

(2012) 11 DEL CK 0158
In the Delhi High Court
Case No : MAC. APP. 606 of 2010

Reliance General Insurance Co. Ltd.

APPELLANT

Vs

Tetar Yadav and Others

RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8
Motor Vehicles Act, 1988 — Section 149(2)(a), 149(2)(a)(ii), 166

Citation : (2013) 1 ACC 303

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Sameer Nandwani, for the Appellant; Amit Kumar Pandey, Advocate for the Respondent Nos. 1, 2 and Mr. Neeraj Sharma, Advocate for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant Reliance General Insurance Co. Ltd. impugns a judgment dated 17.7.2010 passed by the Motor Accident

Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 6,15,500 was granted in favour of the Respondent Nos. 1 and 2 for the

death of Sikander (a bachelor) in. a motor vehicle accident which occurred on 17.3.2008. During inquiry before the Claims Tribunal, it was

claimed that the deceased was in private service, however, no evidence with regard to the deceased's income was produced on record. The

Claims Tribunal, therefore, assumed the minimum wages of an unskilled worker as the deceased's income, added 50% towards inflation on the

basis of the judgment of this Court in National Insurance Co. Ltd. Vs. Smt. Kailash Devi and Others , deducted 50% towards personal and living

expenses and applied a multiplier of 15 as per the age of deceased's mother (40

years).

2. Following contentions are raised on behalf of the Appellant Insurance Company:

(i) As this was a Petition u/s 166 of the Motor Vehicles Act, 1988 (the Act), the Respondents No. 1 and 2 were under obligation to prove that the

accident occurred because of rash and negligent driving of the Maruti van No. DL-1LE-6958 driven by the Third Respondent. In the absence of

proof of negligence, the Appellants are not entitled to pay any compensation.

(ii) The addition of 50% towards inflation was not justified as there was no evidence with regard to the deceased's future prospects.

(iii) The Respondent No. 3 Illas did not possess a valid driving licence to drive the vehicle involved in the accident. Therefore, the Appellant was

not liable to indemnify the injured and could avoid liability u/s 149(2)(a)(ii) of the Act.

3. On the other hand, the learned Counsels for the Respondents urged that the compensation awarded is just and reasonable and that the

Appellant Insurance Company did not produce any evidence to prove breach of the terms and conditions of the policy.

Negligence:

4. There is no gainsaying that proof of negligence is a sine qua non in a Petition u/s 166 of the Act. In order to prove negligence, the Respondent

Nos. 1 and 2 examined PW 4 Mohan Dass. He testified that the accident occurred because of rash and negligent driving of Maruti van No. DL-

1LE-6958 driven by the Respondent No. 3. He added that the Maruti van which was being driven in violation of the traffic rules, hit the deceased

with great force resulting in grievous injuries to the deceased. This part of PW 4's testimony was not analysed by producing any evidence in

rebuttal by the driver, owner or the insurer of the offending vehicle. Thus, for the purpose of claim u/s 166 of the Act, negligent was sufficiently

established.

Quantum:

5. Admittedly, there was no evidence with regard to the deceased's good future prospects. The Claims Tribunal, however, made an addition of

50% on account of inflation on the basis of Kailash Devi. This Court in Rakki v. Satish Kumar & Ors., MAC. APP. 390/2011 decided on

16.7.2012, referred to the reports of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs.

Susamma Thomas and others, , Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , Bijoy Kumar Dugar Vs. Bidyadhar Dutta and

Others, , Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Santosh Devi Vs. National Insurance Company Ltd.

and Others, , and held that as per Santosh Devi even in the absence of any evidence as to future prospects an increase of 30% in the income has

to be provided where the victim had fixed income or was a self-employed person. Relevant portion of Santosh Devi is extracted hereunder:

14.... In our view, it will be naive to say that the wages or total emoluments/ income of a person who is self-employed or who is employed on a

fixed salary without provision for annual increment, etc., would remain the Same throughout his life. The rise in the cost of living affects everyone

across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the

cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst

affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those

employed under the Central and State Governments and their agencies/ instrumentalities have been revised from time-to-time to provide a cushion

against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those

employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV

employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one

lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with

the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been

incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal

basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter

category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by

stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be

the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc. Therefore, we do not think that while making the

observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will

be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person

who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she

becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

6. Thus, in view of the authoritative pronouncements in Santosh Devi, the Respondent Nos. 1 and 2 are entitled to an addition of only 30% on

account of inflation. The loss of dependency thus comes to Rs. 4,25,061 (Rs. 3633 + 30% x 1/2 x 15 x 12).

