
(2016) 05 P&H CK 0197
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 6362 of 2012 (O&M)

Smt. Anita Gupta

APPELLANT

Vs

New India Assurance Co. Ltd. and others

RESPONDENT

Date of Decision : 30-05-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 166, 2(21)

Citation : (2016) 3 LAR 90

Hon'ble Judges : Jitendra Chauhan, J.

Bench : Single Bench

Advocate : Shubhashish Kukreti, Advocate. in FAO No. 6362 of 2012, Vinod Gupta, Advocate. in FAO No. 2820 of 2012, Ashwani Arora, Advocate. in FAO No. 3601 of 2012, for the Appellant; Shubhashish Kukreti, Advocate. in FAO No. 2820 of 2012 and No. 2 in FAO No. 3601 o

Final Decision : Partly Allowed

Judgement

Jitendra Chauhan, J. (Oral) - By this single judgment, I shall dispose of aforesaid three appeals.

The appeals i.e. FAO No. 6362 of 2012 and FAO No.2820 of 2012, have been filed by Smt. Anita Gupta (owner) and the New India Assurance Company Limited (insurer) separately against the impugned award dated 22.03.2012, passed by learned Motor Accidents Claims Tribunal, SAS Nagar, Mohali, (for short, "the Tribunal").

The third appeal i.e. FAO No. 3601 of 2012 is by the claimants seeking enhancement of the amount of compensation awarded vide aforesaid impugned award passed by the Tribunal.

2. The learned counsel for the appellant-Smt. Anita Gupta has argued that the learned Tribunal has wrongly given the recovery rights to the insurance company as while employing Satnam Singh, as driver of the offending vehicle i.e. Swaraj Mazada Truck bearing registration No.HR-55F-1305, the appellant along with her

husband had checked/examined his driving licence and his driving skills. Therefore, there is no wilful breach of the insurance policy on the part of the appellant-Smt. Anita Gupta.

3. The learned counsel for the respondent-Insurance company stated that the appellant-Smt. Anita Gupta has not taken due care while employing the driver-Satnam Singh. The licence held by the driver is a fake/invalid document and is valid to drive the motorcycle and the light motor vehicle.

4. The arguments raised by the learned counsel for the appellant-claimants are that (1) nothing has been awarded towards future prospects; (2) the learned Tribunal applied the multiplier of 13, which is contrary to the law laid down in *Sarla Verma v. DTC*, 2009 (3) RCR (Civil) 77; and (3) less amount has been awarded towards loss of consortium and loss of love and affection.

5. I have heard the learned counsel for the parties and carefully perused the entire record on file.

FAO No. 6362 and 2820 of 2012

6. The appellant-Smt. Anita Gupta pleaded that she had checked the driving licence of the driver and along with her husband took the test of his driving skills, which were found to be perfectly upto the mark. However, there is nothing on record beyond the statement in this regard. The owner of the vehicle is duty bound to check the antecedents of the driver and his driving licence and to take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver. There is nothing on record to suggest that the owner had taken any steps to verify the genuineness of the driving licence of driver of the offending vehicle. The licence in question is issued by Licensing Authority, Mathura. From the testimony of RW1-Anand Rai Kuril, Official of the said authority and from the record on file, it is duly proved that the licence in question is a fake document. Even if it is assumed that the licence in question is not a fake document, in that eventuality, the owner cannot escape from her liability as the licence in question is valid for motorcycle and light motor vehicle and as per the definition of the Light Motor Vehicle as mentioned in Section 2(21) of the Motor Vehicle Act, 1988, the weight of the vehicle which comes under the ambit of light motor vehicle does not exceed 7500 kgs, but in this case, the weight of the offending vehicle is 8800 kgs. Therefore, the said vehicle cannot be said to be a light motor vehicle. The owner could check at least this relevant fact about the said licence. Therefore, the owner cannot say that she had taken due care in appointing the driver on her vehicle and she violated the terms and conditions of the insurance policy. Moreover, it is not proved on record whether the owner herself is well conversant with the driving or not. Further, the learned Tribunal has already granted the recovery rights to the insurance company. Plea of the learned counsel for the insurance company that the insurer is liable to be exonerated from paying the compensation to the claimants is not tenable. No doubt, the driving licence of the driver of the offending vehicle was fake.

However, the legislation being a beneficent one, the provisions thereof should be interpreted liberally. Reliance in this regard can be placed upon *National Insurance Co. Ltd. v. Swaran Singh*, 2004(3) SCC 297, wherein it was held as under:-

"(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149 (2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have 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 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 duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or

otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

7. No fault can be found with the approach of learned Tribunal while granting recovery rights to the insurance company.

CM No.30537-CII of 2012 in FAO No.6362 of 2012

8. Heard.

Keeping in view the circumstances explained in the application, this Court finds no sufficient ground to condone the delay of 169 days in filing the appeal. Moreover the appeal is being dismissed on merits.

Accordingly, CM is declined.

9. For the foregoing discussion, the appeals i.e. FAO No.2820 of 2012 and FAO No.6362 of 2012 are hereby dismissed on merits. The latter appeal is also dismissed being time barred as there are no good grounds for condoning the delay in filing the appeal.

10. The statutory amounts deposited by the owner as well as by the insurance company be placed at the disposal of the Tribunal for disbursement.

FAO No.3601 of 2012

11. Further, from the perusal of the award, it is noticed that the learned Tribunal did not award any compensation on account of the future prospects. It is not in dispute that the deceased was 42 years of age at the time of his death. Therefore, keeping in view the law laid down in *Rajesh v. Rajbir Singh*, 2013(3) R.C.R. (Civil), 170 (SC), an addition of 30% is ordered in the actual income of the deceased towards future prospects. However, as the matter pertaining to the future prospects is pending adjudication before Hon'ble the Supreme Court in SLP (Civil) No.16735 of 2014, therefore, the amount of future prospects be released on furnishing of requisite indemnity bonds by the claimants.

12. Keeping in view the law laid down in *Sarla's case* (supra), multiplier of 14 ought to have been applied instead of 13.

13. In this way, the amount of compensation under the head of "loss of dependency" comes to Rs. 3500/- + 30% X 12 X 14 X 2/3 = Rs. 5,09,600/-, as against an amount of Rs. 3,64,000/-, assessed by the learned Tribunal under this head.

14. As per law laid down in *Rajesh's case* (supra), another amount of Rs. 90,000/- towards loss of consortium payable to the wife of the deceased only.

15. In view of *Vimal Kanwar and others v. Kishore Dan and others*, (2013-3) PLR 776, another Rs. 95,000/- is awarded towards loss of love and affection to the children of the deceased, in equal shares.

16. In view of the above, the appellant-claimants are held entitled to the enhanced compensation of Rs. 3,30,600/- [Rs. 1,45,600/- (enhancement towards "loss of dependency") + Rs. 95,000/- (enhancement towards loss of love and affection payable to the children of the deceased, in equal shares) + Rs. 90,000/- (enhancement towards loss of consortium payable to the wife of the deceased only)] as indicated above, in the manner prescribed in the impugned award, over and above the amount already awarded by the learned Tribunal,

which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, they shall also be entitled to interest @ 7.5% per annum, from the date of filing the present appeal i.e. FAO No.3601 of 2012, till its realization.

17. With the aforesaid modification in the impugned award, the present appeal i.e. FAO No.3601 of 2012 is partly allowed.