

(2023) 08 J&K CK 0014
In the Jammu And Kashmir High Court
Case No : CMAM No. 41 Of 2010

United India Insurance Company Limited	APPELLANT
Vs	
Shahzada & Ors	RESPONDENT

Date of Decision : 09-08-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 13(C), 15, 149(2), 21(2)
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 279, 304A, 427

Citation : (2023) 08 J&K CK 0014

Hon'ble Judges : M. A. Chowdhary, J

Bench : Single Bench

Advocate : Mohammad Sultan, N. H. Khuroo

Final Decision : Disposed Of

Judgement

M. A. Chowdhary, J

1. The Appellant-Insurance Company has preferred this appeal against the award dated 18th of December, 2009 passed by the learned Motor Accident Claims Tribunal, Srinagar in a claim Petition bearing No. 50/2006 titled 'Mrs. Shahzada & Ors. v. United Insurance Company & Ors.', whereby the claimants/ Respondents 1 to 4 herein were granted an amount of Rs.9,30,000/- + 25,000/- with 6 % interest, inclusive of interim relief, from the date of presentation of the claim Petition till final realization.

2. The impugned award has been assailed by the Appellant-

Insurance Company, inter alia, on the following grounds:

a. "That besides raising valid and legal objections, it was specifically contended that the driver of the alleged vehicle was not holding the valid driving licence at the time of accident and also that the offending vehicle was being plied without valid vehicular documents which fact was proved to the satisfaction of the Hon'ble Tribunal when an application was moved for calling upon the owner and

driver of the vehicle to submit the documents in terms of Section 134 (C) of the Motor Vehicles Act and despite being directed, the documents were never ever furnished, as such, the company was not liable to indemnify the insured. The fact that the driver Fayaz Ahmad Mir was holding a driving licence for plying MPMV/ Taxi car til 16-01-2003 and that on the date of accident i.e. 28-01-2006, he was not holding a valid driving licence and the owner/ insured knowing the said fact having allowed the said driver to ply the vehicle has to be saddled with the liability instead of the appellant-company. The Tribunal, however, without looking into that aspect of the matter proceeded to fasten the liability upon the appellant-company, as such, erred fundamentally in law therefore, the impugned award on this score is liable to be quashed;

b. That the fact of breach of terms and conditions of the insurance by the insured were also proved by the appellant-company and no evidence whatsoever had been produced in rebuttal to the Tribunal in this behalf. Despite the fact that the Tribunal was being conscious about it had fastened the liability of Rs.25,000/- upon the Driver of the offending vehicle without any cogent and substantial reason. The award on this score also is liable to be set aside;

c. That the amount of award passed in favour of the respondents 1 to 4 has been passed mechanically and on a higher side and without there being any cogent and substantial evidence, as such, the impugned award is liable to be set aside;

d. That the impugned award has been passed by misdirecting the law on the subject, as such, the impugned award is liable to be set aside;

e. That the impugned award passed by the trial court has caused great prejudice and harm to the appellant. Since the impugned award has visited the appellant with evil as well as penal consequences, therefore, the appellant has no option but to seek setting aside of the said order through the medium of this appeal;

f. That the trial court has miss-appreciated the controversy involved in the matter on facts as well as on law while passing the impugned award, as such, is liable to be set aside; and

g. That the appellant company is holding the corpus in trust and in the capacity of being trustees of the public money are accountable for every penny of it and any direction which would have the effect of jeopardizing the rights of the appellant-company to protect its right to hold the public money in trust cannot sustain, therefore, on this score also, the impugned award is liable to be quashed."

3. Learned Counsel for the Appellant has restricted his arguments mainly to the two points; first, that the quantum of compensation was exorbitant and, second, that the driving license of the driver was not valid and effective as on the date of accident to drive the offending vehicle (Tipper), as such, the owner of the vehicle for breach of contract of insurance was not entitled to be indemnified by the Appellant-Insurer, therefore, the Appellant-Insurance Company should not have

been directed to indemnify the liability of the owner of the vehicle for breach of the contract of insurance.

