

(2014) 01 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order (MVA) No. 135 of 2011 and C.O. No. 375 of 2012

New India Assurance Company Ltd.

APPELLANT

Vs

Ritu Upadhaya

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Citation : (2014) 2 ACC 787 : (2015) ACJ 407 : (2015) 1 AnWR 280 : (2014) 1 AnWR 626 : (2014) 1 ShimLC 222

Hon'ble Judges : Mansoor Ahmad Mir, Acting C.J.

Bench : Single Bench

Advocate : Ashwani K. Sharma, Advocate for the Appellant; Ashok Sharma, Advocate for Respondent Nos. 1 to 3 and Mr. Vijay Arora, Advocate for Respondent No. 5, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, A.C.J.

1. Appellant/insurer has questioned the award dated 14.1.2011, passed by the Motor Accident Claims Tribunal, Fast Track Court, Chamba, District Chamba (HP) in claim petition No. 20 of 2009 titled Smt. Ritu Upadhaya and others versus New India Assurance Company Ltd. and others by the medium of this appeal, for short "impugned award". BRIEF FACTS:

Rakesh Kumar Upadhyay deceased, who was an employee of the National Hydro Electric Power Corporation Ltd./respondent No. 5 herein died in a vehicular accident which has been caused by the driver of the vehicle No. PB06G-4190, while driving the offending vehicle rashly and negligently, on 3rd March, 2009 at about 3.30 p.m. at Kangora Morh, Chaned Tehsil and District Chamba, HP. The deceased was a Chartered Accountant being Assistant Manager (Finance) in National Hydro Electric Power Corporation Ltd./respondent No. 5 and was drawing salary to the tune of Rs. 37,746/- per month. 2. Respondents No. 1 to 3 filed the claim petition before the learned Tribunal below for grant of compensation on the ground that they and mother of the deceased have lost

bread earner who was 36 years of age at the time of accident, drawing an amount of Rs. 37,746/- per month, as salary and have prayed for the grant of compensation to the tune of Rs. 75 lacs, as per break-ups given in the claim petition.

3. The insurer-appellant and owner of the vehicle, i.e., respondent No. 2 filed the objections and contested the petition on various grounds. Following issues were framed on 23.3.2010:--

(i) Whether Rakesh Upadhyay died in a motor vehicle accident which took place on 3.3.2009 at Kangora Morh (Chaned) within the jurisdiction of P.S. Chamba due to rash and negligent driving of driver of vehicle No. PB06B-4190 as alleged? OPP

(ii) If issue No. 1 is proved in affirmative, whether the petitioners and proforma respondent No. 3 are entitled for the grant of compensation, if so, to what amount and from which of the respondent? OPP

(iii) Whether the deceased being occupant of private vehicle bearing No. PB-06-4190 (Tata Sumo) was third party and the policy of insurance does not cover the risk of third party? OPR-1

(iv) Whether the driver of the offending vehicle was not holding a valid and effective driving license at the time of accident? OPR-1

(v) Whether the petition is not maintainable as alleged? OPR-2

(vi) Whether the petition is bad for non-joinder and mis-joinder of necessary parties? OPR-2.

(vii) Relief.

4. The claimants examined five witnesses. Insurer/appellant failed to lead any evidence. Respondent No. 2 examined two witnesses. The learned Tribunal, after scanning the evidence, held that claimants and the mother of the deceased, i.e., respondent No. 4, are entitled to compensation to the tune of Rs. 48,82,590/- with interest at the rate of 7.5% per annum from the date of filing the petition till its deposition and saddled the insurer with the liability.

5. Feeling aggrieved, the insurer/appellant has questioned the impugned award and has prayed for exoneration on the ground that the deceased was employee of respondent No. 5 and was not covered as per the insurance policy, which was "Act Policy".

6. The claimants have also filed cross-objection in this appeal being Cross Objection No. 375 of 2012.

7. Admittedly, there is no dispute about the cause of the death of the deceased, who was a Chartered Accountant being Assistant Manager (Finance). Perusal of the trial Court record also discloses that the claimants have proved by leading oral as well as documentary evidence that the deceased was a Chartered

Accountant being Assistant Manager (Finance) in the employment of the National Hydro Electric Power Corporation Ltd./respondent No. 5, who died in the vehicular accident, which was caused by the driver of respondent No. 5 while driving the vehicle rashly and negligently. Thus, the findings returned by the learned Tribunal on Issue No. 1, are upheld.

8. Before I deal with Issue No. 2, I deem it proper to deal with issues No. 3 to 6. The appellant/insurer, who was arrayed as respondent No. 1 in the claim petition had to discharge onus in terms of the order dated 23.3.2010, made by the learned Tribunal, i.e., the order of framing issues. Admittedly, the appellant has not led any evidence thus, has failed to discharge the onus, and accordingly issues No. 3 and 4 came to be rightly decided in favour of the claimants No. 1 to 3 and against the insurer.

9. National Hydro Electric Power Corporation/respondent No. 5 has failed to prove issues Nos. 5 and 6, thus he failed to discharge the onus discharge the onus. Even otherwise, claimants are victims of vehicular accident, have rightly invoked the jurisdiction of the Motor Accidents Claims Tribunal and sought compensation. The Tribunal has rightly decided Issues Nos. 5 and 6 in favour of the claimants and against the owner/respondent, No. 5 herein.

10. Learned counsel for the appellant has half heartedly argued that the Tribunal has wrongly saddled the Insurance Company with the liability, is not tenable.

