

(2020) 07 J&K CK 0100
In the Jammu And Kashmir High Court
Case No : CMAM No. 34, 35 Of 2014

United India Insurance Company Ltd	Vs	APPELLANT
Mohammad Subhan Bhat And Others		RESPONDENT

Date of Decision : 02-07-2020

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120(B), 302, 307, 324, 427
Arms Act, 1959 — Section 7, 25
Motor Vehicles Act, 1988 — Section 165

Citation : (2020) 07 J&K CK 0100

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Nissar A. Dandroo, Mohd. Altaf Khan

Final Decision : Disposed Off

Judgement

Sanjay Dhar, J

1. The instant appeals have been filed by the appellant against the Award dated 08.10.2013 passed by the Motor Accidents Claims Tribunal, Srinagar (hereinafter referred to as 'the Tribunal'). Before coming to these appeals, let me give a brief background of the events that have led to the filing of these appeals.

2. On 31.07.2002, the deceased, namely, Mohd. Ayoub Bhat and Shakeel Ahmed Baba were travelling in a Maruti Car bearing No. CH-01-V/1342 that was being driven by one Fayaz Ahmed Bhat. At about 9.25 A.M, on reaching near Gol Masjid Tral, the vehicle in question was subjected to firing by unidentified gunmen, resulting in fatal injuries to both the deceased as well as the driver-cum-owner of the vehicle in question. The legal heirs/dependants of the aforesaid two deceased filed two separate claim petitions before the Tribunal, claiming compensation against the legal heirs of the owner-cum-driver and the appellant-insurance company. The legal heirs of the deceased owner-cum-driver did not contest the claim petitions, whereas the appellant-insurance company contested

the claim petitions before the Tribunal by filing its objections.

3. While admitting the currency of policy of the insurance of the offending vehicle covering the period of the occurrence, the insurance company claimed that the accident was not caused due to negligence of the driver of the offending vehicle, inasmuch as the police has filed charge-sheet for offences under Sections 302, 307, 427, 120-B, 324 RPC and Section 7/27 of the Arms Act. On this ground it was urged that the claim petition is not maintainable. It was further contended that the driver of the vehicle in question was not holding a valid driving licence at the time of the accident and as such, the insurance company is not liable to pay any compensation to the claimants. The insurance company also contended that the deceased were travelling as gratuitous passengers in the offending car and that risk to their lives was not covered under the terms of the policy of insurance. On the basis of the pleadings of the parties, the Tribunal framed the following issues:-

(i) "Whether on 03.07.2002, the deceased Mohd Ayub Bhat HC,JKAP was deputed as Security Guard of one Naib Tehsildar, Awantipora an during the course of his duty with Naib Tehsildar in Maruti Car bearing registration No.CH-01-V/1342 and near Main Chowk, Naib Tehsildar was given to understand that as he has been mandated as NC Assembly candidate, therefore, he may not proceed ahead because some unidentified gunmen has planned to attack him, but the Naib Tehsildar turned deaf ear to their request and proceeded ahead and when he reached near Gol Masjid Tral, militants attacked him, due to which deceased sustained bullet injuries on various parts of his body and succumbed to the same? OPP

(ii) Whether this Tribunal has no jurisdiction to try the claim petition, as such it merits dismissal against the respondent company? OPR-1

(iii) Whether the petitioner has no causes of action to file the claim petition against then respondents, as such the same merits dismissal? OPRs

(iv) Whether the respondent/driver of the offending vehicle was having driving license on the date of accident, as such the respondent company cannot be saddled with liability?.. OPR-1

(v) In case the issue no.1 is proved in affirmative, to what amount of compensation, the petitioners are entitled to, from whom and in what, - proportion?.. OPP

4. The Tribunal vide the the impugned judgement, after holding that the death of the deceased has arisen out of use of the offending vehicle and that there was no breach of policy conditions on the part of the insurer, allowed the two claim petitions vide the impugned award.

5. The common award passed by the Tribunal is under challenge through the medium of instant appeals on the following grounds:-

(i) The death of the deceased has not been caused due to any vehicular accident, but as a result of militant activities and as such, the claim petitions are not maintainable.

(ii) The deceased was not holding a valid driving licence, which fact stands established before the Tribunal and in spite of that, the Tribunal has decided the issue in this regard against the insurance company.

(iii) As per the terms of policy of the insurance, the risk to the lives of the occupants of the car in question was not covered and the same has been proved by the insurance company before the Tribunal, but in spite of this, the Tribunal has recorded a finding against the insurer.

6. I have heard learned counsel for the parties. I have also gone through the grounds of appeal, the impugned award and record of the Tribunal.

7. The very first contention of the appellant-insurance company is that the claim petition is not maintainable because the death of the deceased has not taken place due to rash and negligent act on the part of the driver of the vehicle in question. According to the appellant, it is a case where death of the deceased was result of firing by unidentified gunmen upon the vehicle in which they were travelling and the police, after investigation of the case, found that offences under Sections 302, 307, 427, 120-B, 324 RPC and Section 7/27 of the Arms Act are established. It is urged that unless it is shown that the accident was caused due to negligence of the driver of the offending vehicle, no liability can be fastened upon the insured and resultantly the insurance company is not liable to indemnify the insured.

