
(2013) 04 AHC CK 0211

In the Allahabad High Court

Case No : F.A.F.O. No's. 512 of 2004 and 241 of 2006

United India Insurance Co. Ltd.

APPELLANT

Vs

Varun Kumar and Others

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 149(2)(a)(ii), 173
Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2013) 4 ACC 658 : (2014) ACJ 1931 : (2013) 3 AWC 3241

Hon'ble Judges : Saeed-Uz-Zaman Siddiqi, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Tarun Kumar Misra, for the Appellant; Avinash Chandra, for the Respondent

Final Decision : Partly Allowed

Judgement

Rajiv Sharma and Saeed-Uz-Zaman Siddiqi, JJ.—As per office report dated 11.11.2005, notice upon respondents are served but none responds on behalf of respondent Nos. 3 and 4, who are the owner and driver of the vehicle. Since the matter is quite old, as such, with the consent of the counsel for the insurance company as well as counsel for the claimants, we proceed to hear the matter finally.

2. Heard Sri Tarun Kumar Misra, counsel for the United India Insurance Company Ltd. and Sri Avinash Chandra, counsel for the claimants.

3. In both the above captioned first appeal from orders u/s 173 of the Motor Accident Claims Tribunal, the judgment and award dated 31.5.2004 passed by the Motor Accident Claims Tribunal/Special Judge (E.C. Act)/Additional District Judge, Gonda in Motor Accident Claims Petition No. 20 of 2001, has been assailed.

4. Shorn off unnecessary details the facts of the case are that in the morning of 13.5.2000, from Mahila Hospital, Gonda, claimants' mother, namely, Smt. Urmila

Srivastava was going to Village Basantpur Raja on a Jeep, bearing registration No. U.P. 055/7548. When the Jeep reached between near pullia (culvert) situate at Petrol Pump Jainagra village, and Police Station Kotwali Nagar, district Gonda, Balrampur road, due to rash and negligent driving of the driver of the Jeep, the Jeep plunged in a ditch and turned turtle, as a consequence thereof, the passengers including claimants' mother sitting in Jeep sustained injuries. Claimants' mother was admitted in District Hospital, Gonda, where she succumbed to injuries.

5. The information of the said incident was given by one Sanjay Misra and on that basis F.I.R. relating to Case Crime No. 183 of 2000, under Sections 279, 337, 338 I.P.C. was lodged against the driver of the Jeep, namely. Santosh Kumar. Subsequently, on the death of the claimants' mother. Section 304A I.P.C. was added in the said case crime number. At the time of death of the claimants' mother, she was working as Mukhya Sewika at Bal Vikas Pariyojana, Government of Uttar Pradesh and was getting Rs. 7,246 per month from salary and her agriculture income was Rs. 70,000.

6. In order to get compensation, claimants, who are the only legal heirs, preferred claim petition, bearing No. 20 of 2001, before the Motor Accident Claims Tribunal/Special Judge (E.C. Act)/Additional District Judge, Gonda (hereinafter referred to as the "Tribunal"), claiming Rs. 26,40,000 as compensation. In the written statement filed on behalf of the respondent No. 2 (Chheddan), it was pleaded that he was the owner of Jeep No. U.P. 55/7548, which was insured with United India Insurance Company Ltd., at the time of accident. He denied that deceased Urmila was travelling in his jeep and also denied the factum of accident on the date, time and place. The defence set up by him was that due to political pressure, the police had lodged a false report. No written statement was filed on behalf of driver of the Jeep, namely, Santosh Kumar. In the written statement filed on behalf of insurance company, it was pleaded that no information was given about said accident to the insurance company.

7. On the pleadings of the parties, the Tribunal framed the following issues:

1. Whether on 13.5.2000, at about 7.00 a.m., Jeep No. U.P. 55/7548 was met with the accident due to rash and negligent driving of driver of the Jeep within the vicinity of village Jainagra, police station Kotwali Nagar, District Gonda, as a consequence whereof, claimants' mother Smt. Urmila Srivastava, who was travelling in the Jeep sustained serious injuries and succumbed to death?

2. Whether on the above date, the above vehicle was insured with respondent No. 3 United India Insurance Company Ltd.?

3. Whether on the date, time and place, driver of the above Jeep No. U.P. 55/7578 was having valid licence and valid papers?

4. To what amount of compensation, the claimants are entitled?

8. In support of the claim petition, the claimants examined Arun Kumar as P.W. 1, Varun Kumar as P.W. 2 and Raj Naryan as P.W. 3 and produced documentary evidence. Cheddan, who was the owner of the vehicle, was examined as D.W. 3 and he has not produced any document. United India Insurance Company had examined Rajendra Prasad Shukla as D.W. 1, Shailendra Kumar Srivastava as D.W. 2, Sabhajeet Tripathi as D.W. 4, Murlidhar Srivastava as D.W. 5 and Narsingh as D.W. 6 and has produced documentary evidence.

