

(2014) 04 DEL CK 0067
In the Delhi High Court
Case No : MAC. App. No. 578 /2012

New India Assurance Co. Ltd.

APPELLANT

Vs

Urmila Rani and Others

RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149(2)(a), 149(2)(b), 163A, 166
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2014) 142 DRJ 649

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : L.K. Tyagi, Advocate for the Appellant; V.K. Sharma, Advocate for Respondent Nos.1 and 2, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—The present appeal is preferred against the impugned award dated 24.03.2012, whereby the learned Tribunal has granted compensation for an amount of Rs. 5,20,000/- with interest at the rate of 7.5% per annum from the date of filing of the petition till realization of the amount.

2. Mr. L.K. Tyagi, learned counsel appearing on behalf of the appellant/Insurance Company submits that the driver of the offending vehicle was not having valid driving licence on the date of the accident and the vehicle was being driven even without valid permit. In such an eventuality, the learned Tribunal ought to have exonerated the appellant/Insurance Company from paying the compensation instead of directing it to pay the compensation and thereafter recover the same from respondent No.3.

3. Learned counsel further submits that the claimant did not examine any eye witness, thus the negligence on the part of the driver of the offending vehicle has not been established. He further submits that the claim petition was filed u/s 166 of the Motor Vehicles Act, 1988, therefore, it was incumbent upon the claimant to prove the negligence on the part of the respondent No. 2, i.e., driver of the

offending vehicle, however, she has failed to do so. Therefore, the appellant company is not liable to pay any compensation.

4. Learned counsel further submits that on the date of the accident, the deceased was claimed to be working with M/s. P.K. Industries on the monthly salary of Rs. 5000/- per month. He submits that PW1, Smt. Urmila Rani, mother of the deceased had filed her evidence by way of affidavit Ex.PW1/A, wherein she stated that her deceased son was in the employment of the aforesaid establishment and was earning Rs. 5,000/- per month. To this effect, she has placed on record the certificate issued by the said establishment as Ex. CW1/1.

5. Mr. Tyagi, further submits that no witness had been examined by the claimant from the employer of the deceased, thus, mere submission that the deceased was earning Rs. 5,000/- per month on the date of the accident does not prove the said fact. Thus, Ld. Tribunal ought to have assessed the income of the deceased as per the minimum wages applicable to an unskilled person as Rs. 3,312/- per month as per the Minimum Wages Act. 1948.

6. So far as the issue of valid driving licence and permit is concerned, this Court has dealt with the same in the case of Santosh Chabra & Ors. Vs. Abhishek Gureja & Ors. MAC. APP. No. 805/2010 decided on 04.10.2013, wherein held as under:-

21. Law is settled on the issue of no licence, fake licence or invalid driving licence in the case of The New Indian Insurance Company Vs. Darshana Devi and Others, . The offending vehicle at the time of accident was being driven by son of the owner of the vehicle, who was not holding any licence to drive the same. Ld. Tribunal, while awarding the compensation held that the amount shall be payable by the insurer initially, however, the insurer will be at liberty to recover the same from the owner of the offending vehicle. The award passed by Ld. Tribunal was challenged by the Insurance Company, same was affirmed by the High Court and also upheld by the Supreme Court.

22. In New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , wherein it is held as under:

The position can be summed up thus: The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence.

23. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, while deciding the issue of driving licence, the Apex Court has held as under:

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to

be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time. (iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

In *V. Mepheron Vs. Shiv Charan Singh*, , the owner of the vehicle was held not to be guilty of violating the condition of policy by willfully permitting his son to drive the car who had no driving licence at the time of accident. In that case, it was held that the owner and insurer both were jointly and severally liable.

24. In *Oriental Insurance Co. Ltd. and Others Vs. Rakesh Kumar and Others*, , the Coordinate Bench of this court in Para 44 has held as under:

44. (ii) Even when there is a willful breach of the terms of the policy u/s 149(2) (a) of the Act, the Insurance Company is under obligation to indemnify the liability towards the third parties and recover the same from the owner.