11. Claimants have proved by leading evidence that deceased was a Chartered Accountant being Assistant Manager (Finance) and was drawing salary to the tune of Rs. 37746/-. The salary slip is exhibited as Ext. PW3/A. The Tribunal, after making deductions, i.e., income tax deductions and 1/3rd out of salary as his personal expenses, held that claimants have lost source of dependency to the tune of Rs. 3,21,506/- per annum. This finding is not perverse but a legal and sound one.

12. Admittedly, the deceased was 36 years of age at the time of the accident. The multiplier "15" was applicable and came to be rightly applied, in view of the judgment passed by the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, read with judgment passed in Reshma Kumari and Others Vs. Madan Mohan and Another, . Thus, the Tribunal has awarded the just and appropriate compensation, which is otherwise not in dispute. The only question is whether the insurer came to be rightly saddled with the liability?

13. I have gone through the insurance policy which, on the face of it is a "comprehensive policy", is an eye opener for the appellant. The "Act Policy" and "Comprehensive Policy"/"Package Policy" are two different policies.

14. Admittedly, the deceased was occupant of the offending vehicle. The question is whether "Comprehensive Policy" of insurance covers the liability of the occupant of the vehicle, owner/insurer is the only question which is to be

determined in this appeal.

15. The learned counsel for the appellant was asked to explain and thrash out how the insurance company is not liable when the vehicle was covered by the "comprehensive Policy." The recent circulars/guidelines issued by the IRDA dated 16.11.2009 and 3.12.2009 were also brought to his notice mention of which is made in National Insurance Company Ltd. Vs. Balakrishnan and Another, , also reported in National Insurance Company Ltd. Vs. Balakrishnan and Another, .

16. Learned counsel for the appellant frankly conceded that in terms of judgment (supra) read with circulars issued, claim of the occupant is covered and appellant is liable. However, in order to record finding, I deem it proper to discuss the issue.

17. Admittedly, as discussed hereinabove, "Comprehensive Policy" is on record which unfortunately has not been discussed by the Tribunal.

18. I was dealing a case of the like nature as Judge of the Jammu and Kashmir High Court where the award of Rs. 1,68,09,089/- was made and it has been held that the occupant/(employee) of a vehicle of the employer, is covered by the "Comprehensive Insurance Policy." I have delivered that in case titled New India Assurance Company Ltd. v. Shanti Bopanna and others, decided on 8.3.2013. It is apt to reproduce paras 1, 2 and 16 of the judgment herein.

1. Does the "Comprehensive Policy of Insurance" exempts the Insurance Company from its liability of paying compensation to the victim of a vehicular accident who is traveling in a vehicle which is covered under such policy, at the time of accident, is but the only important point, raised in the instant appeal which seeks setting aside of Award dated 26th April, 2012, for short as impugned Award, passed by Motor Accidents Claims Tribunal Samba, for short as Tribunal?

2. "No" is possible the only answer for the reasons those would flow from the narration of events below.

3 to 15.....

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

19. I also deem it proper to reproduce paras 10, 19, 21, and 26 of the judgment of the Apex Court titled as National Insurance Company Ltd. Vs. Balakrishnan and Another, .

10. As per the command of Section 146 of the Act, the owner of a vehicle is obliged to obtain an insurance for the vehicle to cover the third party risk. Section 147 deals with the requirements of policies and limits of liability. Section 147(1) which is relevant for the present purpose is reproduced below:--

147. Requirements of policies and limits of liability.--

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)--

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;

Provided that a policy shall not be required--

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.--For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

On a scanning of the aforesaid provision, it is evident that the policy of insurance must be a policy which complies with the conditions enumerated u/s 147(1)(a) and (b). It also provides where a policy is not required and also stipulates to cover any contractual liability.

11 to 18.....

19. On a perusal of the aforesaid paragraph, 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, in the said case, the Court was dealing with 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.

20.....

21. At this stage, it is apposite to note that when the decision in Bhagyalakshmi was rendered, a decision of High Court of Delhi dealing with the view of the Tariff Advisory Committee in respect of "comprehensive/package policy" had not come into the field. We think it apt to refer to the same as it deals with certain factual position which can be of assistance. The High Court of Delhi in Yashpal Luthra and Another Vs. United India Insur. Co. Ltd. and Another, , after recording the evidence of the competent authority of Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA), reproduced a circular dated 16.11.2009 issued by IRDA to CEOs of all the Insurance Companies restating the factual position relating to the liability of Insurance companies in respect of a pillion rider on a two wheeler and occupants in a private car under the comprehensive/package policy.

22 to 25.....

26. 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 Bhagyalakshmi 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 the Delhi High Court and we have also reproduced the same.

20. Keeping in view the discussion made hereinabove; the Tribunal has rightly

saddled the appellant with liability.

21. The claimants have rightly invoked the jurisdiction of the Tribunal being victim of a vehicular accident and claim petition was maintainable.

22. I am also of the considered view that the awarded amount is neither excessive nor meager, rather it is just and appropriate compensation.

23. In the given circumstances, the appeal as well as cross objection merit to be dismissed and the impugned award merits to be upheld. Accordingly, the impugned award is upheld and the appeal and cross objection are dismissed.

24. The Registry is directed to release the awarded amount in favour of the claimants and the mother of the deceased, strictly, in terms of the conditions contained in the impugned award.

25. It is made clear that if the insurer has not deposited the entire awarded amount till today, is directed to deposit the entire award amount/balance amount within six weeks from today, before the Registry of this Court. Pending applications also stand disposed of.