(2021) 03 JH CK 0207

In the Jharkhand High Court

Case No : Miscellaneous Application No. 284 of 2018

Reliance General Insurance Company Limited APPELLANT

Vs

Manjusha Devi And Ors RESPONDENT

Date of Decision : 24-03-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 170, 279, 304A

Citation : (2021) 03 JH CK 0207

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Amit Kr. Das, Swati Shalini

Final Decision : Dismissed

Judgement

1. Heard, learned counsel for the appellant - Reliance General Insurance Company Limited.

2. Mr. A. K. Das, learned counsel for the appellant has submitted that appellant-Reliance General Insurance Company Limited has preferred this Misc. Appeal against the award dated 12.12.2017 passed by learned District Judge-XIV-cum-Motor Accidents Claims Tribunal, Dhanbad, in Title (M.V.) Case No.15 of 2015, whereby the claimants, 1.Manjusha Devi, 2.Chanda Kumari. 3.Neha Kumar. 4.Nidhi Kumari and 5.Hursh Kumar have been awarded compensation to the tune of Rs.83,48,725/- along with interest @6% per annum from the filing of claim application till its payment.

3. Learned counsel for the appellant-Insurance Company has submitted that the learned Tribunal is proceeding in Execution Case No.73 of 2018 and for stay of the same, I.A. No.4343 of 2019 has been preferred before this Hon'ble Court.

4. Learned counsel for the appellant has assailed the impugned award, on the ground that the learned Tribunal has not given right to recover in favour of the Insurance Company, though the insured /owner of the offending vehicle bearing Registration No.JH-10AQ 6173 has violated the terms and conditions of the

policy, as such, the instant Misc. Appeal may be admitted for hearing.

5. Learned counsel for the appellant in support of his submission has placed reliance upon Para-4 of the impugned judgment, which is the written statement filed by the Insurance Company before the learned Tribunal, as such, the same may be profitably quoted hereunder :-

"4.The defendant no.2 Reliance General Insurance Company Limited through its written statement has challenged the suit on the ground of its maintainability either in law or on facts. It has termed the suit bad for misjoinder of necessary party and non joinder of the party as owner and insurer of the motorcycle involved in this case have not been made party. It has however, admitted the insurance of the pick van involved in this case with it at the time of accident. It further prayed for bringing forth of all the vehicular documents along with driving icence of the pick up van by the owner of the vehicle. It has sought protection of section 147/149/170 of the M.V. Act. It has challenged the age, profession and income of the deceased and so the claim made through its case. On these grounds it has prayed for dismissal of the suit".

6. Learned counsel for the appellant has further submitted that Issue No.(iv) and (v) as framed by the learned Tribunal may be profitably quoted:-

"(iv)Whether the driver of the aforementioned pick up van was holding a valid and effective driving licence at the relevant time of accident?

(v)Whether the concerned pick up van was holding a valid and effective permit at the relevant time of accident?"

7. Learned counsel for the appellant has further submitted that the same has been dealt by the learned Tribunal in Para-10 jointly which may profitably be quoted hereunder :-

"10.Issue No.IV & V :-As regard the driving licence of the driver of the offending pick up van the plaintiffs have furnished the copy of driving licence of Md. Kudus vide Exhibit 12/1 which shows its validity for LMV till 21.07.2016 which has been authenticated by the defendant insurance company vide Exhibit-B while making its investigation in this regard. In context of permit of the said vehicle plaintiffs have brought Exhibit 9 which shows its validity from 09-09-14 to 08-01-15 thereby covering the date of accident dated 14-10-14. The plaintiffs have also furnished the registration document, fitness certificate, tax token of the said vehicle which all found to be valid at the time of said accident. Thus, both issues are decided accordingly."

8. Learned counsel for the appellant has further submitted that the learned Tribunal while granting compensation has considered the same on the higher side.

9. After hearing learned counsel for the appellant-Insurance Company and after perusing the materials available on record, it appears that the issues agitated by the Insurance Company before this Court have been properly dealt with by the

learned Tribunal in Para-10 of the impugned Award. It further appears that Ram Bilash Singh (deceased) died in a motor accident on 14.10.2014 near Binod Bihari Chowk at about 12.30 PM when a pick-up van bearing Registration No.JH-10AQ 6173 coming in a very rash and negligent manner from Vasepur dashed his motorcycle and crushed him to death. An FIR bearing Dhanbad P.S. Case No.1025/14 dated 14.10.14 under Sections 279/304A IPC was registered. After investigation the charge-sheet was submitted against the driver of the said Pick Up van, Md. Kudus. The claimants, being widow, three daughters and one son have claimed the income of the deceased to be Rs.65,000/- per month from his profession i.e. LIC agent, agriculture and dairy business. The claimants have examined four witnesses, Manjusha Devi as PW.1, Amarendra Kumar as PW.2, Ramanuj Singh as PW.3 and Om Prakash Singh as PW.4. Apart from that, the claimants have also exhibited a number of documents i.e. from Exhibit-1 to Exhibit-14/1.

On the basis of said pleading, the learned Tribunal has decided the issues. The learned Tribunal has considered the fact that there is no violation of the terms and conditions of the policy by the insured, as such, the onus lies upon the insurer of the offending vehicle. Admittedly, the vehicle was insured before the appellant-Insurance Company vide Exhibit-8 (photocopy of the insurance policy of the offending vehicle), Exhibit-9 (temporary permit of offending vehicle), Exhibit-10 (certificate of fitness of offending vehicle), Exhibit-11 (tax token of offending vehicle), Exhibit-12 (driving licence of deceased) and Exhibit-12/1 (driving licence of Md. Kudus).

11. Under the aforesaid circumstances, it appears that the learned Tribunal has rightly considered the issues against the appellant-Insurance Company while deciding the issues No.IV & V, as no pleading or contrary evidence has been brought on record by the Insurance Company to assail the same.

12. So far the plea taken by the learned counsel for the appellant-Insurance Company with regard to compensation on the higher side is concerned, since no specific plea has been made that under what heading the compensation has been given on the higher side, rather it appears from perusal of the impugned award that the same was passed by the Tribunal in view of the judgment passed by the Apex Court in the case of Sarla Verma (SMT) and Ors. vs. Delhi Transport Corporation and Anr,, reported in (2009) 16 SCC 121 [at Paras 30 and 42] and in the case of National Insurance Company Ltd. vs. Pranay Sethi, reported in (2017) 16 SCC 680, [at Para 59]. It appears to this Court, that computation of compensation has been rightly done, but the interest has been awarded @6% per annum from the date of filing which is on the lower side, in view of the judgment passed by the Apex Court in the case of Dharmpal and Sons vs. UP State Road Transport Corporation, reported in 2008(4) JCR 79. Since no appeal for enhancement has been filed by the claimants, this Court restrains from interfering with the interest part to enhance it @7.5% per annum.

13. Accordingly, the instant Misc. Appeal preferred by the appellant-Insurance

Company being devoid of any merit stands dismissed.

14. I.A. No.4343 of 2019 filed for stay stands closed.

15. Learned Registrar General of this Court is directed to remit the Statutory amount within four weeks to the learned Tribunal/Executing Court which shall be paid to the claimants and the balance amount of award along with the interest in terms of the award passed by learned Tribunal shall be indemnified by the Insurance Company within a reasonable time as the occurrence is of dated 14.10.2014.