

(2014) 11 DEL CK 0400

In the Delhi High Court

Case No : MAC App. 1258, 1271/2012, C.M. Nos. 20744, 20745, 20746, 20883, 20884 and 20885/2012

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Savitri and Others

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Penal Code, 1860 (IPC) — Section 279, 304

Citation : (2014) 11 DEL CK 0400

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Pradeep Gaur, Advocates for the Appellant; Satish Kumar, Advocates for the Respondent

Judgement

Jayant Nath , J.

CM No. 20745/2014 (delay) in MAC APP. 1258/2012

CM No. 20884/2012 (delay) in MAC APP. 1271/2012

For the reasons stated in the applications, the delay in filing of the appeals is condoned.

The applications are disposed of.

MAC APP. 1258/2012 and CM No. 20744/2012 (stay)

MAC APP. 1271/2012 and CM No. 20883/2012 (stay)

1. Both the above appeals are filed by the appellant Insurance Company seeking to impugn the common award dated 01.09.2012 arising out of the same accident.

2. The brief facts which led to passing of the award by the Tribunal and filing of the present appeal are that on 20.02.2012 at around 6.45 AM at August Kranti Marg in front of Kamla Nehru College an accident took place. Sh. Manish Kumar

was driving the vehicle which is insured by the appellant Company. On account of the accident two persons, namely, Sh. Sultaan Singh and Sh. Raghu Raja Verma died. It was later revealed that the driver Manish Kumar had taken the car without the consent of the owner, namely, Ms. Esha Srivastava and caused the accident by driving her car in a rash and negligent manner.

3. It was the stand of the owner of the vehicle Ms. Esha Srivastava that the driver Manish Kumar was actually a cleaner of the car. The keys were given to him to clean the car. He has without the consent of the owner taken the vehicle and caused the accident while driving the same in a rash and negligent manner. He had a valid driving license. After the accident he came back and returned the keys. Later on when the husband of the owner tried to use the car he could not trace the car and called the police. The police informed that the car was involved in an accident.

4. Based on the evidence on record, the Tribunal held that the offending vehicle at the time of the accident was driven by Manish Kumar. Based on the evidence of P.W.-1 and P.W.-2 and relying upon the judgment of the Supreme Court in the case of *Anya v. University of Oxford*, 2001 EWCA Civ 405 (CA) the Tribunal held that the insured is not at fault or guilty of breach of the terms and conditions of the policy and hence the insurer, namely, the appellant cannot escape from its obligation to indemnify the insured.

5. The Tribunal also held that the accident took place due to rash and negligent driving of Manish Kumar.

6. On compensation, in the case of Sh. Sultaan Singh (MAC App. No. 1258/2013), the Tribunal noted that he was 48 years of age at the time of the accident. The Tribunal further noted that as per the income tax return and the salary slip, his gross income was Rs. 14,24,621/- per annum and he paid income tax of Rs. 2,55,873/-. Hence, compensation for loss of dependency at Rs. 1,48,14,000/- was awarded and a total compensation of Rs. 1,48,69,000/- was awarded.

7. In the case of Raghu Raja Verma (MAC App. No. 1271/2012), the Tribunal noted that he was aged 55 years, a permanent employee of India Lease Development Limited and getting a salary of Rs. 54,457/- per month. Rs. 35,44,800/- was awarded for loss of dependency and a total compensation of Rs. 35,99,800/- was awarded.

8. Learned counsel appearing for the appellant has impugned the award on various grounds. He submits that a prudent owner of a vehicle does not give the keys of the car to a cleaner of the car and would normally open the car himself and take the keys away. He points out that if the keys are given as said to be have been done by the owner, it is likely to be misused. In these facts, he submits the appellant has no liability. He next submits that even otherwise there was clear breach of the insurance policy as six persons were travelling in the vehicle.

9. He further submits that without prejudice, there is no proof that Manish Kumar was driving the vehicle. He further submits and challenges the procedure adopted by the Tribunal. Based on the DAR and the investigation done by the police and the documents placed on record by the police he submits that the salaries of the deceased have been accepted without anybody from the employer being summoned to prove the salary certificate and other related documents. No opportunity to lead evidence was given to the appellant. The procedure adopted to pass the award by the Tribunal he submits is vitiated.

10. He further submits that in the case of Sh. Sultaan Singh, the allowances which were being received by him were wrongly added to the income of the deceased and hence loss of dependency has been wrongly calculated.

11. I will first deal with the issue of the conduct of the owner of the offending car Ms. Esha Srivastava. The contention is that handing over of keys to the cleaner is a negligent act. In my opinion it is of common knowledge that persons who clean the car are given keys of the vehicle to enable them to open the door and clean the car from the interiors. Stray examples of misuse would not lead to an inference that handing over of keys to a car-cleaner is an act of imprudence or negligence. In any case, there is no attempt to show as to how, the said facts support the case of the appellant or exonerate the appellant.

