(2007) 06 J&K CK 0006

In the Jammu And Kashmir High Court

Oriental Insurance Company Ltd. APPELLANT

Vs

Nirmala Devi and Others RESPONDENT

Date of Decision : 08-06-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 145, 165

Citation : (2007) 3 JKJ 401

Hon'ble Judges : J.P. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.P. Singh, J.—These appeals of the Oriental Insurance Company Limited and cross appeals by the claimants in file Nos. 421/C.P and

422/C.P of the Motor Accidents Claims Tribunal, Kathua, arise out of its award dated 02.06.2005, awarding an amount of Rs. 2,90,000/- as

compensation to the claimants in each petition.

2. Facts necessary for the disposal of these Appeals and Cross Appeals may briefly be stated thus:

3. Two labourers, Tilak Raj and Nagar Mal, both resident of Givindsar Kathua were engaged in unloading Marble Slates from Truck No. JK02D-

6947 at Chak Partap Singh Kathua at about 11 PM, on the National Highway, when the loosely loaded Marble Slates fell down from vehicle No.

JK02D- 6947 resulting in instantaneous death of these two labourers.

4. Nirmala Devi, widow of Tilak Raj, her two minor sons, a minor daughter and father-in-law lodged a claim for an amount of Rs. 15,61,500/-,

claiming compensation under the following heads:

(a) Expenditure incurred in taking

dead body: Rs. 1500/â?

(b) Loss of love and affection Rs. 3,50,000/â?

(c) Loss of consortium Rs. 80,000/â?

(d) Loss of mental shock, agony pains

and sufferings, etc. Rs. 2,00,000/â?

(e) Funeral expenses Rs. 30,000/â?

(f) Loss of income and dependency Rs. 9,00,000/â?

5. Raj Kumari, widow of Nagar Mal, her minor son, two minor daughters and father and mother-in-law lodged a claim for an amount of Rs.

15,01,500/-, claiming compensation under the following heads:

(a) Expenditure incurred in taking

dead body: Rs. 1500/â?

(b) Loss of love and affection Rs. 4,00,000/â?

(c) Loss of consortium Rs. 70,000/â?

(d) Loss of mental shock, agony pains

and sufferings, etc. Rs. 2,00,000/â?

(e) Funeral expenses Rs. 30,000/â?

(f) Loss of income and dependency Rs. 8,00,000/â?

6. These two claim petitions were tried together on the following issues:

1. Whether accident involving death of Nagar Mal and Tilak Raj has occurred due to rash and negligent driving of the offending truck no. JK02D-

6947 on 12.2.2000 at 11 PM at Chak Partap Singh NHW? OPP

2. In case issue No. 1 is proved in affirmative, what amount of compensation is payable to the petitioners in each claim petition and by whom?

OPP

3. Whether the Insurance Co. Respondent No. 2 is not liable to indemnify the insured, if so, how? OPR2.

4. Whether the driver of the offending truck did not possess valid/effective driving licence at the time of accident and as such the insurance

company is not liable to pay the compensation? OPR2.

5. Relief.

7. The claim petitions were contested only by the appellant-insurance company. This contest was, however, without leading any evidence by the

appellant-insurance company against the one which had been led by the claimants in support of their respective claims.

On the basis of the evidence of the claimants the Claims tribunal decided issue Nos. 1 and 2 in favour of the claimants and rest of the issues against

the appellant-insurance company. It accordingly, made an award for an amount of Rs. 2,90,000/- in both the petitions alongwith interest at the rate

of 6% P.A from the date of application.

8. The claimants have questioned the award in cross objections, saying that the Tribunal had awarded inadequate compensation whereas the

appellant-insurance company questions the award as bad in law, saying that no tortuous liability had arisen out of the alleged incident which had

occurred when the vehicle was stationery.

9. Mr. D.S. Chauhan, learned Counsel appearing for the appellants vehemently argued that a tortuous liability out of the use of a motor vehicle

would arise only if the vehicle had been in motion, in one way, or the other. Learned Counsel submits that the expression ""USE"" appearing in

Chapter XII of the Motor Vehicles Act, 1988 would be attracted only if the vehicle had been moved or propelled by external or internal force. He

says that activity carried out by the owner in a stationery truck resulting in death of labourers would not entail any liability either on the owner or on

the insurer under the Motor Vehicles Act.

10. Mr. Raghu Mehta, learned Counsel for the claimants, on the other hand, submits that movement of a Motor Vehicle by external or internal

force may not be the sine qua non for maintaining a claim for compensation under the Motor Vehicles Act, 1988 because the expression ""arising

out of the use of motor vehicles"" occurring in Section 165 of Chapter XII of the Motor Vehicles Act was wide enough to cover the activities

undertaken by the owner and the driver of the vehicle even in a stationery vehicle while on roads. Learned Counsel justified the finding of the

Tribunal as to the maintainability of the claim petition relying on Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, .

