Reliance General Insurance Co. Ltd vs Chanchla Kumari And Others on 5 April, 2022

Author: Tashi Rabstan

Bench: Tashi Rabstan

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

MA No. 40/2016
CM 2587/2021
IA 01/2016

Reserved on : 22.03.2022
Pronounced on : 05.04.2022

Reliance General Insurance Co. Ltd. .....Appellant(s)/Petitioner
Through: Mr.Vishnu Gupta, Advocate

versus

Chanchla Kumari and others ..... Respondent(s)
Through: Mr. Sheikh Altaf Hussain, Advocate

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGMENT

1. This appeal is directed against the award dated 17.12.2015 passed by the Motor Accidents Claims Tribunal, Jammu in File No.644/2013 in case, titled as, Chanchla Kumari & anr. vs Reliance General Insurance Company Limited & ors., whereby an amount of Rs.17,00,000/- along with interest @7.5% from the date of filing of claim petition till realization came to be awarded in favour of claimants-respondents 1 & 2 herein, and against the Insurance Company.

2. The facts, as gathered from the impugned award, are that on 14.12.2012, when deceased Sumit Bhatti was walking on foot near Bus Stand, Samba, the offending truck bearing No.HR38-M-2642, which was being driven by respondent No.4 rashly and negligently hit the deceased, as a result of which he suffered critical injuries and died on the spot.

3. Claimants-respondents 1 & 2 herein filed a claim petition before the learned MACT, Jammu for claiming compensation on account of death of the deceased. Reliance General Insurance Company Ltd. contested the claim petition and following issues came to be framed:

> 1) Whether an accident took place on 14.12.2012 at about 9:30 PM at NHW Bus Stand Samba by rash and negligent driving of the vehicle bearing registration No.HR38 M-2642 (Truck) by its driver as a result of which deceased Sumit Bhatti received fatal injuries? OPP
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> 2) If issue no.1 is proved in affirmative, whether petitioners are entitled to compensation; if so, to what amount and from whom? OPP
>
> 3) Whether the offending vehicle was being driven at the time of the accident in violation of terms and conditions of policy of insurance and insurance policy is not liable? OPR-1
>
> 4) Relief? OP Parties.

4. Claimant-Chanchla Kumari besides examining herself also examined eye witness PW Ravi Kumar, whereas the appellant-Insurance Company had failed to examine any witness. The Tribunal after examining the entire record and on the basis of the evidence led awarded Rs.17,00,000/- alongwith interest @ 7.5% per annum from the date of filing of the petition till its realization in favour of claimants-respondents 1 & 2 herein and against the appellant herein. Feeling aggrieved, appellant-insurer has filed the present appeal for setting aside the award impugned.

5. I have heard learned counsel appearing for the parties, considered their rival contentions and also perused the memo of appeal as well as the record of learned Tribunal, produced in the shape of photocopies thereof.

6. Admittedly, the appellant has not disputed the offending vehicle being insured with it nor has disputed the age of deceased. Claimants-respondents 1 & 2 in the appeal have also not questioned the award on any count.

7. The first ground taken by the appellant-insurer is that it had issued a notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 to the owner of offending vehicle to produce the registration certificate, permit, driving license and fitness certificate, however, the owner failed to do so.

8. A perusal of the file as well as the photocopy of the record of learned Tribunal reveals that no such notice was ever served by the insurance company to the owner of offending vehicle in terms of Order XII Rule 8 of CPC for production of registration certificate, permit, driving license and fitness certificate of the offending vehicle nor copy of any such notice is on the record. However, in terms of Section 134(c) of the Motor Vehicles Act, the insurance company had issued a registered notice dated 23.03.2015 to the owner of offending vehicle for providing self attested copies of policy, RC, fitness certificate, permit of the offending vehicle.

9. Therefore, before proceeding further, it would be apt to reproduce Section 134(c) of the Motor Vehicles Act, 1988 herein:

134. Duty of driver in case of accident and injury to a person. -

When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall -

(a) .....

(b) ....
(c) give the following information in writing to the insurer,

who has issued the certificates of insurance, about the occurrence of the accident, namely:-

(i) insurance policy number and period of its validity;

(ii) date, time and place of accident;

(iii) particulars of the persons injured or killed in the accident;

(iv) name of the driver and the particulars of his driving licence.

Explanation. - For the purposes of this section the expression "driver" includes the owner of the vehicle.

10. Therefore, in terms of Section 134(c) of the Motor Vehicles Act, the owner/driver of the offending vehicle was only required to provide the information with regard to insurance policy as well as particulars with regard to accident and the person(s) injured or killed. The documents annexed with the claim petition were copies of insurance policy, registration certificate and the FIR; therefore, the insurance company could have easily gathered the information from these documents regarding insurance policy number, its validity, date, time and place of accident and the person died from the copy of FIR. As regards the production of permit, the Insurance Company is always aware of the name of the transport authority where the insured vehicle is registered. It can summon the record from the concerned transport authority to prove the breach of the condition of the policy for using a vehicle without permit or for a purpose not allowed by the permit. The Appellant Insurance Company did not make any effort to summon the record from the concerned transport authority to prove that the vehicle was being plied for a purpose other than the one specified in the permit issued by the concerned transport authority. Thus, the Insurance Company, in my considered opinion, had failed to prove that there was a willful breach of the terms and conditions of the policy on the part of the insured so as to avoid liability to indemnify the insured.

