(2013) 03 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : C.I.M.A. No. 303 of 2012

New India Assurance Co. Ltd. APPELLANT

Vs

Shanti Bopanna and Others RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Citation : (2014) 2 ACC 285 : (2014) ACJ 219

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : R.K. Gupta and Mr. Prem Sadotra, for the Appellant; R.K. Jain and Mr. Vishal Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—Does the 'comprehensive policy of insurance' exempt the insurance company from its liability of paying the

compensation to the victim of a vehicular accident who is travelling in a vehicle which is covered under such policy at the time of accident? This is

the only important point raised in the instant appeal which seeks setting aside of award dated 26.4.2012 (for short, 'the impugned award'), passed

by the Motor Accidents Claims Tribunal, Samba (for short, 'the Tribunal'). 'No' is possibly the only answer for the reasons that would flow from

the narration of events below.

Brief Facts:

2. On 30.3.2009, a vehicular accident caused at Chakpura, Vijaypur claimed the life of one Venkata Subramanyam Bopanna. Accident had

allegedly been caused due to rash and negligent driving of one Deepak Kumar, driver of the offending vehicle, Tata Sumo Grandy, bearing registration No. CH 04-E 6276.

3. Respondent Nos. 1 and 2, being the legal heirs of the deceased, viz., wife and minor son, approached the Tribunal seeking compensation from

the insurer-appellant for the life of deceased having gone astray due to said accident. Respondents claimed compensation to the tune of Rs.

2,50,00,000 along with 12 per cent interest per annum from the appellant.

4. Appellant insurer and the respondent Nos. 2 and 3 in claim petition appeared before the Tribunal and filed objections. Tribunal after considering

the pleadings of the parties framed as many as eight issues for determination. The said issues are verbatim placed on record, thus:

(1) Whether deceased Venkata Subramanyam Bopanna died as a result of injuries sustained in a road accident on 30.3.2009 at 7.15 a.m. near

Chakpura, Vijaypur caused by respondent No. 2 while driving vehicle No. CH 04-E 6276 in a rash and negligent manner? OPP

(2) Whether respondent No. 2 was not holding a valid driving licence at the time of the accident? OPR 1

(3) Whether respondent No. 1 is not liable to pay any compensation as the offending vehicle was driven in contravention of the terms and

conditions of the insurance policy and route permit? OPR 3

(4) In case issue No. 1 is proved in the affirmative, whether the petitioners are entitled to any compensation under the Motor Vehicles Act and if

so, from whom and to what extent? OPP

(5) In case issue No. 1 is proved in the affirmative, whether the liability of respondent No. 1 is limited to compensation of Rs. 1,00,000? OPR 1

(6) Whether the deceased does not come within the definition of the term third party? If so, what is its effect? OPR 1

(7) Whether the risk of the alleged deceased being employee or member of the insured is not covered under the insurance policy and thus

respondent No. 1 is not liable to pay the compensation? OPR 1

(8) Relief.

5. Respondent No. 1 herein after being asked to lead evidence has produced and examined Rajesh Kumar, Lovely Bhagat and also appeared as

her own witness to prove her claim. Besides in the shape of documentary evidence, she placed reliance on photocopy of F.I.R., insurance policy, post-mortem report and appointment letter dated 5.3.2008, and Form No. 16 detailing out the salary and tax statement of the deceased.

6. Appellant also examined S.K. Gupta and S.S. Jaral, while as respondent No. 3 in the claim petition, examined Ramesh Sharma.

7. The witnesses produced and examined by the respondent No. 1 herein lend support to the respondents' case and their statements establish the

factum of the respondent Nos. 1 and 2 herein, to be the legal heirs of deceased and having been deprived of their only dependency. The witnesses

have deposed that deceased's gross monthly salary was Rs. 2,08,333 and Rs. 1,84,879 after requisite tax deductions. The witnesses have also

corroborated the stand of the respondent No. 1 vis-a-vis the rank and future prospects of the deceased in the company. One of the witnesses has

deposed that he has witnessed the accident as he happened to be driving on a motor cycle on the spot on the fateful day. He has deposed that

offending vehicle was being driven rashly and negligently at high speed.

8. The insurer-appellant examined S.K. Gupta, Divisional Manager of New India Assurance Co. Ltd., Ludhiana who deposed that insurance

policy exhibited as EXT-SKG covers the risk of the vehicle, third party and six non-fare paying passengers up to Rs. 1,00,000 per person.

However, he has further stated that being the employee of the owner of offending vehicle, the victim was not covered; therefore, insurance

company was not liable to pay compensation. In cross-examination he stated that the insurance policy was comprehensive policy.

9. S.S. Jaral, investigator of the insurance company, has stated that deceased was a top executive in Surya Pharmaceutical. The claim, as per him,

under the personal claim policy comes under the personal accident for which additional premium was being charged.

10. The Tribunal after examining the entire record and scanning the evidence returned issue-wise findings and the said findings vis-a-vis issue Nos.

