

(2024) 01 RAJ CK 0070

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 4, 5 Of 2001

New India Assurance Company Limited

APPELLANT

Vs

Phooli Devi And Others

RESPONDENT

Date of Decision : 16-01-2024

Acts Referred:

Code Of Civil Procedure, 1908 — Order Order 41 Rule 22, 41 Rule 43

Citation : (2024) 01 RAJ CK 0070

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Jagdish Vyas, Nitin Trivedi

Final Decision : Allowed

Judgement

Birendra Kumar, J

1. The insurer has challenged the award dated 23.09.2000, in Motor Accident Claim Case No.45/1994 as well as Motor Accident Claim Case No.42/1994 made by the Motor Accident Claims Tribunal, Hanumangarh. The main ground for challenge is that since the driver had no genuine driving licence rather he had produced a fake driving licence, the insurer should have been allowed right to recovery in both the matters. Further the quantum of compensation decided in both the claim cases have been challenged as excessive one.

2. A brief background of the case is that on 25.12.1998, the deceased Om Prakash and Kalwant alongwith some others were going on a Jeep bearing registration No.RSK-534 from Pakka Sarna to Sriganganagar. Near village Palewali Dhani, a Truck bearing registration No.HIU-1323 coming from the side of Sriganganagar on a very high and negligent speed collided with the Jeep as a result whereof, the Jeep driver Sadhuraam, Om Prakash, Jaswant, Labhsingh and Kalwant died on the spot and some other passengers sustained injuries. An FIR was registered and after investigation the Police submitted charge-sheet against the driver of the Truck.

3. The driver of the offending Truck produced a driving licence, vide Exhibit-8. The investigator of the appellant investigated the genuineness of the driving licence and reported that the driving licence was not issued by the Licensing Authority, Hyderabad from where it was purportedly issued. Thereafter, the Tribunal took precaution and requested the District Judge, Hyderabad to get statement of Licensing Authority recorded. A copy of the statement of Licensing Authority was also brought on the record which reveals the same was recorded by the appointed Advocate Commissioner signed on 21.07.2000 by him as well as the Licensing Authority. In the statement, it has specifically been mentioned that the driving licence No.13629/86 dated 18.09.1986 was not issued in favour of the driver of the offending Truck.

4. The learned Tribunal wrongfully rejected the same by saying that it is not evident who had recorded the statement and original records were not transmitted to the Tribunal. Likewise, the Tribunal wrongly disbelieved the investigation report of the appellant even though there was no contrary evidence on the record, especially when the driver and owner did not contest the claim case.

5. Learned counsel for the claimants-respondents does not dispute that there was evidence on record to substantiate that the driver of the offending Truck had no driving licence rather he had produced a fake driving licence.

6. The driver and owner were noticed in this appeal as well, but no one appeared either for the driver or owner, even after publication of notice in the daily newspaper.

7. The learned Tribunal failed to appreciate that in a summary proceeding under the Motor Vehicles Act, strict rule of Evidence Act is not applicable and as such proof beyond reasonable doubt was also not required.

8. Thus, it is evident that the appellant had proved that the driver of the offending Truck had no driving licence on the date of accident. Hence, the appellant has right to recover after payment of compensation to the claimants. The right can be exercised jointly and severally against the driver and owner of the Truck as held in National Insurance Company Ltd. Vs. Swaran Singh & Ors. reported in (2004) 3 SCC 297 and in subsequent judgments.

9. Swaran Singh case (supra) was directly a case on non-availability of driving licence. Therefore, the appellant is directed to pay to the dependents of the victims of the incident the compensation decided by the Tribunal minus already paid amount and may exercise the right to recover the same from owner and driver of the offending vehicle.

10. Learned counsel next contends that the Tribunal has not followed the settled method of calculation of compensation as such has awarded excessive compensation in both the matters.

11. Learned counsel for the claimants-respondents submits that in-fact on

calculation by adopting the settled method of calculation laid down in Pranay Sethi's case and other subsequent judgments the compensation requires to be enhanced and this Court has ample power under Order 41 Rule 43 CPC even to enhance the compensation not asked for by the claimants.

Now the question for consideration is whether the Appellate Court can enhance the compensation decided by the Motor Accident Claims Tribunal, even though no appeal/cross objection/cross appeal has been preferred by the claimants.

12. The answer to the question would be in negative as the question involved is in squarely covered by the judgment of Hon'ble Supreme Court in *Ranjana Prakash & Ors. Vs. Divisional Manager & Anr.* [(2011) 14 SCC 639]. Para 6, 7 and 8 of the aforesaid judgment reads as under:-

"6.....therefore, in an appeal by the owner/insurer, the appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the compensation awarded is not reduced. The fact that the claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal. [emphasis is mine]

7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the

compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.”

[emphasis is mine]

13. Learned counsel for the claimants-respondents have placed reliance on following judgments (i) Sanobanu Nazirbhai Mirza & Anr. Vs. Ahmedabad Municipal Transport Service [(2013) 16 SCC 719] (ii) Savita Vs. Bindar Singh & Ors. [(2014) 4 SCC 505] and (iii) the judgment of this Court in Amarjeet Kaur & Ors. Vs. General Manager, Punjab Roadways, Chandigarh decided on 28.08.2017 vide S.B. Civil Misc. Appeal No.823/2003.

