
(2020) 09 J&K CK 0029

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 165 Of 2009, IA No. 245, 717 Of 2009

United India Insurance Co. Ltd

APPELLANT

Vs

Ayodhya Devi And Others

RESPONDENT

Date of Decision : 18-09-2020

Acts Referred:

Citation : (2020) 09 J&K CK 0029

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Vishnu Gupta, R.K.Jain

Final Decision : Disposed Off

Judgement

Sanjeev Kumar, J

1. United India Insurance Company Ltd., (hereinafter referred to as the 'insurer') is in appeal against the award dated 30.01.2009 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as the 'Tribunal') in file No. 146/claim titled 'Ayodhya Devi and others vs. United India Insurance Company Ltd. and others, whereby respondent Nos. 2, 3, 6 and 7 have been held entitled to a compensation of Rs.5,26,800/- along with pendente lite and future interest @ 7.5% per annum. The Tribunal has held the insurer liable to pay compensation to the claimants in indemnification of the insured. The compensation has been awarded by the Tribunal on account of death of one Tirath Singh, the predecessor-in-interest of the claimants in the motor vehicle accident that took place on 29.03.2005 in the compound of the workshop.

2. The impugned award has been assailed by the insurer on several grounds. Mr. Vishnu Gupta, learned counsel, appearing for the insurer, during the course of arguments, however, restricted his challenge to the award on the following grounds:

(i) That the finding of the Tribunal that the accident had occurred due to

negligent act of respondent No.5, the driver of the Tanker No. JK02D-1209 ['the offending vehicle'] is bad, illegal and perverse.

(ii) That the compensation awarded by the Tribunal in favour of the claimants is too exorbitant and excessive.

(iii) That the Tribunal applied the wrong multiplier having regard to the age of the deceased which was proved to be 58 years at the time of accident.

(iv) That the sums awarded by the Tribunal under the conventional heads are not in consonance with the law.

3. Mr. Jain has, learned counsel appearing for the claimants vehemently contests the grounds urged by the Mr. Gupta, learned counsel for the insurer to assail the impugned award. He submits that, having regard to the evidence on record, the amount awarded by the Tribunal cannot by, any stretch of reasoning, be said to be excessive or exorbitant. With regard to the negligence on the part of the driver of the offending vehicle, Mr. Jain submits that it is on account of negligence of the driver of the offending vehicle that the accident occurred. He argues that the driver of the offending vehicle should have taken the necessary precaution and not taken the oil Tanker to the workshop for welding works. He, therefore, submits that since the Tanker contained explosive material, as such, it caught fire and exploded, the moment the welding process was started upon it. Mr. Jain attributes a serious lapse to the driver of the offending vehicle.

4. With a view to appreciate the grounds of challenge to the impugned award urged by the learned counsel for the insurer, it would be necessary to briefly notice few facts relevant to the disposal of this appeal.

On 29.03.2005, the offending vehicle driven by respondent No.5 entered Yard No. 4, Narwal. The driver parked the offending vehicle near the shop M/S Anand Auto Workshop, where the deceased Tirath Singh was employed as a mechanic. The driver of the offending vehicle, without taking proper care and caution told the welder in the workshop to do some welding work on the Tanker. The lids of all petrol compartments of the Tanker were opened. Due to sudden combination of petrol gases and an existence of pressure in the Tanker, the material in the Tanker got ignited and the Tanker exploded. As a result, its splinters hit the deceased resulting in severe bodily injuries all over his body to which he ultimately succumbed. The said Tanker was insured with the insurer on the date of accident.

5. The claimants being wife, major son and major unmarried daughter filed a claim petition. It was claimed that the deceased being a mechanic was earning a sum of Rs.7500 per annum and was contributing a minimum of Rs.7000 towards the maintenance of the family. The claim petition was contested by the insurer and the owner of the offending vehicle. The driver of the offending vehicle chose not to contest the petition and was, thus, proceeded ex parte. On the basis of the pleadings of the contesting parties, the Tribunal framed the following issues:

(i) Whether an accident on 29.03.2005 by rash and negligent driving of offending vehicle No. JK02D-1209 in the hands of erring driver in which deceased Tirath Singh sustained fatal injuries ? OPP

(ii) If issue No.1 is proved in affirmative whether petitioners are entitled to the compensation if so to what amount and from whom ? OPP

(iii) Whether driving of offending vehicle at the time of accident was not holding valid effective driving licence and drove the vehicle in contravention of terms and conditions of insurance policy ?

(iv) Relief.

6. As is evident, the burden of proof of issue Nos. 1 and 2 was placed on the claimants and with a view to discharge the burden, the wife of the deceased namely Ayodhya (now deceased) entered the witness box and also examined PWs Baldev Raj, Kuldeep Raj and Hari Ram Sharma as her witnesses.

