

(2020) 07 J&K CK 0057
In the Jammu And Kashmir High Court
Case No : CMAM No. 103 Of 2008

New India Insurance Company Ltd

APPELLANT

Vs

Ghulam Mohammad Sheikh And Others

RESPONDENT

Date of Decision : 15-07-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 166(3), 173
Motor Vehicles Act, 1939 — Section 95, 95(2)

Citation : (2020) 07 J&K CK 0057

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Manzoor A. Dar

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) This appeal under Section 173 of the Motor Vehicles Act is directed against the award 18.03.2010, passed by Motor Accidents Claims Tribunal, Srinagar (for brevity the Tribunal), in the claim petition filed by the legal heirs of deceased Mohammad Jabbar Mir.

2) The facts emanating from the record of the Tribunal reveal that on 30.11.1986, deceased Mohammad Jabbar Mir was knocked down by a vehicle bearing registration No.JKC-5787, that was being driven rashly and negligently by its driver, Gh. Mohammad Sheikh, respondent No.1 herein. The accident resulted in fatal injuries to the deceased. The dependents of the deceased filed a claim petition before Tribunal on 25.08.2001 claiming a compensation of Rs.15.00 lacs from the driver, owner and the insurer of the offending vehicle.

3) The respondent No.1, driver, and respondent No.3, owner of the offending vehicle did not contest the claim petition whereas respondent No.2, the registered owner of the offending vehicle, claimed in his reply that he had already sold the vehicle in question to one Ghulam Ahmad Kaboo before the

occurrence.

4) The appellant insurance company, resisted the claim petition before the Tribunal, mainly, on the ground that the claim petition has been filed after a lapse of 17 years of the occurrence and, as such, the same is not maintainable. It was further contended by the insurer that the insurance policy that was issued in favour of the insured relating to the offending vehicle, covered only limited liability in terms of Section 95 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act of 1939), that was in operation at the relevant time.

5) The Tribunal, on the basis of pleadings of the parties, framed the following issues:

1. Whether on 30.11.1986, Ghulam Mohd. Sheikh, respondent No.1, was plying vehicle JKC/5787 rashly and negligently from Anantnag to Srinagar, as a result of which at Drangbal, Pampore, it hit Mohd. Jabbar Mir who sustained fatal injuries and later on succumbed to the same? OPP

2. Whether the respondent No.2 has sold the offending vehicle to one Ghulam Ahmad Kaboo who in turn has sold the same to respondent No.3 before the accident, if yes, what is its effect on the merits of the case? OPR-2.

3. Whether claim petition is time barred and as such not maintainable? OPR-2

4. Whether this Tribunal has no jurisdiction to try and decide the claim petition? OPR-2

5. Whether the offending vehicle was not having any insurance cover on the date of accident, as such the company is under no obligation to indemnify the insured and compensate the petitioners? OPR-4

6. Whether the driver of the offending vehicle was not holding valid and effective driving licence on the date of accident. As such the insurance company cannot be saddled with the liability? OPR-4

7. In case the issue No.1 is proved in affirmative, to what amount of compensation the petitioners are entitled to, from whom and in what proportion? OPP

8. Relief.

6) After conclusion of the trial the Tribunal, while holding that the claim petition is maintainable despite having been filed after 17 years of occurrence and repelling the contention of the insurer that its liability was limited to Rs.50,000/, awarded a sum of Rs.5,30,088/ along with interest @6% per annum in favour of the claimants payable by the insurer.

7) The appellant insurance company has assailed the award passed by the Tribunal, mainly on the grounds that the claim petition having been filed after more than 17 years of occurrence had become stale and dead and, as such, the Tribunal was not justified in entertaining the same; that the liability of the insurer

in the instant case was limited to Rs.50,000/ in terms of Section 95 of the Act of 1939 and ,as such,, the Tribunal has fallen into error by extending the liability of the appellant insurance company beyond limits.

8) I have heard learned counsel for the appellant and perused the grounds of appeals, impugned award and record of the Tribunal. It is pertinent to mention here that nobody on behalf of the respondents chose to argue the case at the time of hearing even though the matter was adjourned on several dates for awaiting appearance of their counsel.