1 and 2 have not been questioned, therefore, does not necessarily require to be adjudicated upon. However, I have gone through the findings and

am of the considered view that the respondents-claimants have proved the factum of rash and negligent driving at the hands of driver of the

offending vehicle which resulted in accident. The validity of the driving licence of driver is not disputed, therefore, findings returned on issue Nos. 1

and 2 are upheld.

11. The appellant is aggrieved by the impugned award also for being on higher side.

12. Heard counsel for the parties and went through the insurance policy which on the face of it is a comprehensive policy and relates to private car

and covers its occupant. It is beaten law of the land that when the policy is a conditional policy, i.e., comprehensive policy, the insurance company

is to be saddled with the entire liability. Therefore, the Tribunal was right in holding insurer-appellant liable and saddling it as such. Another instance

of it is given in case titled Jyoti v. Geeta Devi, decided by the High Court of Punjab and Haryana bearing F.A.O. No. 1593 of 2008, while

referring to Delhi High Court decision in Yashpal Luthra and Another Vs. United India Insur. Co. Ltd. and Another, and it has been held therein

that package policy covers the occupant in private car also. Delhi High Court has also taken note of the circular issued by Tariff Advisory

Committee (for short 'the TAC), dated 18.3.1978 in Yashpal Luthra case (supra).

13. Apex Court also in case titled National Insurance Company Ltd. Vs. Balakrishnan and Another, has held that an Act policy is different from

comprehensive/package policy, and that it covers the risk of occupant in a car and pillion rider also.

14. S.K. Gupta, the witness examined by appellant, has deposed that insurance policy is a comprehensive policy, thus the claim was impermissible.

However, the Hon'ble Apex Court in the case (supra) has discussed the mandate of sections 147 and 149 of Motor Vehicles Act. It is apt to

reproduce paras 15, 16, 21 and 22 of the judgment herein, thus:

(15) At this juncture, we may refer with profit to a two-Judge Bench decision in Bhagyalakshmi and Others Vs. United Insurance Co. Ltd. and

Another etc., wherein the learned Judges took note of the contention of the learned senior counsel for the claimant-appellant which was to the

effect that after the deletion of the second proviso appended to section 95(1)(b) of the Motor Vehicles Act, 1939, in the 1988 Act, the liability of

a passenger in a private vehicle must also be included in the policy in terms of the provisions of the 1988 Act. The Bench reproduced the policy,

referred to section 64-VB of the Insurance Act, 1938, took note of the role of the Tariff Advisory Committee and referred to the decisions in

Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, New India Assurance Co. Ltd. Vs. Asha Rani and Others, ; United

India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, ; Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha and Others, ; and Oriental

Insurance Co. Ltd. Vs. Sudhakaran K.V. and Others, and observed thus:

Before this court, however, the nature of policies which came up for consideration were Act policies. This court did not deal with a package

policy. If the Tariff Advisory Committee seeks to enforce its decision in regard to coverage of third party risk which would include all persons

including occupants of the vehicle and the insurer having entered into a contract of insurance in relation thereto, we are of the opinion that the

matter may require a deeper scrutiny.

On a perusal of the aforesaid para, it is clear as crystal that the decisions that have been referred to in Bhagyalakshmi (supra) involved only 'Act

policies'.

The Bench felt that the matter would be different if the Tariff Advisory Committee seeks to enforce its decision in regard to coverage of third party

risk which would include an occupant in a vehicle. It is worth noting that the Bench referred to certain decisions of Delhi High Court and Madras

High Court and thought it appropriate to refer the matter to a larger Bench. Be it noted that in the said case, the court was dealing with a

comprehensive policy which is also called a package policy. In that context, in the earlier part of the judgment, the Bench had stated thus:

The policy in question is a package policy. The contract of insurance if given its face value covers the risk not only of a third party but also of

persons travelling in the car including the owner thereof. The question is as to whether the policy in question is a comprehensive policy or only an

Act policy.

(16) Thus, it is quite vivid that the Bench had made a distinction between the 'Act policy' and 'comprehensive policy/package policy'. We

respectfully concur with the said distinction. The crux of the matter is what would be the liability of the insurer if the policy is a

'comprehensive/package policy'. We are absolutely conscious that the matter has been referred to a larger Bench, but, as is evident, the Bench has

also observed that it would depend upon the view of the Tariff Advisory

Committee pertaining to enforcement of its decision to cover the liability

of an occupant in a vehicle in a 'comprehensive/package policy', regard being had to the contract of insurance.

(21) In view of the aforesaid factual position, there is no scintilla of doubt that a 'comprehensive/package policy' would cover the liability of the

insurer for payment of compensation for the occupant in a car. There is no cavil that an 'Act policy' stands on a different footing from a

'comprehensive/package policy'. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has

commanded the insurance companies stating that a 'comprehensive/package policy' covers the liability, there cannot be any dispute in that regard.