12. Coming to the next submission of the appellant regarding six persons travelling in the offending car, this conclusion is said to be drawn from the evidence of P.W.-1 Mahesh Kumar and P.W.-2 Sh. Sagar who accompanied the driver Manish Kumar with some other friends. However, the Tribunal concluded that no evidence has been led by the Insurance Company to show that there was any breach of any insurance policy by the owner or the driver or that Manish Kumar was not having an effective driving license. The Tribunal hence directed the appellant Insurance Company to make the necessary payment.

13. There are no reasons shown to me to disagree with the findings recorded by the Tribunal. The appellant has not been able to show as to what provision of the Insurance Policy has been violated. In the absence of details or allegations, the said contention of the Appellant cannot be accepted.

14. Regarding the next submission of the appellant, i.e. that Manish Kumar was not driving the offending car, the driver Manish Kumar has denied that he was driving the vehicle.

15. The Tribunal had summoned both P.W.-1 Mahesh Kumar and P.W.-2 Sagar. P.W.-1 Mahesh Kumar has said that he knew Manish Kumar and on the date of the accident he confirms that he had gone to the Mother Dairy Booth and that four other persons, namely, Akash,, Atish, Sagar and Nitin were with him. He further states that Manish asked them to wait as he was coming with the car. He later came with the car and all of them sat in the car and went to the Mother Dairy Booth and then they went to August Kranti Marg. He confirms that near Kamla Nehru College, Manish Kumar could not control the car and hit two

persons. Thereafter, the car hit the central verge of the road and stopped. Mahesh Kumar, P.W.-1 further states that he sustained a fracture on his left hand. He also states that Manish Kumar the driver removed the keys of the car and they all went in the bus. In his cross-examination he confirms that all the boys live in the vicinity of about half a kilometre of his house. He knows them for about one year.

16. In cross-examination he reiterates the statement made in the examination in chief. He has denied that he was driving the car.

17. P.W.-2 Sh. Sagar in his evidence also confirmed that he knows Manish Kumar. He also confirms that Manish Kumar was driving the vehicle at the time of the accident. He confirms that in the accident two persons were injured. He also confirms that Manish Kumar after the accident removed the keys and that he accompanied Manish Kumar to the house of the car owner and gave him the keys. He further states that Manish Kumar thereafter cleaned another car and went to his house. He states that after the accident they tried to stop a van and put one of the injured in the Van but the van driver refused. In his cross-examination there is nothing different said.

18. The evidence of P.W.-1 and P.W.-2, clearly show that Manish Kumar was driving the vehicle.

19. That apart, a chargesheet has been filed by the Police against Manish Kumar and a criminal case under Sections 279/304 IPC is pending against him.

20. In the light of the above evidence, there are no reasons to differ with the findings of the Tribunal that Manish Kumar was driving the vehicle when the accident took place.

21. Coming to the next submission of the learned counsel for the appellant that the award is based on only the evidence gathered by the police and no opportunity was granted to the appellant to lead evidence. A perusal of the trial court record shows that on 27.07.2012 the Tribunal notes that it is appropriate to give an opportunity to the Insurance Company to lead evidence. The matter was then adjourned to 07.08.2012 but no evidence was led by the Insurance Company. On 24.08.2012 the Tribunal notes the submissions of the learned counsel for the claimants that the compensation be awarded on the basis of the documents and verifications made by the IO filed with the DAR. The Tribunal also records the submission of learned counsel for the driver Manish Kumar and Sh. Safiullah, Advocate who was representing the appellant Insurance Company stating that they do not want to examine any witness.

22. In the light of the above orders passed by the Tribunal, it is clear that an opportunity was granted to the appellant Insurance Company to lead evidence and they have on their own volition not led any evidence.

23. Reference may be had to the judgment of the Division Bench of Punjab and Haryana High Court in Anya v. University of Oxford, 2001 EWCA Civ 405 (CA) ,

which held as follows:

"6. The provisions of the Act relating to the Constitution, powers to be exercised and the procedure to be followed by the Claims Tribunal leave no matter of doubt that the Claims Tribunal is a Judicial Authority clothed by the Act, with inherent judicial power of the State to determine disputes between parties on merits fairly and objectively. The Claims Tribunal possesses the powers to summon and examine witnesses, to cross examine them and to order discovery, admission or denial of documents. It decides the claim for compensation and renders a binding decision. An appeal is provided against its decisions. It is quasi-judicial Tribunal possessing the trappings of the Court. It is, however, not enjoined by law to observe all the rules of procedure contained in the Code of Civil Procedure and the Evidence Act which are binding on the Civil Courts. The Claims Tribunal has been constituted for specific purpose, i.e., to adjudicate upon claims for compensation in relation to accidents causing death or bodily injuries arising out of accidents by the use of motor vehicles. It has no jurisdiction to entertain or decide any other claim, dispute, suit or cause. The functions and duties of the Claims Tribunal are very much like those of a body discharging judicial functions though it is not a "Court".