(iii) Once the Insured proves that the driver did not hold any driving licence to drive the Class of vehicle involved in the accident or that the driving licence was fake; requires the owner and driver to produce the driving licence and if they failed to produce the same, the onus of proving breach of policy would be deemed to be discharged. Onus would then shift on the owner to establish that he was not guilty of breach of the terms of policy. In the absence of any evidence being produced by the Insured, in such cases, it will be presumed that he was guilty of a willful breach. The Insured in such cases, would be entitled to recover the compensation paid to third party in discharge of its statutory liability.

(iv) Where policy is avoided on proof or facts which renders the Insurance policy void u/s 149(2)(b) of the Act, the Insurance Company would not be under obligation to pay even to third parties, as in such cases the contract of insurance is non est.

25. No doubt, the respondent no. 3/insurance company successfully proved that there was breach of terms and conditions of the policy, mere breach of the conditions of the policy would not entitle the insurance company to avoid its liability against the insured.

26. In the present case, the offending vehicle is admittedly an insured vehicle, limited to the terms of the policy of insurance, the insurance company is duty bound to take over the contractual liability of the assured and pay the sum

awarded to the claimants by the Ld. Tribunal.

27. The provisions of sub-section 4 and 5 of the Section 149 of Motor Vehicles Act, 1988 may be considered as to the liability of the insurer to satisfy the decree at the first instance.

7. As regards the issue of negligence is concerned, admittedly, FIR No.508/06, under Sections 279/304A IPC & u/s 177 MV Act regarding the accident was registered at Police Station Sahibabad, U.P against the driver of the offending vehicle.

8. Keeping in mind the above facts, the learned Tribunal relied upon the case of National Insurance Company Ltd. Vs. Smt. Pushpa Rana and Others, , wherein the Apex Court observed that the certified copies of the said criminal case record, such as FIR, recovery memo and mechanical inspection report of vehicle are sufficient proof to reach the conclusion that driver was negligent. It was further recorded that proceedings under the Motor Vehicles Act are not akin to the proceedings in a civil suit and hence, strict rules of evidence is not required to be followed in this regard.

9. As this issue had already been decided by this Court in catena of cases, therefore, keeping into consideration the facts of the present case, I do not find any merit in the same.

10. As far as the issue of income of the deceased being considered by the learned Tribunal as Rs. 5,000/- per month while relying upon the certificate Ex. CW1/1 is concerned, admittedly, no witness had been examined by the claimant to prove that the deceased was working with M/s. P.K. Industries on the monthly salary of Rs. 5,000/- per month.

11. On perusal of the testimony of PW1/Smt. Urmila Rani, it is revealed that she was specifically cross-examined by the appellant on this issue. She deposed that she did not have any document to show that her deceased son used to give her Rs. 4,000/- per month. It was denied that she was deposing falsely. She also denied the suggestion that her son was not earning anything and that her son was not in any employment. She also denied the suggestion that the affidavit Ex.PW1/A filed by her was forged.

12. However, fact remains that the respondent/claimant did not examine any witness from the employer of the deceased to prove the salary certificate Ex.CW1/1 of the deceased.

13. In view of the above discussion and the fact that employment of the deceased could not be proved, I am of the considered opinion that while calculating the compensation on account of loss of dependency, keeping in mind the Minimum Wages Act. 1948, the learned Tribunal ought to have taken the income of the deceased as applicable to an unskilled person.

14. Since the minimum wages for an unskilled person was Rs. 3312/- per month

at the relevant time, therefore the same is taken for computing the compensation on account of dependency.

15. On the other hand, Mr. V.K. Sharma, learned counsel appearing on behalf of the respondent Nos. 1 and 2 submits that the Appellate Court has to see whether the compensation granted by the learned Tribunal is just and fair. He submits that the compensation awarded towards non-pecuniary losses, such as Rs. 5,000/- for funeral expenses and Rs. 10,000/- for love and affection, is on a lower side and the same may be enhanced in the interest of justice.

