(2020) 05 JH CK 0091

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 57, 103 of 2015

Rita Devi And Ors APPELLANT

Vs

Bajaj Allianz General Insurance Company Limited And Ors RESPONDENT

Date of Decision : 28-05-2020

Acts Referred:
Central Motor Vehicle Rules, 1989 — Rule 28

Citation : (2020) 05 JH CK 0091

Hon'ble Judges : B.B. Mangalmurti, J

Bench : Single Bench

Advocate : Atanu Banerjee, Arvind Kumar Lall, Alok Lal, Santosh Kumar, Arvind Kumar Lall, Atanu Banerjee, Siddhartha J. Roy

Final Decision : Dismissed

Judgement

B.B. Mangalmurti, J

1. Instant miscellaneous appeals have been filed against the award dated 03.12.2014 passed by Sri Amitabh Kumar, learned Principal District Judge-cum-Motor Accident Claim Tribunal, Bokaro in T.M.V. Claim Case No.20 of 2013 in which a compensation of Rs.5,70,000/- has been awarded in favour of claimants with interest at the rate of 9% per annum from the date of application till payment, deducting the amount already paid within one month from the date of passing of this order with a liberty to recover the aforesaid amount of compensation from the owner of offending vehicle.

Miscellaneous Appeal No.57 of 2015 has been filed by the claimants for enhancement of award amount claiming compensation to the tune of Rs.26,00,000/- on account of death of son of appellant nos.1 and 2 who died in accident and Miscellaneous Appeal No.103 of 2015 has been preferred by owner of vehicle to modify/set aside the claim and the finding of Court below regarding liberty to insurer to realize the award amount from the appellant.

2. The brief facts of case is that on 15.01.2013 when deceased Chandan Kumar

@ Chandan Agarwal was returning to his house after performing his work on a bicycle, a truck bearing registration no. JH 02 Q-5151 dashed him and due to injuries he died on the spot.

3. Learned counsel for the appellants submitted that deceased Chandan Kumar @ Chandan Agarwal at the time of his death was 23 years as per birth certificate (Exhibit 5) and he was working as mason and was earning Rs.400/- per day and by his earnings he was maintaining his parents and minor sister. It is submitted that learned Tribunal erred in choosing the multiplier of 15 instead of 18 as the deceased was 23 years at the time of his death. Learned counsel further submitted that offending vehicle was insured with Bajaj Allianz General Insurance Company Limited under Policy No.0G-13-2406-1803-00000408 which was valid from 13.05.2012 to 12.05.2013 which covers the date of accident of 15.01.2013. It is further submitted that the driver Birendra Kumar Mehta was holding a valid driving license. The driving license issuing register has been called for from the office of D.T.O., Hazaribagh which has been marked as Exhibit-G in which it has been mentioned that commercial driving license of the driver was issued from the office of D.T.O. and was renewed till 25.11.2014. He further submitted that the claimants/appellants have examined four witnesses in support of their claim and the monthly income of the deceased was Rs.9000/- per month or Rs.400/- per day for which a certificate of income dated 09.12.2013 (Exhibit-6) issued by the concerned employer namely M/s Paswan Electrical Enterprises was proved by its proprietor Sri Basudev Paswan (A.W.-4). A.W.1- Ashok Kumar Agarwal has also deposed that his son was mason who was earning Rs.9000/- per month. Learned counsel further submitted that the compensation in this case may be re-assessed to Rs.30,17,000/-.

Mr. Arvind Kumar Lall, learned counsel for the appellants/owner of vehicle appearing in Misc. Appeal No.103 of 2015 submitted that the Tribunal has fixed the liability merely on the ground of violation of driving license. He further submitted that there was no endorsement in the register that the driving license was cancelled or suspended so it was effective on the date of accident. He further submitted that as per Rule 28 of Central Motor Vehicle Rules, 1989 no order of suspension of driving license was passed. It was also submitted that Insurance Company cannot absolved of his liability as the Insurance Company has to prove negligence of the owner that the driver had no valid license but he was entrusted by the owner to drive the vehicle without valid license.

He relied in the case of Narcinva V. Kamat & Another Versus Alfredo Antonio Doe Martins & Others reported in II (1985) ACC 34 (SC), Lal Chand Versus Oriental Insurance Company Ltd. reported in 2006 (4) JLJR (SC) 173 as also in the case of Dilip Singh Versus Dulari & Another reported in 2006 ACJ 118.