5. The Division Bench of Kerala High Court, in the case of *Anya v. University of Oxford*, 2001 EWCA Civ 405 (CA) passed a general direction for future guideline and compliance, relevant portion of which reads as follows:

"11. In the wake of the above circumstances we are inclined to set aside the order of the Tribunal and remit the matter back to the Tribunal for de novo consideration. However, we are inclined to give certain directions to the Claims Tribunals for future guidance and compliance.

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4. Tribunal even in the absence of any evidence adduced by the claimants could decide the issues on the basis of the FIR, scene mahazar, wound certificate and other materials applying the principle of *res ipsa loquitur*. This principle as such may not dispense with the need to prove a fact alleged by a person but the Tribunal after considering the police report, objection filed by the opposite party if any, can reach a conclusion though no oral and documentary evidence was adduced by the claimant. Of course in appropriate cases Tribunal could insist the appearance of injured person so as to get itself satisfied of the claim. Culpability could be presumed if Tribunal satisfied on the basis of the available materials that the claim is genuine and award adequate compensation."

24. Hence, a Tribunal under the M.V. Act can in given facts and circumstances, take a decision on the basis of documents placed on record, though no oral evidence has been led. In the present case, the appellant chose not to lead

additional evidence. Hence the submissions of the learned counsel for the appellant are misconceived and have no basis whatsoever. No fault can be found with the procedure adopted by the Tribunal.

25. As far as the issue of salary of the deceased Sh. Sultaan Singh is concerned it is quite clear that is based on the income tax returns of the deceased. The police has verified the same. He was a permanent employee of Citi Financial Consumer Finance India Ltd. holding the post of Assistant Vice President. His salary slip and income tax return is on record which shows his net income after payment of income tax of Rs. 2,55,873/-, was Rs. 11,68,748/- per annum. Photocopy of his passport is on record which shows that he was 48 years old on the date of the accident. The salary slip of Sh. Sultan Singh which is for the month January 2012 issued by Citi Financial Consumer Finance India Ltd. also shows the calculation of income tax worksheet from April 2011 to March 2012, which portion reads as follows:--

"Income Tax Worksheet for the month of January 2012

April 2011- March 2012

26. Hence, apart from basic, the deceased was also drawing HRA, special allowance, incentive and some YTD reward.

27. Reference in this context is made to the judgment of the Supreme Court in the case of Anya v. University of Oxford, 2001 EWCA Civ 405 (CA) where in paragraph 8 the Supreme Court held as follows:--

"8. The term "income" has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms."

28. There is nothing to show or no reason as to why the allowances which are shown in the salary slip of the deceased should not be taken to be as income beneficial to the members of the entire family. No other submission in that regard is made.

29. The salary has been assessed by the Tribunal based on the income tax records. In the light of the above, the Tribunal has rightly assessed the income of the deceased. Sultaan Singh. The appellant has not been able to show any cogent reason as to why the order of the Tribunal should be modified and the income as assessed be not accepted. In the light of this evidence the assessment of income at Rs. 11,68,748/- P.A. by the Tribunal is in order.

30. In the case of Raghu Raja Verma based on the photocopy of his passport his age was assessed at 55 years. He was a permanent employee in India Lease Development Ltd. holding the rank of a manager. As per his salary slip his gross-

salary was Rs. 54,457/- per month of which Rs. 3,600/- per month was deducted as provident fund. The income came to Rs. 6,53,484/- per annum. The income tax paid by the deceased was Rs. 62,697/- and net annual income came to Rs. 5,90,787/-.

31. No submissions have been made impugning or challenging the said assessment of income of Sh. Raghu Raja Verma.

32. There is clearly no merit in the present two appeals. The same are accordingly dismissed.

33. At the end of arguments, just when I am about to dictate orders, learned counsel appearing for the appellant points out that the appellant have filed an application CM No. 20746/2012 in MAC. APP. 1258/2012 and CM No. 20885/2012 in MAC. APP. No. 1271/2012 under Order 41 Rule 27 CPC for leading of additional evidence. It is urged that the Insurance Company could not examine witnesses to prove the fact that the vehicle was not driven by Manish Kumar on the date of the accident and that the counsel for the appellant company did not advice the appellant to summon the said witnesses who are necessary to determine this fact. It is further urged that no witnesses were summoned by the claimants to prove the income of the deceased and only on the basis of documents submitted in DAR the Tribunal has assessed compensation payable.

34. In the light of the orders passed above, these applications are clearly without merit. It is clear from the orders dated 27.07.2012, 07.08.2012 and 24.08.2012 of the Tribunal that the appellant have themselves chosen not to lead evidence. There are no reasons to permit the appellant to lead additional evidence at this stage. There is nothing to show that the evidence which is now sought to be produced was, notwithstanding exercise of due diligence not within the knowledge or could not be produced before the Tribunal. No reasons have been placed on record to doubt the veracity of the salary slips or IT record placed on record. The applications are without merit and are dismissed.

35. All interim orders stand vacated.

36. Any amount lying deposited be released to the claimants proportionately in the same manner as directed by the Tribunal.

37. Stay applications also stands dismissed.