11. Supporting the cross objections, learned Counsel urges that the Tribunal had been penurious in awarding compensation to the families of the

two labourers who had led cogent evidence in establishing that they were entitled to the compensation more than the one which had been awarded

to them by the Tribunal. He questions Tribunal's deduction of 1/3rd of the amount of dependency which had been assessed by the Tribunal.

12. Mr. Chauhan, on the other hand, says that in case the claim petitions of the respondents were allowed to be maintainable, the amount awarded

by the Tribunal would not warrant any increase as the Tribunal has not committed any error in assessing the compensation.

13. I have considered the submissions of learned Counsel for the parties in the light of the judgment cited by learned Counsel for the claimants.

14. The question raised by Mr. Chauhan that the claim petitions would not be maintainable when the accident had arisen because of the activity

carried out in a stationery truck, is no longer res integra in view of the law laid down in Shivaji Dayanu Patil's case.

15. The expression ""arising out of the use of motor vehicle"" in my opinion, is wide enough to cover the present case because the owner of the

offending truck had permitted it to be driven for being brought on the National Highway where after during unloading of Marble Slates from the

truck the accident had taken place, resulting in the death of two labourers. Use of a motor vehicle in any manner whatsoever, regardless of its

being stationery would entail a tortuous liability on the owner of the motor vehicle who permits the use of the vehicle in any manner resulting in loss

of life or damage to any one. The owner of the motor vehicle, being a person incharge of the vehicle, having permitted the vehicle to be brought on

road on the National Highway and thereafter permitted its use in a manner resulting in death of two labourers, cannot escape his liability to

compensation arising out of the accident. Like wise in view of the provisions of Section 145 of the Motor Vehicles Act, the indemnifier-Insurance

Company too cannot escape its statutory besides contractual liability to indemnify the owner against third party risk. This is so because the liability

of he indemnifier-Insurance Company arises out of the use of the motor vehicle, which has a wider connotation AND not only because of the

driving of the motor vehicle. I am supported in taking this view by a judgment in Ram Chander and Ors v. Rajasthan State Road Transport

Corporation and Ors. reported as 1996 ACH 736.

16. The claim petitions of the respondents-claimants were thus maintainable and I do not find any error in the finding recorded by the Tribunal,

holding the claim petitions to be maintainable, in view of the law laid down in Shivaji Dayanu Patil's case. The submission of Mr. Chauhan,

therefore, fails.

17. I will now examine the plea of claimants that they were not suitably compensated by the Tribunal.

18. I have gone through the evidence led by the claimants before the Claims tribunal. The evidence of the claimants that the deceased labourers

were earning between Rs. 150/- to Rs. 200/- per day goes unrebutted because not even a single question had been put to the witnesses and one

of the claimants on this aspect of the earning capacity of the deceased labourers.

19. Omission of the Insurance Company to controvert the evidence led by the claimants regarding the income of the deceased labourers, leaves

this Court with no other option to accept the evidence of the claimants. Keeping in view the fact that there may be some exaggeration in projecting

the income of the deceased, it would be just and proper to assess the daily income of the deceased labourers at Rs. 120/-. The monthly income of

these two labourers would thus come to Rs. 3600/- each. Deducting l/3rd out of this income, which would have been spent by the deceased on

their personal expenses, the monthly dependency of the family on the earning of the deceased would come to Rs. 2400/- per month. The annual

dependency would thus be Rs. 28,800/. Applying the same multiplier, which was selected by the Tribunal, which is lesser than the one mentioned

in the IInd Schedule of the Motor Vehicles Act, the multiplicand would come to Rs. 4,03,200/-. The claimants had not justified their claim for

enhanced amount for loss of consortium and funeral expenses, as mentioned in their claim petitions. The Tribunal was therefore right in awarding an

amount of Rs. 5000/- on account of loss of consortium and Rs. 5000/- on account of funeral expenses. Adding these two components to the

above mentioned amount of compensation, the total amount of compensation would come to Rs. 4,13,200/-.

20. In order to see whether the amount calculated hereinabove, was just and proper compensation to the dependents of the deceased labourers, it

was found that if the aforesaid calculated amount was invested in a fixed deposit, to be spent later on marriages, education and other expenses for

running the affairs of the family in the absence of the deceased labourers, it would yield around Rs. 3000/- per month by way of interest on the

invested amount. This, in my opinion, would thus be just compensation to the claimants, who, if allowed this amount by way of compensation,

would get the same amount which they had been getting during the life-time of the bread winner of the family.

21. There is thus no merit in the appeals of the insurance Company. The Cross Appeals, however, succeed.

22. I would, accordingly, while dismissing the appeals of the Insurance Company, allow the Cross Appeals and award an amount of Rs.

4,13,200/- in each claim petition. The awarded amount shall carry interest @ 6% per annum from the date of application till its realization.

23. Registrar Judicial shall release the amount deposited by the appellant-Insurance Company in these two appeals in favour of respective

claimants in terms of this judgment.

24. The remaining amount shall be deposited by the-appellant-Insurance Company with Registrar Judicial of this Court within a period of four

weeks, which, on its deposit, shall be released in favour of the claimants on their proper identification.