4. Learned Counsel has further argued that the deceased was shown as a carpenter, whose income was claimed at Rs.15,000/- by the claimants, whereas, without any evidence, the Tribunal had taken the income of the deceased at Rs.5,000/- per month, which was on higher side, as in those days in the year 2006, the carpenters had no such income. Learned Counsel further submitted that the Tribunal ought to have fixed the income of the deceased carpenter as per the Minimum Wages Act and, as such, on taking the monthly income of Rs.5,000/- of the deceased, the Tribunal has committed an error and also that the loss of estate has been fixed at Rs.1.00 lac which was also on the higher side as against the settled position of Rs.15,000/-.

5. It is further argued by the learned Counsel for the Appellant that the driver of the offending vehicle was having MPMV/Taxi Car driving license in his favour, which had been issued on 17th of January, 2000 and was valid upto 16th of January, 2000, but was later on renewed upto 16th of January, 2006, therefore, the Respondent-driver was not holding a valid and effective driving license on 28th of January, 2006, that is the date of accident, as the license had not been renewed after 16th of January, 2006. Moreover, as per the learned Counsel, the vehicle that the Respondent-driver was driving was a Tipper, for which a 'Heavy Goods Vehicle' (HGV) license was required, thus, the Respondent-driver was not having a 'Heavy Goods Vehicle' (HGV) driving license and the license that he had of MPMV/Taxi Car was also not valid and effective after 16th of January, 2006, whereas the accident had taken place on 28th of January, 2006. He further argued that the driving license, being invalid and not effective as on the date of accident, as such, there was breach of contract of insurance between the Appellant-insurer and the Respondent-insured (owner), meaning thereby that there was no liability of the Appellant-insured to indemnify the Respondent-insured.

6. Mr Khuroo has also argued that the quantum of compensation granted by the Tribunal is required to be slashed down for a just compensation, inasmuch as the public money in the hands of the Insurance Company cannot be treated as a bonanza and there has to be just compensation which has not been determined properly by the Tribunal in the present case. It was further submitted that in view of the invalidity of the license of the driver of the offending vehicle, the liability to indemnify the insured, as held by the Tribunal, is also required to be withdrawn and the Appellant-Insurance Company has to be held entitled to recover the amount of compensation from the insured for breach of contract on this count.

7. Learned Counsel for the Claimants/ Respondents 1 to 4 herein argued that the Tribunal has accepted the income of the deceased at Rs.5,000/-, which was reasonable and since the claimants could not have produced any documentary evidence so as to prove the income of the carpenter, who was working in private

sector, the Tribunal was within its competence to take the income of the deceased on a guesswork in view of the prevailing market rate with regard to wages of the carpenters. He has further argued that it is not on a higher side for a carpenter to earn at least Rs.200 per day from his work. Learned Counsel has also argued that as against the claim of Rs.15,000/- per month by the claimants, the Tribunal had taken the income of the deceased at Rs.5,000/- only which, by no stretch of imagination, can be said to be on higher side or exorbitant, to be slashed down.

8. Mr Sultan further argued that the Tribunal has rightly granted the compensation on other counts as well and, therefore, the quantum of compensation granted in favour of the claimants does not call for any interference. The learned Counsel, accordingly, prayed that the amount of compensation granted by the Tribunal, in terms of the impugned award, be maintained.

9. Learned Counsel appearing for Respondents 5 and 6 (owner and driver of the offending vehicle), on the other hand, argued that the Respondent-driver was holding a license to drive a 'Light Motor Vehicle' (LMV) and that the unladen weight of the offending vehicle, i.e., Tipper, as per the registration certificate, was just 6250 kgs, which falls within the definition of a 'Light Motor Vehicle' (LMV) and, therefore, the Respondent-driver was holding a valid and effective driving license to drive the offending vehicle on the date of accident. He has further argued that, as per the proviso to Section 15 of the Motor Vehicle Act, even after expiry of the validity of the driving license of the Respondent-driver on 16th of January, 2006, it was valid for a further period of 30 days, therefore, as on the date of accident, i.e., 28th of January, 2006, the driving license of the Respondent-driver has to be deemed valid and effective as per proviso to Section 15 of the Motor Vehicles Act and, thus, there is no breach of contract between the Appellant-insurer and the Respondent-insured, so as to absolve the Respondent-insured from its vicarious liability to indemnify the Respondent-driver for its tortious liability.