16. Admittedly, the deceased died at the young age of 32 years, he was a bachelor and left behind his parents. Therefore, keeping in mind the facts and circumstances of the case, following the dictum of the Apex Court in the case of *Rajesh and Others Vs. Rajbir Singh and Others*, and in the interest of justice, I award Rs. 25,000/- for funeral expenses and Rs. 1,00,000/- for love and affection.

17. Lastly, the learned counsel for the respondents/claimants submits that the learned Tribunal has erred in applying the multiplier of 11 keeping in mind the age of the mother.

18. The issue of multiplier has been dealt by this Court in the case of *Mohd. Hasnain & Ors. Vs. Jagram Meena & Ors.* bearing MAC. APP. No. 152/2014, decided on 24.03.2014, wherein held as under:-

21. The maximum value of the multiplier is fixed at "18", which is fairly representing the purchasing capacity of a victim in a stable economy. In the ascertainment of purchasing capacity of the victim, the age of the claimant has no relevance because of the fact that it has no nexus with the assessment of the loss of dependency.

22. Moreover, subsequent to the introduction of Section 163A and the Second Schedule of the Act, the Apex Court in *Trilok Chandra*, introduced a structural change by increasing the numerical value of multiplier from "16" to "18", whereas it had been fixed at "16" as per *Susamma Thomas*. Specifically, there was no variation in respect of fundamental premise of "multiplier method" as held in *Susamma Thomas*. In *Trilok Chandra*, the apex court has taken the second schedule as a guiding factor.

23. Significantly, the Apex Court in the case of *Reshma Kumari and M. Nag Pal* has followed the age of the victim as a factor for selecting the multiplier. Specifically, in the selection of multiplier for the age group up to "15" the Apex Court never considered the age of the claimants as a relevant factor. Therefore, this court finds no reason to adopt a different formula for the victim who is above "15" years of age, whereas the relevant factors have been adopted by the Apex Court such as (i) age of the deceased (ii) income of the deceased and (iii) number of dependents. The Apex Court, while formulating the relevant factors for the assessment of loss of dependency, the age of the claimants never

considered as a factor. Finally, in the assessment of dependency, the courts/tribunals are computing the purchasing capacity of the deceased; not the claimants. Therefore, I am of the considered opinion that the age of the victim is the proper factor for selecting the correct multiplier.

19. Therefore, keeping in mind the view taken by this Court in the aforementioned case and the age of the deceased, i.e., 32 years at the time of the accident, the appropriate multiplier would be 16 in this case.

20. It is ordered accordingly.

21. Accordingly, the compensation amount comes as under:

Sl. No.

Heads of Compensation

Compensation granted by Id. Tribunal

Compensation granted by this Court

1.

Loss of dependency

Rs. 4,95,000/-

Rs. 4,76,928/-

2.

Funeral expenses

Rs. 5,000/-

Rs. 25,000/-

3.

Loss of love and affection

Rs. 10,000/-

Rs. 1,00,000/-

4.

Loss of estate

Rs. 10,000/-

Rs. 10,000/-

TOTAL

Rs. 5,20,000/-

Rs. 6,11,928/-

Accordingly, the total compensation amount is assessed at Rs. 6,11,928/-

22. Resultantly, the enhanced compensation comes to Rs. 91,928/-(Rs. 6,11,928/- - Rs. 5,20,000/-).

23. The enhanced compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

24. Accordingly, the appellant/Insurance Company is directed to deposit the enhanced compensation with proportionate interest with the Registrar General of this Court within a period of five weeks from today, failing which, respondent No.1/claimant shall be entitled for penal interest at the rate of 12% per annum on account of delayed payment.

25. On deposit, the Registrar General is directed to release the same in favour of the respondents /claimants in equal proportion on taking necessary steps by them.

26. The statutory amount be released in favour of the appellant.

27. In view of the above, the appeal is partially allowed.

CM No. 9546/2012 (for stay) With the disposal of the appeal itself, the instant application has become infructuous. The same is accordingly dismissed.