9. On a critical analysis of the evidence produced by the parties, the Tribunal decided issue No. 1 in the affirmative and held that Jeep No. U.P. 055/7548 had met with the accident due to rash and negligent driving of the driver of the Jeep in within the vicinity of village Jainagra, police station Kotwali Nagar. District Gonda, as a consequence whereof, claimants mother Smt. Urmila Srivastava, who was travelling in the Jeep sustained serious injuries and died on account of the injuries received by her in the said accident. While dealing with issue No. 2, the Tribunal has reached to the conclusion that on the date of accident, i.e., on 13.5.2000, Jeep No. U.P. 055/7548 was insured with United India Insurance Company Ltd. While dealing with issue No. 3, the Tribunal came to the conclusion that on the date of accident, the driver of the Jeep in question was having valid driving licence as well as other valid papers. While deciding issue No. 4, the Tribunal, while placing reliance upon the statement of P.W. 2 Varun Kumar, who was the son of the deceased, that there was no rule for deducting G.P.F. from her mother's salary, determined Rs. 7,246 as monthly income of the deceased and after deducting one-third amount, the Tribunal opined that monthly income of the deceased was Rs. 4,830. As on the date of accident, the deceased was aged between 44-45 and as such, on applying "14" multiplier, the Tribunal came to the conclusion that claimants were entitled to get compensation to the tune of Rs. 8,31,440 alongwith interest at the rate of 9% per annum from the date of filing the claim petition till realization of the awarded amount. Accordingly, the Tribunal directed the United India Insurance Company Ltd. to pay the compensation under award within a month.

10. Feeling aggrieved, F.A.F.O. No. 512 of 2004 has been filed by the United India Insurance Company and F.A.F.O. No. 241 of 2006 has been filed by the claimants for enhancement of the awarded amount.

11. Since common questions of facts and law are involved in both the appeals, as such, they are being decided by a common order.

12. Learned counsel for the United India Insurance Company Ltd. did not dispute the factum of accident and resultant expiry of deceased Smt. Urmila Srivastava.

13. The only point which has been urged, during the course of arguments, from the side of the insurance company is that liberty to recover the amount from the owner may be given, as the driver who was driving the vehicle, at the time of accident, did not possess the requisite valid licence. Further, vehicle in question was registered as Maxi Cab and insured as a Private Car and as such, the owner

of the vehicle had violated the terms and conditions of the policy.

14. Motor Vehicles Act is a beneficial statute and as such, in spite of the fact that the insurance company under law has no liability to pay the compensation but keeping in view the objects of the Act, which are beneficial in nature, it would be proper for the insurer to satisfy the award.

15. The question of statutory liability to pay the compensation was discussed in detail by the Supreme Court in *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others*, , where it was held that exclusion clause in the contract of Insurance must be read down being in conflict with the main statutory provision enacted for protection of victim of accidents. It was laid down that the victim would be entitled to recover the compensation from the insurer irrespective of the breach of the condition of policy. The Supreme Court in *Sohan Lal Passi's* case analyzed the corresponding provisions under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988 and approved the decision in *Skandia*.

16. In *New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, , the Apex Court has held that the insurer who has been made liable to pay the compensation to third parties on account of issuance of certificate of insurance, shall be entitled to recover the same if there was any breach of the policy condition on account of the vehicle being driven without a valid driving licence. The relevant portion of the report is extracted hereunder:

21. A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

23. It is advantageous to refer to a two-Judge Bench of this Court in *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others*, . Though the said decision related to the corresponding provisions of the predecessor Act (Motor Vehicles Act, 1939) the observations made in the judgment are quite germane now as the corresponding provisions are materially the same as in the Act. Learned Judge pointed out that the insistence of the Legislature that a motor

vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the insurance company but to protect the members of the community who become sufferer on account of accidents arising from the use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the courts were not recoverable by the victims (or dependants of the victims) of the accident. This is the *raison d'être* for the Legislature making it prohibitory for motor vehicles being used in public places without covering third-party risks by a policy of insurance.

24. The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in *Sohan Lal Passi Vs. P. Sesh Reddy and others*, .

25. The position can be summed up thus: The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties. If there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence.....

17. Again in *United India Insurance Company Ltd. Vs. Lehu and Others*, of the report the Supreme Court referred to the decision in *Skandia. Sohan Lal Passi and Kamla* and held that even where it is proved that there was a conscious or willful breach as provided u/s 149(2)(a)(ii) of the Motor Vehicles Act, the insurance company would still remain liable to the innocent third party but may recover the compensation paid from the insured. The relevant portion of the report is extracted hereunder:

18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen, in order to avoid liability under this provision it must be shown that there is a "breach". As held in *Skandia* and *Sohan Lal Passi* cases the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance.....