10. Heard learned Counsel for the parties, perused the pleadings on record and considered the matter.

11. One Lateef Ahmad Dar S/O Ali Mohammad Dar R/O Nilhama, Pulwama, while riding his motor cycle from Nilhama and on reaching at Khadermuh, was hit by Tipper No. MP-20-GA-0254, driven by its driver rashly, negligently and carelessly. The motor cyclist suffered fatal head injury and succumbed to the said injury on the same date in Government SMHS Hospital, Srinagar. A case was registered by Police Station, Pulwama vide FIR No. 26/2005 for the commission of offences punishable under Sections 279, 304A and 427 of the RPC. His legal heirs, including his wife, a minor daughter and parents, filed a claim Petition before the Tribunal, claiming compensation for the death of the deceased-motor cyclist.

12. The Respondents-owner and driver denied their liability for the reason that

the death of the deceased had been caused due to the collusion of two vehicles, therefore, the Petition is not maintainable for non-joinder of necessary parties, whereas the Insurance Company, in its Objections filed before the Tribunal, alleged that the offending vehicle was being driven by the driver without having a valid driving license and raised a statutory defence in terms of Section 149(2) of the Motor Vehicles Act, however, the Insurance Company admitted the currency of the insurance policy of the offending vehicle, as on the date of accident.

13. The Tribunal, after framing the issues and leading of evidence by the parties, decided the case granting compensation in favour of the claimants payable in a major portion by the Appellant-insurer and Rs.25,000/- by the Respondent-driver.

14. Adverting to the points raised by the learned Counsel for the Appellant with regard to quantum of compensation, it is noted that the Tribunal had, on common knowledge, accepted that the carpenters are in great demand in the Valley, where carpenters from nearby States are also employed, as such, the deceased would have been earning Rs.250/- per day at least as wages and, presuming even if the deceased would be getting only 20 working days in a month, he would not be earning less than Rs.5,000/-per month and, accordingly, on spending 1/3rd of his income on his own expenses, he would be contributing an amount of Rs.3,400/- monthly on the sustenance of his wife, minor children and parents, who are claimants in the case. On this analogy, the annual loss of dependency was calculated at Rs.40,800/- and, having regard to the age of the deceased as 30 years and with the applicable multiplier of 18, the total loss of dependency was worked at Rs.7,34,400/-. The claimants/ Respondents 1 to 4 herein were, finally, awarded the compensation on the following counts:

S. No.

Head under which compensation granted

Compensation granted by the Tribunal (Rs.)

01.

Loss of Dependency/ Income

7,34,400/-

02.

Loss of Love and Affection

40,000/-

03.

Loss of Consortium

50,000/-

04.

Loss of Estate

1,00,000/-

05.

Funeral Expenses

5,000/-

Total

Rs. 9,29,400/-

Rounded to Rs. 9,30,000/-

15. In the considered opinion of this Court, the Tribunal has not committed any error by taking the income of the deceased as Rs.250/- per day as the wages of a carpenter and the Tribunal has also very reasonably taken only 20 working days in a month to work out as Rs.5,000/- income of the deceased and there being no dispute with regard to the 30 years age of the deceased and the applicable multiplier of 18, the total loss of dependency was rightly arrived at Rs.7,34,400/- by the Tribunal, which requires no interference from this Court.

16. Learned Counsel for the Appellant has also argued that the amount of compensation on account of loss of estate was granted as Rs.1.00 lac, which was on the higher side. This contention of the learned Counsel seems to be genuine as the loss of estate is generally accepted by the Hon'ble Apex Court and all other courts of the country at Rs.15,000/-, therefore, this amount of compensation of Rs.1.00 lac is required to be slashed from Rs.1.00 lac to Rs.15,000/-. Likewise, the loss of consortium of Rs.50,000/-, in the considered opinion of this Court, is also on the higher side and is required to be slashed from Rs.50,000/- to Rs.40,000/-, therefore, the compensation on account of loss of consortium is also to be modified to the said extent. However, the compensation on account of funeral expenses is on the lower side and is required to be enhanced from Rs.5,000/- to Rs. 15,000/-. For the aforesaid reasons, the amount of compensation granted by the Tribunal is modified as under:

S. No.

Head under which compensation granted

Compensation granted by the Tribunal (Rs.)