Liability:

7. It is urged by the learned Counsel for the Appellant that the offending vehicle involved in the accident was a goods vehicle. Respondent No. 3

has however, possessed a licence to drive a light motor vehicle only. It is urged that the Appellant Insurance Company examined Rakesh Kumar

(R3W-1) who testified that the driving licence No. 05518/S issued by Licensing Authority, Sonipat was valid to drive only a motor cycle, scooter

and a motor car. He deposed that the vehicle in question was a goods vehicle as per the copy of registration certificate Ex. R3W-1/B and thus the

insured committed a breach of the terms and conditions of the policy.

8. It is no longer res integra that onus to prove breach of the terms and conditions of policy is on the insurer. In Sohan Lal Passi Vs. P. Sesh

Reddy and others, , the three-Judge Bench of the Supreme Court while referring to Section 96(2)(b)(ii) of the Motor Vehicles Act, 1939 (the

Act), held that this Section cannot be interpreted in a technical manner. Section 96(2)(b)(ii) only enables the Insurance Company to defend the

liability to pay the compensation on the grounds mentioned in Sub-section (2)

including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. It was held that if the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. The Supreme Court held that the insurer has to satisfy the Tribunal that such violation or infringement on the part of the insured was wilful. The relevant part of the report is extracted hereunder:

12. ... According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the Insurance Company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in Sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed. This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the Insurance Company, has appointed a duly licensed driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the driver duly authorised to drive the vehicle whether the Insurance Company in that event shall be absolved from its liability? The expression "breach" occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the Insurance Company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the Insurance Company cannot repudiate its statutory liability under Sub-section (1) of Section 96. In the present case far from establishing that it was the appellant who had allowed Rajinder Pal Singh to drive the vehicle when the accident took place, there is not even any allegation that it was the appellant who was guilty of violating the condition that the vehicle shall not be driven by a person not duly licensed. From

the facts of the case, it appears that the appellant had done everything within his power inasmuch as he has engaged a licensed driver Gurbachan

Singh and had placed the vehicle in his charge. While interpreting the contract of insurance, the Tribunals and Courts have to be conscious of the

fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it

is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly

licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of

Sub-section (1) of Section 96 of the Act.

9. Similarly, in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , the Supreme Court observed that in order to avoid its liability it is not

sufficient for insurer to show that the person driving at the time of the accident was not duly licensed but it must further be established that there

was breach on the part of the insured.

10. In the instant case, the insured was not put to notice that the driver possessed a licence to drive a motor car only or that he was not competent

to drive a light goods vehicle on the strength of the driving licence which was produced by the Claimants. Admittedly, no notice under Order 12

Rule 8, CPC was issued to the driver and owner to produce the driving licence possessed by the driver on title date of the accident. Moreover, an

insurer can provide a wider coverage than under the Act. Section 149(2)(a) of the Act simply provides that an insurer can provide one of the

conditions as laid down in Section 149(2)(a) and (b) while entering into a contract of insurance. In the instant case, no notice was issued to the

insured to produce the original insurance policy. The Appellant Insurance Company was precluded to produce secondary evidence without first

laying foundation that the primary evidence was not forthcoming. Thus, the Appellant Insurance Company is not entitled to avoid the liability under

the insurance policy.

11. No other ground has been raised.

12. In view of the above, the compensation stands reduced by Rs. 65,439.

13. The excess amount of Rs. 65,439 along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be

refunded to the Appellant Insurance Company.

14. The balance amount of compensation payable shall be disbursed in favour of the Respondent Nos. 1 and 2 in term of the orders passed by the

Claims Tribunal.

15. The Appeal is allowed in above terms.

16. Statutory amount of Rs. 25,000, if any, shall be refunded to the Appellant Insurance Company. Pending Applications stand disposed of.