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20.....If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would

remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view.

18. The Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , again emphasized that the liability of the insurer to satisfy the decree passed in favour of the third party was statutory. It approved the decision in Sohan Lal Passi, Kamla and Leheru. Paras 73 and 105 of the report are extracted hereunder:

73. The liability of the Insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

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105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.

19. In Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, , the Apex Court has held that the insurer is liable to pay the quantum of compensation fixed by the Tribunal to the claimants at the first instance and recover it from insured and for the purpose of recovering the same from the insured owner of vehicle, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.

20. The Apex Court in the case of National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, , after considering the object of the Motor Vehicles Act, 1988 was of the opinion that it would be proper for the Insurer to satisfy the award, though in law it has no liability. In such cases the insurer has been given the option and liberty to recover the amount from the Insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit.

21. In view of the above legal proposition of law, we are of the view that the liability of the insurance company to satisfy the award in the first instance is statutory. It is bound to satisfy the same and entitled to recover the amount of compensation paid from the driver and the owner.

22. No other point has been pressed by the insurance company during the course of arguments.

23. Insofar as question of enhancement of compensation is concerned, Sri Avinash Chandra, learned counsel for the claimants, while placing reliance upon the judgment of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , has submitted that mother of the claimants

late Urmila Srivastava was working on the post of Mukhya Sewika in the Bal Vikas Department, Government of Uttar Pradesh and she was a Government servant holding the pensionable post and would retire in the year 2015. He submits that the Tribunal, while awarding compensation to the claimants, has neither considered the income/salary of the mother of the claimants upto the age of superannuation alongwith the other consequential service benefits nor status and the source of agriculture income. He submits that at the time of accident, the mother of the claimants was receiving salary to the tune of Rs. 7,216 per month and the said amount would be increased due to enhancement in the dearness allowances, increments, selection grade and promotional pay-scale provided for the said post in future and if the same would be considered, the amount would be much higher but the Tribunal erred to determine the same in detail.

24. Considering the matters in detail, it comes out that the claim of the claimants that the Tribunal should have awarded additional amount of compensation under the head of future prospects considering that if deceased was working as Mukhya Sewika, she would have progressed in her career and earned much more money than the emoluments that he was receiving. It is not in dispute that the deceased had the future prospects of being promoted and in that event receiving salary in the higher scale apart from receiving increments etc., in the course of time. The Hon'ble Supreme Court in the case of Sarla Verma (supra) held as under:

24. In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years.

(Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary or (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure, therefore, should be made only in rare and exceptional cases involving special circumstances.

25. In view of the ratio of the aforesaid judgment of Hon'ble Supreme Court in Sarla Verma's case (supra), benefit of future prospects should be granted by adding 30% of the total income of the deceased.

26. In the instant case, this has to be considered alongwith a fact that deceased

was working as Mukhya Sewika in Bal Vikas Department and if had deceased alive, she would have retired on attaining the age of superannuation in the year 2015 and further at the time of accident, the deceased earned Rs. 7,246 and aged about 44-45 years. Therefore, we are of the view that 30% of the addition is considered appropriate to be made on the income of the deceased for future prospects in view of Sarla Verma (supra).

27. For the reasons aforesaid, loss of income is determined at Rs. 7,246, out of which. 1/3rd amount should be deducted as self expenses, i.e., Rs. 2,415 and on applying the multiplier of 14 adopted for the purpose of arriving at a just compensation, the amount comes to $(4,830 \times 12 \times 14)$ Rs. 8,11,440. Further, as decided above, on adding future prospects @ 30%, i.e., Rs. 2,43,432, the amount of compensation comes to Rs. 10,54,872, to which the claimants are entitled. However, award of the Tribunal is maintained on other aspects, i.e., Rs. 15,000 towards loss of consortium and love and affection and Rs. 5,000 towards funeral expenses.

28. In the result, both the appeals are partly allowed. The award passed by the Motor Accident Claims Tribunal, Gonda dated 31.5.2004 is modified to the extent that claimants/appellants are entitled to a total compensation of Rs. 10,54,872 together with interest @ 9% per annum on the enhanced amount only from the date of filing of the claim petition by the claimants. The United India Insurance Company Ltd. to make compliance of this order within a period of three months from the date copy of this order is produced before them. However, liberty is granted to the United India Insurance Company Ltd. to recover the amount from the owner of the vehicle in accordance with law. Registry is directed to transmit the statutory amount deposited by the appellants to the Tribunal concerned forthwith and the Tribunal, on receipt of the amount, shall pay the same to the claimants subject to its verification.

Registry shall remit the lower court record forthwith.