4. Learned counsel appearing in both the appeals on behalf of Bajaj Allianz General Insurance Company Limited submitted that Tribunal has awarded higher compensation than the law settled by Hon'ble Supreme Court and no sufficient proof of income has been brought on record. The Tribunal instead of calculating

compensation at Rs.3000/- as monthly income, calculated on Rs.4000/- per month as monthly income which is not permissible under the law of this type of worker. In support of his submission, he has relied on decisions in the case of National Insurance Company Ltd., Town, Jamshedpur, East Singhbhum Versus Smt. Bandana Saw & Others reported in 2014 (1) JLJR 416 (Jhar). He further submitted that the Tribunal while deducting amount equivalent to 50% towards personal expenses as per settled law has deducted 1/4th only which is serious error because the deceased was unmarried and as per settled law on account of death of bachelor where the parents are the claimants, a sum equivalent to 50% on account of personal expenses is to be deducted.

Learned Tribunal while dealing with Issue No.I and II has clearly mentioned that as per contention of Insurance Company at the time of accident the driver was not holding valid driving license of the offending vehicle. It has been observed by Tribunal that no photograph is affixed on the license which had been issued in favour of Birendra Kumar Mehta. It has also been observed that:-

"Birendra Kumar Mehta has not submitted his photograph for said driving license and without submitting the photo unactivated the said D.L. has been taken away and using the same D.L. which amounts to suspend and revoke driving license under Section 28 of Central Motor Vehicle Rules, 1989. Therefore, it is not signed and accepted by the D.T.O. posted on 31.01.2013".

He further submitted that it has been observed by the Hon'ble Apex Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh & Others reported in (2004) 3 SCC 297 it has been observed in Para 50 that :-

"Under the Motor Vehicles Act, holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to the same from the owner or driver thereof."

In Para 110 (iii) the Hon'ble Supreme Court has observed that :-

"The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver of one who has not disqualified to driver at the relevant time."

5. Learned counsel for the appellants/claimants preferred Miscellaneous Appeal No.57 of 2015 for enhancement of compensation amount on the ground that the Tribunal has calculated the income of deceased at Rs.4000/- per month and awarded compensation on the basis of age of parents although it should have been awarded on the basis of age of deceased. The Tribunal has not awarded on account of future prospect of deceased in view of the judgment of Hon'ble Apex Court passed in the case of National Insurance Company Limited Versus Pranay Sethi & Others reported in (2017) 16 SCC 680. Apart from it, wrong multiplier of 15 was applied whereas as per ratio of the case of Sarla Verma (Smt) & Others Versus Delhi Transport Corporation & Another reported in (2009) 6 SCC 121, as per the age of deceased, the multiplier should have been applied.

6. Misc. Appeal No.103 of 2015 has been preferred by the owner of vehicle, who is appellant herein. The contention is that liability has been fixed due to violation of Rule 28 of Central Motor Vehicle Rules, 1989 but the Tribunal has not taken care that there was no endorsement in the register that the driving license was cancelled or suspended. In this circumstance, the Tribunal should have held that the driving license was valid at the time of accident. In this appeal, respondent no.4 is the Insurance Company as well as in another Miscellaneous Appeal, Bajaj Allianz General Insurance Company Limited, who is also respondent no.1 in Misc. Appeal No.57 of 2015 who has insured the truck bearing registration no.JH 02 Q 5151 and the insurance policy has been marked as Exhibit 2.

7. Learned counsel for the Insurance Company has contended that the driver of offending vehicle i.e. truck was insured but the driver was not having valid license at the time of accident. The Tribunal has also held that Exhibit F itself shows that the driving license which was being used by the driver of the offending vehicle namely Birendra Kumar Mehta is in contravention of Section 28 of the Central Motor Vehicle Rules, 1989 nor it was signed and accepted by the District Transport Officer, Hazaribagh. The driving license was unactivated but it was being used by the driver which is violation of terms and conditions of insurance policy.

8. Considering the above submission of the parties and on perusal of Lower Court Records as well as the papers attached with this appeal, it appears that the deceased was aged about 23 years and as per assertion, he was earning Rs.9000/- per month by working as Rajmistry (Mason) but in absence of any cogent evidence, the Tribunal has assessed the income of deceased as Rs.4000/- per month. It further appears that the Tribunal has deducted 1/4 towards personal expenses although as per the Hon'ble Apex Court's decision, the deduction should have been more. In this situation, the multiplier of 15 has been applied by the Tribunal even then the Tribunal has awarded more than what the claimants/appellants were entitled. The Tribunal has also awarded more on account of loss of estate, funeral expenses etc. as well as interest @ 9% per annum, therefore, enhancement of compensation amount does not arise otherwise at the present prevailing calculation, the amount would reduce which

will be unjust towards claimants/appellants. Therefore, the award passed by the Tribunal does not require any interference. The Tribunal has already passed order for payment of compensation amount with liberty to recover the aforesaid amount on account of compensation from the opposite party no.2, owner of offending vehicle. Therefore, no case could be demonstrated for enhancement of award.

9. Hence, both miscellaneous appeals i.e. Misc. Appeal No.57 of 2015 and Misc. Appeal No.103 of 2015, are dismissed.