11. The next ground argued by the learned counsel for appellant-Insurance Company is that the driver of offending vehicle was not holding valid and effective driving license at the time of accident.

12. A perusal of the file of learned Tribunal also reveals that the insurance company had issued a notice under Order XII rule 8 CPC to the driver of offending vehicle for production of original driving license. The stand of insurance company is that despite issuance of said notice, the driver had failed to produce the same, as such it can be assumed that the alleged offending vehicle was being driven by its driver without a valid and effective driving license, which fact must have been within the knowledge of the insured, therefore, the same amounted to breach of the conditions of the policy and the insurance company in such a situation was not liable to pay compensation.

13. It is a settled law that onus of proving breach of policy condition is upon the insurer. The Hon'ble Supreme Court in the case titled, "National Insurance Company Ltd. Vs. Swaran Singh and others, reported as (2004) 3 SCC 297", while deciding the issue of driving license, has held as under:

> "(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 a duly licensed driver or one who was not disqualified to drive at the relevant time.
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> (iv) The insurance companies, 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."

14. Thus, from the above, it is clear that it was for the appellant-insurance company to prove before the learned Tribunal that the driver of the offending vehicle was not holding a valid driving licence at the time of the accident. Admittedly, no evidence was led by the Insurance Company to prove that the driver of the offending vehicle was not holding valid or effective driving license at the time of accident. Even the insurance company has not examined any witness to prove the condition of the insurance policy regarding which the appellant-insurance company is claiming the breach. In fact the appellant-insurer had missed the opportunity of extracting evidence in its favour by not examining the Investigating officer on this aspect of the case. In the aforesaid circumstances, it cannot be stated that the insurance company has discharged its burden of establishing breach of policy condition on the part of the insured, as such the Insurance Company is contractually liable to pay compensation to the claimants.

15. The next ground taken by the appellant-Insurance Company is that the learned Tribunal has arbitrarily assumed the income of deceased at Rs.10,000/- per month, and has committed grave error in further enhancing the income of deceased by 50% to Rs.15,000/- per month. The appellant is also aggrieved of the Multiplier of 18 applied by the learned Tribunal while calculating the

compensation.

16. Mr. Sheikh, learned counsel appearing for claimants-respondents 1 & 2 herein submitted that the award passed by the learned Tribunal is appropriate and in consonance with the law laid down by the Hon'ble Supreme Court and, thus, needs no interference from this Court.

17. Admittedly, as per record, the deceased was 20 years of age. The grievance of claimants is that the deceased (son of respondent No.1 and brother of respondent No.2) was just 20 years of age and when the claim petition came to be filed in the year 2013, the age of claimant-Leza Bhatti was just 18 years. It is to be seen here that claimant-Chanchla Kumari is a widow. In paragraph-22 of the claim petition it has been specifically averred that claimant-respondent No.1, i.e., mother of deceased was a house wife and both the claimants were totally dependant upon the income of deceased. As such I do not find any force in the argument of learned counsel for appellant-insurance company that the deceased was dependant upon his mother, that too when the appellant has failed to adduce any evidence in rebuttal. Further, the deceased came to be died in the year 2012 and now the year 2022 is running. During this period the inflation has certainly soared many fold, as such I am of the considered opinion that the learned Tribunal has rightly taken the income of deceased to be Rs.10,000/- per month, with 50% addition in the monthly wages of deceased towards future prospects, to be applied for calculating the amount of compensation in view of judgment delivered by the Apex Court in case Rajesh & others vs Rajbir Singh & others, (2013) 3 SCC (Cr.) 817. Further, enactment of Motor Vehicles Act is welfare legislation with an objective to give financial aid to the victims of motor vehicular accidents and also to the dependants of the deceased persons. This legislation aids such victims or their dependants to lead a respectable life. Thus, the interpretation of various sections of Motor Vehicles Act shall be towards the fulfillment of these objectives and not to block the compensation on non- sustainable grounds.

18. The another legal issue this Court came across is regarding the propriety of the multiplier as it is held by the Constitution Bench in National insurance company Limited Vs. Pranay Sethi (supra) and reiterated in Royal Sundaram Alliance Insurance Company Ltd. Vs Mandala Yadagiri Goud and Ors., AIR 2019 SC 1825, relevant paragraph-13 whereof is reproduced hereunder:

> "13. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents."

19. Thus, it is clear that the Learned Tribunal has rightly taken the age of deceased while calculating the multiplier.

20. The age of the deceased at the time of death was 20 years, therefore, in view of judgment of Apex Court in Sarla Verma vs Delhi Transport Corporation, Civil Appeal No.3483 OF 2008 (Arising out of SLP [C] No.8648 of 2007), the learned Tribunal has rightly applied the multiplier of 18.

21. In view of the above discussion, the judgments cited by the learned counsel for appellant do not apply to the case in hand and are distinguishable.

22. Therefore, in view of what has been discussed above, I do not find any reason to take a view other than the one taken by the learned Tribunal. Accordingly, the appeal is dismissed along with connected CM/IA. Let the award amount be released in favour of claimants in terms of the award.

23. Send down the record along with a copy of this judgment.

Jammu: (Tashi Rabst
05.04.2022 Judge
(Anil Sanhotra)

Whether the order is reportable ? Yes
Whether the order is speaking ? Yes