8. In order to determine the above issue, it is necessary to have a look at the relevant provisions of the Motor Vehicles Act. Chapter-XII of the Act relates to Claims Tribunal and Section 165 provides for establishment of the Motor Accidents Claims Tribunal for a particular area. Sub section (1) of the said provision is relevant to the context and the same is reproduced as under:-

Section 165(1)

"A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Explanation.-For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under section 140".

9. From the perusal of the aforesaid provision, it appears that a Claims Tribunal is established for adjudicating upon the claims for compensation in respect of

accidents involving the death or bodily injuries to persons "arising out of use of motor vehicles" or damages to any property of a third party so arising or both. It is nowhere mentioned in the aforesaid provision that the Claims Tribunal will adjudicate upon claims for compensation in respect of only those accidents where there is negligence of driver of the vehicle involved. The Claims Tribunal possesses the jurisdiction to assess and award compensation in respect of all cases of accidents arising out of use of motor vehicle.

10. The Hon'ble Supreme Court in the case of Shivaji Dayanu Patel and Anr. Vs. Vatschala Uttam More (Smt), reported as (1991) 3 SCC 530 had an occasion to interpret the expression "use of motor vehicle" in the context of provisions contained in Section 165 of the Act. It was a case of a collision between a petrol tanker and a truck, as a result of which the petrol tanker had gone off the road, about 20 feet away from the highway and due to overturning of the tanker, the petrol contained in it had leaked out, resulting in an explosion. The said explosion caused the death of some persons, who had gone there to collect the leaked petrol from the tanker. In the backdrop of these facts, the Hon'ble Supreme Court observed as under:-

The expression 'arising out of the use of motor vehicles" was also used by Parliament in sub-section (1) of Section 110 of the Act wherein provision was made for constitution of Motor Accidents Claims Tribunals for speedy and expeditious adjudication of claims of compensation in respect of accidents involving death or bodily injuries to persons arising out of the use of motor vehicles or damages to any property of a third party so arising or both. Furthermore, by subsection (1) of Section 94 of the Act an obligation was imposed that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter VIII of the Act. Section 95 prescribed the requirements of such insurance policies as well as limits of liability. In arising out of the use of the vehicle in a public place. While construing the expression "arising out of the use of a motor vehicle" in Sub-section (1) of Section of the Act, regard will have to be had to the fact that expressions to the same effect were also contained in sections 95 and 110 of the Act. clause (b) of Sub-section (1) of Section 95, it was laid down that the policy of insurance required must be a policy which insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) against (i) any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place and (ii) the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. While construing the expression "arising out of the use of a motor vehicle" in sub-section (1) of Section of the Act, regard will have to be had to the fact that expressions to the same effect were also contained in Sections 95 and 110 of the Act."

11. The Hon'ble Court in para-36 of the aforesaid judgment further went on to observe as under:-

"36. This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A of the Act, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Section 92-A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in section 92-A enlarges the field of protection made available to the victims of accident and is in consonance with the beneficial object underlying the enactment."

12. From the aforesaid enunciation of law on the subject, it is clear that a claim petition is maintainable, if the accident has arisen out of use of the motor vehicle and it is not necessary that the accident should have taken place due to negligence of the driver of the vehicle. This position of law has been reiterated in a number of subsequent judgments of the Hon'ble Supreme Court as well as of our own High Court. In "Bipal Bashi Das Vs. Oriental Insurance Company Ltd., reported as 2008 (III) ACJ 1728", the claim petition by widow of the deceased, who was one of the dead passengers travelling in a jeep that was fired upon by extremists, was held to be maintainable. Similarly in "Smt. Rita Devi and others Vs. New India Assurance Company Limited, reported as 2000 (5) SCC 113, the Hon'ble Supreme Court has held that the incident of murder of driver of an Auto Rikshaw hired by the passengers, who committed felony of stealing of Auto Riskhaw is an accident within the meaning of Motor Vehicles Act.

13. The death of the deceased in the instant case has resulted on account of firing by unidentified gunmen on the vehicle, in which they were travelling. The said incident, in view of the law discussed herein before, can safely be termed as an accident arising out of use of motor vehicle and as such, the claim petition is maintainable. The finding of the Tribunal in this regard does not deserve any interference.

14. Another ground taken by the appellant in the instant appeals is that the policy of insurance of the vehicle involved in the accident covered risk to only 3rd parties and not to the occupants of the car. To buttress this point, the appellant has relied upon the statement of Mr. M.K. Raina, Senior Branch Manager, United India Insurance Company Limited, Pulwama, who has stated in his examination in chief that premium for covering risk of occupants of the vehicle in question was not received by the company and as such, risk to their life was not covered under the terms of the policy.

