
(2021) 03 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : Motor Accidental Case No.33 Of 2017

Oriental Insurance Company Ltd

APPELLANT

Vs

Tauseef Ahmad Dar And Ors

RESPONDENT

Date of Decision : 16-03-2021

Acts Referred:

Citation : (2021) 03 J&K CK 0038

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Manzoor A. Dar, Rizwan

Final Decision : Disposed Of

Judgement

1) The appellant insurance company has challenged the award dated 13.06.2015, passed by Motor Accident Claims Tribunal, Anantnag (for short "the Tribunal"), whereby a sum of Rs.9,10,000/ along with interest @7.5% per annum has been awarded as compensation in favour of the claimants/respondent Nos.1 and 2 to be payable by the appellant insurance company.

2) The instant appeal owes its genesis to a motor vehicular accident that took place on 15.03.2012 at Tulkhun Bijbehara, when a vehicle bearing No.JK03B-9192 that was being driven rashly and negligently by its driver, the respondent No.4 herein, knocked down mother of the claimants, the respondent Nos.1 & 2 herein, resulting in her death.

3) The claim petition was resisted by the appellant insurance company as well as by the owner and driver of the offending vehicle i.e. respondent Nos.3 and 4 herein, by filing their pleadings in answer to the claim petition. All the respondents before the Tribunal denied the occurrence. The appellant insurance company, while admitting that the offending vehicle was covered by a policy of insurance with it, claimed that there was breach of policy conditions, inasmuch as the driver of the offending vehicle was not holding a valid driving license at the relevant time. However, the owner and driver of the offending vehicle i.e.

respondent Nos.3 and 4 herein, in their reply categorically stated that there was no breach of policy conditions on their part and that the driver was holding a valid driving license.

4) On the basis of respective pleadings of the parties, the learned Tribunal framed the following issues:

1) Whether on 15th of March, 2012, the deceased Fatima was on her way to fetch some vegetables and was going on her side of the road and the offending vehicle bearing registration No.JK03B-9192 driven by the respondent No.2 at a very high speed hit the deceased from behind, resulting in serious injuries to the deceased on her head and other parts and succumbed to injuries in SKIMS on 21.03.2012?(OPP)

2) Whether the accident was caused due to the rash and negligent driving of the respondent No.2?

3) Whether the petitioners are entitled to compensation, if so, from and to what extent?

4) Whether the respondents are not liable to indemnify the petitioner as he was not having a valid and effective D/L at the time of accident?(OPR5)

5) Relief? OP Parties

5) After recording the evidence led by the parties, the learned Tribunal, while deciding issue Nos.1 and 2, came to the conclusion that the accident that had resulted in death of the deceased caused due to rash and negligent driving of the offending vehicle by its driver, the respondent No.4 herein. Regarding issue No.3, the learned Tribunal while recording a finding that the deceased was a housewife besides doing the job spinning, chain stitching and looking after the orchards and other family affairs, computed the compensation by taking the monthly income of the deceased at Rs.5000/- per month, where-after it concluded that the claimants are entitled to a compensation of Rs.9,10,000/-.

6) Regarding issue No.4, the learned Tribunal observed that the insurer has failed to examine any witness or any official from the licensing authority to conclusively prove that the driver was not holding a valid driving license at the relevant time and, accordingly, the insurance company was saddled with the liability to satisfy the award.

7) I have heard learned counsel for the parties and perused the impugned award, grounds of appeal and the record of the learned Tribunal. and Ors v. Vinod Kumar and anr, Civil Appeal No.20962 of 2017 (arising out of SLP(C) No.29032 of 2015). In the aforesaid case, the Supreme Court has observed that the onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid driving license at the relevant time.

8) The appellant has challenged the award of the learned Tribunal on a number of grounds but during the course of arguments only two grounds have been urged by the learned counsel for the appellant.

9) The first ground that has been urged by the learned counsel for the appellant is that the driving license of the offending was not valid at the relevant time and that the learned Tribunal has fallen into an error by holding that it was for the insurance company to prove that the driver was not holding the valid driving license. It has been contended that the initial burden that the driver was holding a valid driving license is upon the owner and driver of the offending vehicle and unless this initial burden is discharged by the owner/driver, the burden of proving this issue does not shift to the insurance company.