9) The first thing that has been urged by the learned counsel for the appellant is that there has been unreasonable delay on the part of claimants to file the claim petition in the instant case, inasmuch the accident has taken place in the year 1986 whereas the claim petition has been filed before the Tribunal in the year 2001. According to the learned counsel, even though the Motor Vehicles Act, 1988 does not provide for any limitation for filing a claim petition, yet a claimant cannot be expected to lodge his claim after unreasonably long delay. To support his contention, the learned counsel has placed reliance upon the judgment of Hon?ble Supreme Court in the case of M/s. Purohit and Company Vs. Khatoonbee and another, AIR 2017 SC 1612.

10) In the above referred case the Hon?ble Supreme Court, while noting that there is no prescribed period of limitation for lodging a claim petition after the amendment of Section 166 of the Motor Vehicles Act, 1988, whereby sub-section 3 of Section 166 came to be deleted w.e.f. 14.11.1994, observed that it is imperative to determine whether at the juncture when the claimant approached the Motor Accidents Claims Tribunal, the claim was a live and surviving claim. The Hon?ble Court further went on to hold that if the claim is not so, the same may not be entertained. It was further observed that an individual concerned must approach the Tribunal within a reasonable time and the question of reasonability would depend upon facts and circumstances of the each case.

11) There can be no dispute with the position of law explained by the Hon?ble Supreme Court in the above noted case but as has been observed by the Hon?ble Supreme Court, each case has to be approached in accordance with the facts and circumstances attending the said case. If the facts and circumstances of a case show that the claim, despite having been lodged belatedly, is live and surviving the same cannot be thrown out.

12) Now coming to the instant case, a perusal of the record of the Tribunal reveals that the genuineness and correctness of the occurrence and the claim arising there from is supported not only by oral evidence led by the claimants before the Tribunal but also the documents on record which include the copy of FIR, copy of the challan and other annexures to the challan. All these documents are public documents which by no stretch of imagination can be termed as manufactured or fabricated. These documents clearly show that the accident, which is subject matter of the instant case, did take place which resulted in

death of the deceased. The eye witnesses examined by the claimants have clearly supported the version of occurrence given in the charge sheet and there is nothing in the cross examination of these witnesses which would remotely suggest that the claim is based upon any fabrication.

13) It is true that the claimants have approached the Tribunal after an unduly long period of time, but when the statute does not prescribe any period of limitation for lodging a claim before the Tribunal and there is no material on record to even remotely suggest that the claim is not genuine or that the same is stale and not surviving, this delay in lodging the claim petition in the facts and circumstances of the case will not come in way of entertaining the claim petition and thus the Tribunal was justified in entertaining and trying the claim petition of the dependents of the deceased.

14) The other ground urged by the learned counsel for the appellant is that the policy of insurance of the offending vehicle was issued in terms of Section 95 of the Act of 1939, which provided for limited liability for third party risks to the extent of Rs.50,000/ only. The learned counsel has contended that this was specifically pleaded before the learned Tribunal and since the policy of insurance was not forthcoming, as such, the appellant insurance company had placed on record a computation sheet showing the amount of premium received by the insurer under various heads. It has been further urged that the insurer in the instant case had received a premium of Rs.240/ to cover the liability under the Act applicable at the relevant time and, as such, the insurer is liable to indemnify the insured to the extent of Rs.50,000/, the limit prescribed under the provisions of Section 95 of the Act of 1939.

15) There can be no dispute to the proposition that the law applicable at the time of issuance of policy of insurance will govern the statutory liability arising under such policy. The policy in this case pertains to the year 1986 when the Act of 1939 was in operation. Section 95(2) of the said Act provided limited liability for the third party risk. However, the statutory limit under Section 95 was not absolute. The Section did not place an embargo on the insurance company from covenanting or issuing insurance policy/cover note/certificate of insurance in excess of the statutory limit. It is for the insurance company not only to plead limited liability but also to prove it by placing on record the insurance policy or other material/contemporary record/documents having a bearing on the question. I am supported in my view by the judgment of this Court passed in the case of United India Insurance Co. Ltd. vs. Ghulam Ahmad Sanoo and Ors, reported in AIR 2000 J&K 115.

16) In the instant case, neither original nor a copy of the policy of insurance has been placed on record by the appellant insurance company. It has been urged that because the accident had occurred more than 17 years ago, as such, it was not possible to trace out the record of the policy and for this reason, the insurance company on the basis of information provided by the banker of the insured, placed on record a hand written computation sheet showing the breakup

of the premium received by the insurance company for covering the risk to the offending vehicle. As per this computation sheet, a total sum of Rs.3724/, which includes Rs.240/ as third party risk limited up to Rs.50,000/, has been received by the insurance company as premium.