15. A careful perusal of the cover note of the insurance policy, photo copy whereof is on record of the Tribunal, reveals that the insurance company has received premium from the insured, which covers own damage also meaning thereby that it is a comprehensive package policy. The things become clearer when we have a look at the cross-examination of Sh. M.K. Raina, Branch Manager. He has stated in his cross-examination that the vehicle in question was covered by a comprehensive policy. It is not in dispute that a comprehensive package policy of a private car covers the risk to the life of the occupants of the car. It is not the case of the insurance company that the deceased had paid any fare for travelling in the vehicle in question or in other words it is not the case of the insurance company that the vehicle in question was being plied for hire and reward. Therefore, the contention of the insurance company that risk to the life of the deceased was not covered by the terms of the policy conditions, is without any merit.

16. Although the appellant-insurance company has urged in the appeal that the quantum of compensation awarded by the Tribunal in favour of the claimants in both the claim petitions is on higher side, yet no arguments in this regard were advanced by the learned counsel for the appellants. Even otherwise, the compensation awarded by the Tribunal in favour of the claimants in both the cases is not on higher side. In fact, it is on lower side, inasmuch as the Tribunal, while assessing the compensation, has not taken into account the gross salary of the deceased, but it has taken into account only net salary of the deceased, which is contrary to the settled law of the land. The claimants, however, have not filed any cross appeal. Thus, the compensation awarded by the Tribunal in favour of the claimants in both the appeals is not on higher side.

17. Lastly, it has been argued by learned counsel for the insurance company that the driver of the offending vehicle was not in possession of a valid driving licence at the time of the accident and as such, there has been breach of policy conditions on the part of the insured, resulting in exoneration of the insurance company in paying compensation to the claimants. It is urged that the Tribunal has not appreciated the evidence brought on record by the insurance company on this issue, which has resulted in recording of a perverse finding by the Tribunal.

18. So far as the issue with regard to the validity of the driving licence is concerned, the insurance company has contended that the deceased driver of the vehicle in question was in possession of a fake learner's licence at the time of the accident. In order to prove this fact, the insurance company has examined RW-Tariq Ahmed, the licencing clerk, RTO Office, Srinagar and RW-Mohd. Sultan, licensing clerk, RTO Office, Srinagar. RW-Tariq Ahmed has, on the basis of record of his office, stated that the driving licence No. 2587/R is a learners' driving licence issued in the name of one Mushtaq Ahmed Sheikh S/o Ghulam Mohammed Sheikh. RW- Mohd. Sultan has stated that as per the record, licence bearing No. 2582/R is a learners' licence in the name of Muneer Ahmad Khan S/o

Maqsood Ahmed Khan. So the witnesses have stated that none of the aforesaid licences are in the name of the deceased driver namely, Fayaz Ahmed Bhat. As per the charge-sheet, vide seizure memo dated 31.07.2002, learner's licence No. 2587/RTO/R with date of issue 25.04.2002 in the name of Fayaz Ahmad Bhat, stands seized by the police during investigation of the case. Photo copy of the said learner's licence is on record. Statement of RW- Tariq Ahmed, the licensing clerk establishes that the driving licence No. 2587/R exist in the name of Mushtaq Ahmed Sheikh and not in the name of Fayaz Ahmad Bhat.

19. From the aforesaid evidence on record, it is clear that the deceased driver, who also happened to be the owner of the vehicle, was holding a fake learner's licence. The fact that he was holding a fake learner's driving licence was well within his knowledge. Being himself the owner of the offending vehicle, the breach of policy condition on his part was willful.

20. As per the terms of the policy conditions, which stands proved by the statement of the Branch Manager-Mr. M.K. Raina, the driving of the insured vehicle by a driver holding an invalid or fake driving licence, constitutes a breach of policy conditions, entitling the insurance company to avoid its liability to pay the compensation to the claimants. Thus, the insurance company in this case has been successful in discharging its burden of proving that there has been a breach of policy condition on the part of the insured. The legal heirs of the deceased driver-cum-owner have chosen not to contest the claim petition and they have not brought anything in rebuttal on record on this issue.

21. In the face of the aforesaid evidence on record, the observation of the Tribunal that the insurance company has not proved the issue by speaking evidence with documentary record, is perverse and against the record. The same, therefore, deserves to be set aside.

22. For the foregoing reasons, the appeals of the appellant-insurance company are allowed to the extent that the finding on issue No. 1 returned by the Tribunal with regard to the validity of the driving licence of the driver of the vehicle involved in the accident, is set aside and it is held that the driver of the vehicle in question was not holding a valid driving licence at the time of the accident and as such, there has been breach of policy condition on the part of the insured.

23. It has time and again been held by this court and by the Hon'ble Supreme Court that the Court has power to direct the insurance company to satisfy the award with a right to recover the awarded sum from the owner/insured even in cases, where breach of policy conditions has been proved by the insurance company. Having regard to the circumstances of the present case, particularly the fact that the claimants in both the claim petitions may not find it easy to recover the amount of compensation from the legal heirs of the deceased driver, that too after a lapse of eighteen years of the accident, it is directed that the awarded sum in each of the claim petitions shall be paid by the insurance company to the claimants as per the quantum assessed by the Tribunal vide the

impugned judgment, with a right to recover the same from the legal heirs of the deceased owner. Accordingly, the appeals stand disposed of.