

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 355 of 2023

Appellant :- The New India Assurance Company Ltd.,
Faizabad Thru. Divisional Manager

Respondent :- Smt. Kavitha And Ors.

Counsel for Appellant :- Asit Srivastava

Counsel for Respondent :- Atul Mishra

Hon'ble Jaspreet Singh, J.

Heard Sri Asit Srivastava, learned counsel for the appellant as well as Sri Atul Mishra, learned counsel for the respondent nos. 1 to 5 who has appeared on caveat.

The instant appeal has been preferred by the Insurance Company assailing the award dated 30th August, 2023 passed by the Motor Accident Claims Tribunal, Gonda in Claim Petition No. 120 of 2020 whereby in a death case a sum of Rs. 74,55,416 has been awarded in favour of the claimants-respondents along with 7% interest per annum.

While assailing the aforesaid award, the learned counsel for the appellant has raised three submissions:-

(i) The Tribunal erred in noticing the documents which were filed by the owner/driver of the offending vehicle which is insured with the appellant and that the fitness certificate as well as the permit were not valid on the date of the accident which took place on 14.07.2020 whereas the Tribunal while dealing with issue no. (iii) recorded a finding that the said documents were valid.

(ii) It is further urged that while computing the compensation, the Tribunal erred in taking the amount as indicated in the salary slip as the base whereas it was a Performance Link Pay and as such the same could not have been given taken as the basis as that would fluctuate depending upon the performance of the deceased and for the said reason appropriate factorization of the said salary should have been done and having failed to do so, it has resulted in an inflated award.

(iii) It is further urged that the evidence has also not been

appropriately considered by the Tribunal which has resulted in sheer miscarriage of justice.

Sri Atul Mishra, learned counsel for the claimants-respondents submits that there is no error in the award and especially on the ground which has been raised by the Insurance Company for the reason that the documents which have been placed by the owner of the offending vehicle were all valid.

In so far as the fitness certificate and the national permit for authorization of goods is concerned, both indicate that they were valid more so in light of the notification issued by the Government of India, Ministry of Road Transport and Highways dated 09th June, 2020 whereby considering the prevalence of Covid-19 pandemic, the validity of documents which included the fitness certificate, permits of all types, licenses and registrations which could not be extended or which expired since 01st February, 2020 or were to expire till 30th September 2020, the same shall to be treated to have been valid till 30th September, 2020.

It is urged that in view thereof, the documents must be treated as valid as they are covered by the notification aforesaid on the date of the accident i.e. 14.07.2020 and the aforesaid plea is not available to the appellant.

The learned counsel for the claimant-respondents on the other hand further submits that in so far as the salary slip is concerned even that was duly placed before the Tribunal and official of the Department where the deceased was working was examined as a witness who corroborated and proved the salary slip. It is only thereafter that the Tribunal has computed the compensation.

It is further urged that there was no evidence led by the Insurance Company either to discredit the said salary slip or to raise any objection since no cross-examination on this point was done, hence, for the aforesaid reasons, the said plea may not be entertained for the first time before this Court.

The learned counsel for the claimants-respondents further submits that the Tribunal has properly appreciated the evidence and in absence of any contrary material, the findings returned by the Tribunal are based on proper appreciation of evidence and as such the appeal is devoid of merits and is liable to be dismissed.

The Court has considered the rival submissions and also perused the material on record.

Apparently, this Court finds that the Claim Petition bearing No. 120 of 2020 was filed by the claimants-respondents no. 1 to 5 seeking compensation on account of death of Sri Triyugi Narayan Tiwari who met with an accident on 14.07.2020 with the offending vehicle bearing No. NL 01 L 3960 and had died on account of the said unfortunate incident. The same came to be contested by the Insurance Company as well as the owner of the vehicle and they have filed the requisite documents and upon the exchange of pleadings the Tribunal had framed the issues.

In so far as the general defence of the Insurance Company is concerned, it was stated that unless the claimants and the owner of the offending vehicle were able to establish that the documents were valid, the Insurance Company cannot be compelled to indemnify the award.

The Tribunal considering the evidence and found that the documents filed by the owner relating to the offending vehicle in question were valid, inasmuch as, the offending vehicle did possess a valid permit, the fitness certificate and its driver also had a valid subsisting license, accordingly, the findings were returned on issue no. (iii) holding the aforesaid.

The Tribunal also noticed the salary slip, the statement of the official who have come to prove the same and thereafter taking Rs. 33,451/- as the net salary and thereafter factoring for future prospects and deducting for the number of dependents and considering the age had adopted a multiplier of 16 and has awarded a sum of Rs. 74,55,416/- along with 7 % interest by means of award dated 30th August, 2023 which is under challenge.