10) In support of the above contention, the learned counsel has relied upon the judgment of the Supreme Court in the case of Pappu

11) In the instant case, a perusal of the record of the learned Tribunal shows that the respondent Nos. 3 and 4 i.e. owner and driver of the offending vehicle did contest the claim petition by filing objections to the same. In their objections, it was specifically pleaded by the said respondents that the driver was holding a valid driving license. In fact, the record shows that photocopies of the documents of the vehicle including photocopy of the driving license of the offending driver had been placed on record. Thus the owner and driver of the offending vehicle, in the instant case, had discharged their initial burden of showing that the offending driver was holding a valid driving license at the relevant time. Once the pleadings and the documents to the effect that the driver was holding a driving license were brought before the learned Tribunal, the onus would shift to the insurance company to prove that the driving license in question was either fake or not valid at the relevant time.

12) The appellant insurance company, in the instant case, has examined only RW Jasweet Singh, an official of the appellant insurance company. He has made a statement that the driving license of the driver was not valid. This he has stated on the basis of the report of the investigator. However, the investigator has not been examined by the appellant insurance company. No official of the Transport Authority/Department from where the driving license of the offending driver was issued, was examined by the appellant insurance company to show that the driving license in question was not valid. Thus, the finding of the learned Tribunal that the insurer has failed to prove the contravention of the terms and conditions of insurance policy cannot be interfered with.

13) The other contention raised by the learned counsel for the appellant insurance company is with regard to quantum of compensation. According to learned counsel, the quantum of compensation awarded by the learned Tribunal, in this case, is on a higher side as it is not in accordance with the ratio laid down by the of the Supreme Court in National Insurance Company Limited v. Pranay Sethi and Ors., (AIR 2017 SC 5157).

14) The learned Tribunal, on the basis of the evidence, has come to the conclusion that the deceased besides being a housewife was doing the job of spinning and chain stitching. Therefore, the learned Tribunal has rightly taken her monthly income as Rs.5000/ for the purpose of calculation of compensation. The learned Tribunal has taken future prospects of the deceased by making an addition of 30% of her income. The age of the deceased has been taken as 40 years. As per the ratio laid down by the Supreme Court in Pranay Sethi's case (supra), an addition of 25% is to be made to the income of the deceased where the deceased was a self employed or on a fixed salary and the deceased falls in the age group of 40 to 50 years. Thus, the learned Tribunal has erred in increasing the income of the deceased by 30% while taking her future prospectus into account.

15) Similarly, the learned Tribunal has awarded a sum of Rs.1,00,000/ on account of loss of love and care, Rs.25,000/ as funeral expenses and Rs.5,000/ as loss of estate which is not in accordance with the ration laid down by the Supreme Court in Pranay Sethi's case (supra). As per the ratio laid down by the Supreme Court in aforesaid case, the compensation under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses has been provided at Rs.15,000/, Rs.40,000/ and Rs.15,000/ respectively. However, it has been further provided that the aforesaid amount should be enhanced at the rate of 10% in every three years. To this extent also, the award is required to be modified.

16) Having regard to the aforesaid discussion, the modified compensation in this case is computed in the following manner:-

(A) Loss of Dependency:-

Step-I By taking monthly income of the deceased as Rs.5000/-and adding 25% on account of future prospectus, the monthly income of the deceased comes to Rs.6250/-. Thus, the annual income of the deceased would be $\text{Rs.}6250 \times 12 = 75,000/-$.

Step-II Having regard to the number of dependents of the deceased, 1/3rd of her income is to be deducted towards her personal expenses. Accordingly, the annual loss of dependency to the claimants comes to Rs.50,000/-.

Step-III The age of the deceased was 40 years and thus applying the applicable multiplier of 15, the loss of dependency of the claimants comes to $\text{Rs.}50,000 \times 15 = 7,50,000/-$.

(B) Conventional heads:

The claimants are also entitled to a compensation of Rs.15000/- on account of loss of estate, Rs.40,000/- on account of loss of parental consortium and Rs.15,000/-on account of funeral expenses.

17) Thus, the claimants are now entitled to the compensation in the following

manner :

1. Loss of dependency

= 7, 50,000/-

2. Loss of estate

= 15,000/-

3. Loss of parental consortium

= 40,000/-

4. Funeral expenses

= 15,000/-

Total

= 8,20,000/-

18) Accordingly, the claimants are entitled to revised compensation in the amount of amount of Rs.8,20,000/- along with interest @7.5 per annum from the date of filing of the claim petition till its realization. Award of the learned Tribunal shall stand modified to the above extent.

19) The appeal shall stand disposed of in the above terms.

20) A copy of this order be sent to the learned Tribunal for information.