Compensation modified (Rs.)

01.

Loss of Dependency/ Income

7,34,400/-

7,34,400/-

02.

Loss of Love and Affection

40,000/-

40,000/-

03.

Loss of Consortium

50,000/-

40,000/-

04.

Loss of Estate

1,00,000/-

15,000/-

05.

Funeral Expenses

5,000/-

15,000/-

Total

Rs. 9,29,400/-

Rounded to Rs. 9,30,000/-

Rs. 8,44,400/-

Rounded to Rs.8,45,000/

17. Reverting to the second contention with regard to the validity of the driving license of the Respondent-driver of the offending vehicle, as raised by the learned Counsel for the Appellant, it is admitted that the Respondent-driver had a 'Light Motor Vehicle'-LMV (MPMV/ Taxi Car) license, which having been issued on 17th of January, 2000, had been renewed upto 16th of January, 2006. The offending vehicle, being of the unladen weight of 6250 kgs, has to be taken as a 'Light Motor Vehicle' (LMV) in view of the fact that the 'Light Motor Vehicle' has been defined in sub-section 21 of Section 2 of the Motor Vehicles Act "as a transport vehicle or omnibus, the gross vehicle weight of either of which, or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kgs and, therefore, having regard to the unladen weight of the

offending vehicle as 6250 kgs, the same has to fall in the class of a 'Light Motor Vehicle' (LMV) and not a 'Heavy Goods Vehicle' (HGV), whose unladen weight exceeds 12000 kgs. That being so, the offending vehicle, being of the weight of 6250 kgs, has to be treated as a 'Light Motor Vehicle' (LMV), for which the license of 'Light Motor Vehicle' (LMV) was required, which the Respondent-driver had to his credit.

18. Now, coming to the question as to whether after 16th of January, 2006 upto which date the driving license of the Respondent-driver had been renewed, would be deemed invalid and ineffective for driving the vehicle and, for this, we have to advert to Section 15 of the Motor Vehicle Act. The first proviso to Section 15 of the Act provides "provided that in any case where the application for the renewal of the licence is made more than thirty days after the date of its expiry, the driving licence was to be renewed with effect from the date of its renewal", which means that there is a grace period of thirty days from 16th of January, 2006 upto 15th of February, 2006, wherein driving licence had to be renewed, thus, covering the date of accident on 28th of January, 2006, for the deemed validity of the licence as provided in the Statute.

19. The contentions of the learned Counsel for the Appellant on both the counts that the driving license of a 'Heavy Goods Vehicle' (HGV) was required to drive the offending vehicle and that the licence having been issued in favour of the driver of the offending vehicle was also not valid as on the date of accident having expired before the date of accident are both misplaced and are rejected. It is not comprehensible as to why the Respondent-driver was ordered to make the part payment of Rs.25,000/- of the award. This Court records that, in view of his driving licence being valid and effective, to saddle him even with part payment is misplaced and this direction is required to be and is, hereby, set aside.

20. The aforesaid modified amount of compensation shall be payable to the claimants/ Respondents 1 to 4 herein in tune with the award passed by the Tribunal, payable as a whole by the Appellant-insurer. There shall, however, be no order as to costs.

21. The amount of compensation which has been deposited in the Registry of this Court is directed to be sent to the learned Tribunal, through available mode, along with a copy of this Judgment, for its onward disbursement, in favour of the claimants/ Respondents 1 to 4 herein in terms of the award of the Tribunal, after proper identification. Excess amount, if any deposited, shall be reimbursed to the Appellant-Insurance Company.

22. Appeal is disposed of as above, along with all connected CMs.