7. The Tribunal in the light of evidence led by the claimants held issue No.1 proved in favour of the claimants. The Tribunal concluded that it was on account of sheer negligence on the part of the driver of the offending vehicle that the accident in question occurred in which deceased Tirath Singh lost his life. The driver of the offending vehicle asked the mechanic in the workshop to do welding work on the Tanker despite being aware that there was inflammable material in the Tanker. It is because of this reason, the Tanker caught fire and exploded. The splinters of the exploded Tanker hit the deceased, who suffered multiple injuries on his body to which he later succumbed in the Hospital. In view of aforesaid evidence on record, the Tribunal came to the conclusion that the accident in which deceased lost his life was on account of negligent use of the vehicle by its driver.

8. Mr. Vishnu Gupta, learned counsel for the insurer could not point out anything contrary on record which would persuade this Court to take a view different from the one taken by the Tribunal. The findings of the Tribunal on issue No.1 are in accordance with the evidence on record and are, therefore, affirmed.

9. Issue No.3, the onus whereof, was on the insurer has not been proved by the insurer by leading any evidence. Otherwise also, when the accident occurred, the offending vehicle was stationery and parked and, therefore, was not a result of driving skills by the driver of the offending vehicle. The Tribunal has very correctly appreciated this aspect and has held issue No.3 not proved by the insurer. I see no justification to take a contrary view on the issue. This brings us to the quantum of compensation awarded by the Tribunal to the claimants.

10. Mr. Gupta, learned counsel for the insurer was at pains to demonstrate that the Tribunal has gone wrong at more than one place in computing the just and fair compensation payable to the claimants. It is argued that the Tribunal has wrongly taken the age of the deceased as 50 years, whereas the evidence on record was clearly demonstrating that the deceased, at the time of accident, was

58 years old. The Tribunal, without there being evidence on record and taking the age of the deceased in the age group of 50 to 55 erroneously applied the multiplier of 9 and assessed the compensation accordingly.

11. Mr. Gupta, learned counsel for the insurer also disputes the findings of the Tribunal that the deceased, at the time of accident, was receiving a monthly salary of Rs.7000/- from his employer. He also disputes the amount of compensation paid under the conventional heads.

12. Heard learned counsel for the parties and perused the record.

13. Having gone through the impugned award in its entirety and the evidence on record, I am of the view that there is no cogent and satisfactory evidence brought on record by the claimants to prove that the income of the deceased, at the time of accident, was Rs.7000 per month. The claimants, however, have demonstratively proved that the deceased was a mechanic and, therefore, a skilled worker. The wages payable to the skilled worker at the relevant point of time as per the Government order could be taken to be the income of the deceased. Both the learned counsel for the parties agreed that, at the relevant point of time, a skilled worker was being paid a monthly wages of Rs.5500/-. I also find that the Tribunal has omitted to add income by way of future prospects and with a view to determine as what should be the addition to the income of the deceased on account of loss of future prospects, we need to determine the age of the deceased in the first instance.

14. The claimants in the claim petition have claimed the age of the deceased as 50 years at the time of accident. The post mortem report placed on record, however, indicates the age of the deceased about 58 years. There is no other satisfactory evidence on record with regard to the age of the deceased. In that view of the matter, taking the age of the deceased in the age group of 50 to 55 by the Tribunal deserves to be acceded. Going by the age of the deceased, the multiplier of 11 was applicable and the same could not have been slashed down by the Tribunal. The legal position in this regard is well settled in the case of *Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121 and *National Insurance Company Ltd vs. Pranay Sethi and ors*, AIR 2017 SC 5157. The Tribunal has, however, rightly applied the deduction @ 1/3rd of the income of the deceased.

15. Since the deceased was in the age group of 50 to 60, addition of 10% towards future prospects should also be made. Some modification in the sums awarded under the conventional heads is also called for.

16. Notwithstanding that the claimants have not filed any appeal for enhancement or cross-objections, this Court is well within its powers, rather is under a duty to ensure that the compensation awarded is just and fair (see *Jitendra Khimshankar Trivedi and others v. Kasam Daud Kumbhar and others*; 2015 (4) SCC 237).

16. In view of the discussion made above, I hold the claimants entitled to the following amount:

Loss of dependency Rs.5,32,488/-(Rs.4034x12x11)

Funeral expenses Rs.15000/-

Loss of estate Rs.15000/-

Loss of spousal consortium to wife of deceased Rs.40,000/-

Loss of parental consortium @ 40000/- each to respondent Nos. 2 ad 3
Rs.80,000/-

Total Rs.6,82,488/-

17. The award passed by the Tribunal stands modified to the aforesaid extent and the appeal disposed of accordingly. There shall, however, be no change with regard to the interest awarded by the Tribunal. The insurer to deposit the balance amount in the Registry of this Court. The amount on its receipt shall be released by the Registry in favour of the claimants. Other terms and conditions of the impugned award shall remain, however, unaltered.