14. The aforesaid matters were decided on an appeal by the claimants as such the cases are distinguishable because no appeal/cross objection/cross appeal was filed by the claimants herein. Learned counsel for the claimants-respondents has next relied upon judgments of five judges bench in Panna Lal Vs. State of Bombay reported in AIR 1963 Supreme Court 1516.

In Panna Lal’s case (supra), the appellant had filed suit for recovery of full amount of contract money which was due with the defendant-respondent for construction made by the appellant of three hospitals. Respondent-Deputy Commissioner had signed the agreement. The learned trial Judge decreed the suit and held that since the agreement was made on behalf of the State and the construction has benefited the State, therefore, the State would be liable to pay. Accordingly, liability was fixed against the State-respondent. The State-respondent preferred an appeal to the High Court and the High Court found that State was not liable to pay. Accordingly, dismissed the appeal. The Hon’ble Supreme Court considered the provision under Order 41 Rule 33 CPC read with provision under Order 41 Rule 22 CPC and held that the High Court should have exercise its power to grant decree against other respondent including the signatory of the contract. Even in Panna Lal’s case, the Hon’ble Supreme Court did not say that the Appellate Court could enhance the relief which was not challenged by the aggrieved respondent.

15. Thus, the claimants-respondents cannot ask for enhancement of award money in absence of any appeal preferred by the claimants-respondents. This Court cannot exercise power under Order 41 Rule 33 CPC in view of clear dictum in Ranjana Prakash case (supra) in absence of any appeal or cross-objection by the claimants-respondents. Therefore, this revisit on calculation would be confined to examining the correctness of quantum of compensation to consider whether it is a case for reduction of compensation decided by the Tribunal.

S.B. Civil Misc. Appeal No. 5/2001:-

16. Learned counsel for the appellant has drawn attention of the Court that the deceased Kalwant Kumar was aged about 29 years and he was a Teacher in Government School. His monthly salary was Rs.1,907/-. The Tribunal wrongly took Rs.6,000/- per month as salary assuming the salary prevailing on the date of award. The record reveals that the award under the heads of "loss of consortium", "funeral expenses and loss to the estate" have been made in the lower side.

17. In view of settled guidelines for calculation of just compensation laid down in *Sarla Verma & Ors. Vs. Delhi Transport Corporation & Ors.* [(2009) 6 SCC 121] as well as in *National Insurance Co. Ltd. Vs. Pranay Sethi* [2017] 16 SCC 680, the calculation would be as follows:-

18. The Tribunal has awarded Rs.9,87,000/-. The salary of the deceased who was a Government servant was Rs.1,907/- per month and age of the deceased-Kalwant Kumar was 29 years. Therefore, 50% of the salary requires to be added considering the future prospect of the deceased as he was in permanent Government job. Out of that 1/4 is deductible for personal expenses of the deceased considering the number of dependents. Thereafter, the remaining amount would be multiplied with multiplier of 12 months and multiplicand would again be multiplied with multiplier of 17 considering the age of the deceased. Thus, payable compensation comes to Rs.4,37,580/-. Besides aforesaid each of the claimants would get Rs.40,000/- for loss to their individual consortium. Rs.30,000/- would be payable for funeral expenses and loss to the estate. The total amount comes to Rs.6,67,580/-. The Tribunal has awarded 12% interest.

19. Since the Motor Accident Claims Tribunal had made wrong calculation of income and has adopted wrong multiplier which resulted in erroneous award. Therefore, this Court directs the appellant to pay Rs.6,67,580/- alongwith interest @ 12% from the date of application till date of realization within two months, failing which, penal interest would be payable. While making the payment, the insurer shall adjust already paid amount.

S.B. Civil Misc. Appeal No. 4/2001:-

20. The learned Tribunal has awarded Rs.4,16,000/- to the claimants-respondents, however, identical error in calculation has been made as noticed above in CMA No.5/2001.

21. The deceased-Omprakash Swami aged about 40 years at the time of his death. He was a Government Patwari engaged in Agricultural Department of the Government. His monthly salary was Rs.1,460/- + 23% DA. The total amount comes to Rs.1,795/-. The round figure is Rs.1,800/-. Out of that 1/4 is deductible for personal expenses of the deceased. After deduction, the amount comes to Rs.1,350/-. This amount is multiplied with 12 months to get yearly loss and again multiplied with multiplier of 15 considering the age of the deceased. The amount comes to Rs.2,43,000/-. The claimants would be entitled 50% of this amount as future prospect of the deceased. The total amount comes to

Rs.3,64,500/-. Besides aforesaid each of the 5 claimants would get Rs.40,000/- for loss of their individual consortium. Rs.30,000/- would be payable for funeral expenses and loss to the estate. The total payable compensation is calculated as Rs.5,94,500/-.

22. Since there is no appeal for enhancement of compensation. The award made by the Tribunal alongwith interest awarded stands hereby affirmed. The insurer shall pay the aforesaid amount minus already paid amount to the claimants-respondents within two months, failing which, the penal interest would be payable. On payment the appellant would be entitled to recover the same from the owner/driver of the offending vehicle.

23. Both the appeals stand allowed with the aforesaid modification in the award.