At the outset it will be relevant to notice the notification issued by the Government of India dated 09th June, 2020 and the relevant portion thereof reads as under:-

"Please refer to the order by Ministry of Home Affairs vide No.40-3/2020-DMI(A), Dated 24th March 2020, and the guidelines issued subsequently, pursuant to a decision to impose a complete lock down in view of the threat imposed by the spread of COVID-19. The Government has provided for the availability of the essential goods and production thereof and has allowed the vehicles for the transport of such goods/cargo and further opening up the operation of passenger transport. It had come to the notice

of the Government that citizens were facing difficulties in renewal of validity of various documents related to Motor Vehicles Act, 1988 and Central Motor Vehicle Rules, 1989 due to lock-down being at various stages in the country and expected to face long queues in front of Government Transport Offices.

2. In view of the above, Ministry of Road Transport and Highways had issued an advisory dated 30th March, 2020 to all States and Union Territories regarding extension of validity of the documents related to Motor Vehicles Act, 1988 and Central Motor Vehicle Rules, 1989. It was advised that the validity of Fitness, Permit (all types), Driving License, Registration or any other concerned document(s) whose extension of validity could not or not likely be granted due to lock-down and which had expired since 1st of Feb, 2020 or would expire by 30th of June 2020, the same may be treated to be valid till 30th of June 2020. Enforcement authorities were advised to treat such documents valid till 30th of June, 2020.

4. Taking into consideration the grim situation still continuing due to conditions for prevention of spread of COVID-19 across the country, it is advised that-

a. Validity of Documents: The validity of Fitness, Permit (all types), Learner's License, Driving License, Registration or any other concerned document whose extension of validity could not or not likely be granted due to lock-down and which had expired since 1st Feb 2020 or will expire till 30th September 2020, the same may be treated to be valid till 30th September, 2020. Enforcement authorities may be advised to treat such documents valid till 30th September, 2020.

b. Attention of State / UT Government Authorities are brought to the following provisions of the Motor Vehicles Act, 1988 for consideration:

I. Subsections 3(f) and 3(n) of Section 66 - Exemption from requirement of permit to transport vehicle by State Government.

II. Clause (viii) of sub-section 2 of section 96 provide for exemption of prescribed person or prescribed classes of persons from payment of all or any or any portion of the fees payable under Chapter V of the MV act, 1988.

III. Section 211- Provide for exempting any class of persons from the payment of fee in part or in full.

C. Exemption from Permit / Relaxation on Fees / Tax / Penalties: The State/UTs are requested to consider provisions available under the Motor Vehicles Act 1988 or other such provisions available under other Acts, for considering relaxation in requirement of permit, or fees or taxes for renewal / penalty for permits etc."

From the perusal of the aforesaid notification, it would be clear that in so far as the fitness certificate, permits of all types, driving licences and registration were to be treated as valid till

30th September, 2020. Apparently, the accident took place on 14.07.2020 and thus is covered by the aforesaid notification.

It will also be relevant to notice that the issue which has been raised by the Insurance Company is not as if that the vehicle did not possess the said document rather the argument is that they were not valid on the date of the accident.

The learned counsel for the appellant has also submitted that even the notification which has been referred to by the learned counsel for the claimants was not placed before the Tribunal. Be that as it may, since it was a notification prior issued by the Government of India of which judicial notice taken be taken and is also held the documents to be valid. There is nothing on record to suggest that this notification was not cognizable and its benefit cannot be granted.

Be that as it may, the very fact that the notification dated 09th June, 2020 which is prior in time from the date of the accident i.e. 14.07.2020 was clearly applicable and a renewal holiday was granted to all till 30th September, 2020. In view of the aforesaid, the documents which have been placed on record were valid till 30th September, 2020 and the accident having taken place on 14.07.2020, hence, it is not open for the Insurance Company to raise this plea, accordingly, the same is turned down.

Coming to the other submissions of the learned counsel for the appellant regarding the salary slip, it would be relevant to notice that there has been no evidence led from the side of the Insurance Company to disprove the same. Merely raising a plea that the salary was performance based and unless and until the tabulation of the previous performances is evaluated, it was not open for the Tribunal to have taken the amount mentioned therein in the humble opinion of the Court, even this submission does not hold water for the reason that a salary slip was placed on record which was proved by the witness, the Insurance Company failed to cross-examine nor led any evidence to the contrary.

Once having missed the boat and considering the document that the salary slip which was proved in accordance with law, there was no way the Tribunal could have ignored the same, apart from the fact that there was no effort made by the Insurance Company either to take the plea in its statement of defence or

attempted to summon the previous performances, tabulations of the deceased and having failed to do so now it is no more open for the appellant to raise this issue.

Thus, having taken an overall view of the facts and circumstances as well as the findings returned by the Tribunal, this Court is satisfied that there is no palpable error apparent on the award which may persuade this Court to entertain the appeal. No other point has been pressed. Accordingly, the appeal is devoid of merits and is accordingly ***dismissed*** at the admission stage itself. The award dated 30th August, 2023 passed in C.P. No. 120 of 2020 is affirmed. The statutory amount deposited before the Court shall be remitted to the Tribunal concerned to be released in favour of the claimants-respondents and the remaining shall also be paid as per terms of the award within a period of 60 days from the date a certified copy of this order is placed before the Authority concerned. Costs are made easy.

Order Date :- 4.12.2023

Asheesh