to respondent - Mst. Raja Begum, has been alive to parameters to be observed to work out

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

suffered by respondent. Tribunal had before it evidence in the shape of statement of Dr. Manzoor Ahmad Halwai, Orthopaedician, who operated

respondent after the accident as also EXPM 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. 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, Tribunal has made threadbare discussion of all the relevant factors while

assessing the compensation. Tribunal proceeded to award an amount of Rs. 3,10,000/- in favour of claimant - respondent in the Appeal. This

included Rs. 1,30,000/- on account of pecuniary loss and Rs. 1,80,000/- on account of non- pecuniary loss. The awarded amount was to carry

interest @ 6% per annum till the amount was realised. 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 meaning of Section 168, Motor Vehicle Act. The interest awarded

by Tribunal on the amount awarded is also reasonable and in accordance with law laid down by the Apex Court. The compensation assessed,

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 @ 6% per annum from the date of filing of claim petition till

realisation of the award amount. The appellant insurance company shall have right to recover the compensation paid to 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.