17) As already noted, the onus of proving that a policy of insurance covers a limited liability is upon the insurance company. In the instant case, although the appellant insurance company had pleaded before the Tribunal that it had not received any additional premium to cover the unlimited liability in respect of the offending vehicle, yet the policy of insurance, neither original nor a copy thereof, has been placed on record. The insurance company has not even cared to examine any of its official/officer to prove the contention that the record relating to the policy of insurance was not traceable. By producing a hand written computation sheet, without any comments, remarks or certificate from any responsible officer of the company regarding correctness of this computation sheet, it cannot be said that the insurance company has discharged its onus of proving that the policy of insurance covered only a limited risk to third parties.

18) Learned counsel for the appellant insurance company submitted that the insurance company had insured the offending vehicle which was a goods vehicle and for that, liability of the insurance company was limited to Rs.50,000/ under Section 95 of the Act of 1939. It is also submitted that under the relevant schedule of premium for motor insurance as per India Motor Tariff, a copy whereof is on record of the Tribunal, the premium for ?Act Only Liability? was fixed at Rs.240/ and in this case the said amount was charged as premium thereby covering the liability to the extent of Rs.50,000, as was contemplated under Section 95 of the Act of 1939.

19) If we have a look at the copy of India Motor Tariff, which is on record of the Tribunal, the premium for ?Act Only Liability? was fixed at Rs.200/ at the relevant time whereas premium for liability to Public Risk was fixed at Rs.240/. In this case, as per the version of the appellant insurance company, a sum of Rs.240/ was charged as premium which is, admittedly, higher than the premium fixed for ?Act Only Liability? i.e.Rs.200. Thus even as per the version of the appellant insurance company, they have collected additional premium towards liability to Public Risk which was higher than the premium for Act Only Liability, therefore, the Tribunal rightly held the insurance company liable for unlimited liability.

20) I am supported in my aforesaid view by the judgment of the High Court of Rajasthan in the case of National Insurance Co. Ltd. Vs. Laxmi and Ors, reported in 2005 ACJ 211(Raj). In the said case, the Tribunal awarded a sum of Rs.1.04,000/ as compensation to the claimants and the insurance company was held liable to indemnify the owner of the vehicle for entire sum under the policy. The insurance company appealed before the High Court for limiting its liability to Rs.50,000/, the statutory liability fixed under the Act of 1939. After the High Court dismissed the appeal, the matter was taken to Hon?ble Supreme Court

wherefrom the matter was remanded to the Tribunal with a direction to hold enquiry as regards liability of the insurance company. After framing additional issue and considering the material, the Tribunal found that the premium for the Act Only Liability was Rs.200/ and premium charged from the vehicle owner was Rs.240/ which was captioned under 'Liability to Public Risk', which under the insurance jargon is considered as 'third party risk policy' by charging higher than the 'Act only policy' and on that premise, it came to the conclusion that the insurance company has charged additional premium for public risk and its liability towards 'third party risk' was unlimited and consequently the insurance company was held liable for the entire claim. The award of the Tribunal was again assailed in an appeal before the Single Bench of the High Court which was dismissed. The Division Bench of the Rajasthan High Court considered the terms of the policy and held as under:

"Therefore, in our opinion, under policy the appellant specifically undertook unlimited liability to indemnify the insured towards the third party by not excluding the liability of the insured in respect of claims arising out of death or bodily injury caused to the third party. Therefore, Motor Accidents Claims Tribunal as well as learned single Judge were right in their conclusion."

21) The aforesaid decision of the High Court of Rajasthan was followed in later decisions of same High Court in National Insurance Co. Ltd. vs. Hastimal Lodha And Ors, reported in 2006 (1) WLC 666 and New India Assurance Co. Ltd vs. Prem Lata & Ors, reported in 2010 ACJ 2875.

22) In the face of aforesaid discussion of law on the subject, it becomes clear that the appellant insurance company has failed to discharge its burden of proving its assertion of limited liability under the policy of insurance under reference by not producing even a copy of the policy or the record of the policy. It has also failed to examine even a single witness to prove the circumstances under which it was unable to produce such record/policy. Even otherwise, the appellant insurance company, as per its own version, having received higher premium than the premium prescribed for statutory liability, cannot avoid its liability to indemnify the insured to the full extent.

23) For the foregoing reasons, I do not find any ground to interfere with the impugned award passed by the Tribunal. The appeal, being without any merit, is dismissed as such.

24) Record of the Tribunal along with a copy of this judgment be sent back.