We may hasten to clarify that the earlier pronouncements were rendered in respect of the 'Act policy' which admittedly cannot cover a third party

risk of an occupant in a car. But, if the policy is a 'comprehensive/package policy', the liability would be covered. These aspects were not noticed

in the case of Bhagyalakshmi and Others Vs. United Insurance Co. Ltd. and Another etc., and, therefore, the matter was referred to a larger

Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the

statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by Delhi High Court and we have

also reproduced the same.

(22) In view of the aforesaid legal position, the question that emerges for consideration is whether in the case at hand, the policy is an 'Act policy'

or 'comprehensive/package policy'. There has been no discussion either by the Tribunal or the High Court in this regard. True it is, before us,

Annexure P-I has been filed which is a policy issued by the insurer. It only mentions the policy to be a 'comprehensive policy' but we are inclined to

think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a 'package policy' to cover the

liability of an occupant in a car.

15. Having regard to the ratio laid down by the Hon'ble Apex Court, Hon'ble High Courts of Delhi and Punjab and Haryana read with statement

of insurance official, S.K. Gupta, the appellant has rightly been saddled with the liability.

16. The learned senior counsel for the appellant contended that claimants have shown the age of deceased as 49 years but post-mortem report

and other documents disclose his age as 51 years. After noticing this fact, learned counsel for the appellant sought leave to amend the appeal which

was granted vide order dated 4.2.2013. The amendment was sought only to show that the Tribunal has fallen in error while applying multiplier 11

and making 30 per cent addition to the income of the deceased on account of future prospects.

17. Now the question is whether 30 per cent was to be added to the income of the deceased as his future prospects?

18. The thumb rule in case titled Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, is that if the deceased is below 40

to 50 years of age, addition of 30 per cent is to be made to his income provided the deceased had a permanent job and no such addition is to be

made in a case where the age of the deceased was more than 50 years. The matter came up again for consideration before Apex Court in the case

reported as Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and Another, and their Lordships have held that there can be

deviation of thumb rule in exceptional cases and where income of the deceased was bound to increase.

19. In the instant case, it is an admitted fact that deceased was holding the post of Vice-President and was due to be promoted as Managing

Director, thereby his income would have risen to Rs. 5,00,000 per month. Thus 30 per cent has to be added to his income for future prospects

and rightly done by the Tribunal. It is apt to reproduce paras 8 and 10 of the said judgment herein, thus:

(8) The law regarding addition in the income for future prospects has been clearly laid down in Smt. Sarla Verma and Others Vs. Delhi Transport

Corporation and Another, and the relevant portion reads as follows:

(11) In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, this court increased the

income by nearly 100 per cent, in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, the income was increased only by 50 per cent and

in Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, the income was increased by a mere 7 per cent. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50 per cent of actual salary to the actual salary

income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income

is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 80 per cent if the age of the

deceased was 40 to 50 years. There should be no addition where the age of the deceased is more than 50 years. Though the evidence may

indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different

methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments,

etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional

cases involving special circumstances.

(10) The present case stands on different factual basis where there is clear and incontrovertible evidence on record that the deceased was entitled

and in fact bound to get a rise in income in the future, a fact which was corroborated by evidence on record. Thus, we are of the view that the

present case comes within the 'exceptional circumstances' and not within the purview of rule of thumb laid down by Sarla Verma (supra) judgment.

Hence, even though the deceased was above 50 years of age, he shall be entitled to increase in income due to future prospects.

20. He also contended that as per the Schedule appended with the Motor Vehicles Act, multiplier 9 was to be applied. Hon'ble Supreme Court

has dealt with a matter involving same question in a case titled Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and Another,

and it was held that multiplier 11 is appropriate multiplier applicable in the given circumstances. It is apt to reproduce para 14 of the judgment

herein, thus:

(14) ...In the appeal, which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation,

granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split

multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefore. The High Court has also not considered

the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55

years the multiplier is 11, which is specified in the II column in the Second Schedule to the Motor Vehicles Act and the Tribunal has not committed

any error by accepting the said multiplier. This court also fails to appreciate why the High Court chose to apply the multiplier of 6.

21. Keeping in view the ratio laid down in the judgment (supra), the Tribunal was right in applying multiplier 11 in the present case.

22. Having regard to the above discussion, I am of the considered view that Tribunal has rightly awarded Rs. 1,68,09,089, Rs. 2,500, Rs. 2,000

and Rs. 5,000 under the head (i) loss of dependency, (ii) loss to estate, (iii) funeral expenses and (iv) loss of consortium respectively. The interest

component awarded at the rate of 6 per cent is reasonable too. The cumulative effect would be that the impugned award is maintained and appeal

is dismissed.

23. The suffering, pain and agony of the family, consisting of a lady and a minor child, having lost its only earning member can just be imagined. The

said suffering has got multiplied by the conduct of the appellant insurer who has dragged them unnecessarily and kept them busy in litigation;

therefore, I deem it proper to impose costs too.

24. Accordingly, the appeal is dismissed with costs of Rs. 10,000 payable to the respondents-claimants. Send down the record.