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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 183 OF 2010

Bajaj Allianz Insurance Company Limited, through Branch Manager, Shivmohan Bhawan, Vidhansabha Marg, Pandri, Raipur (C.G.)

… Appellant

versus

1. Ramesh Soni, S/o Raghuvansh Prasad Soni, aged about 33 years, R/o Village Arjuni, Post Arjuni, Tahsil and P.S. Dongargaon, District Rajnandgaon (C.G.)
2. Omprakash Lode, S/o Shri Ram Lode, aged 18 years, R/o Shivni Bhodni, P.S. Ramtek, District Nagpur (M.H.)
3. Damanjeet Singh Tuli, S/o not known by the appellant, R/o 630 Navneet Vila, Kashmiri Gali, Bejonbag, Nagpur (M.H.)

… Respondents

MISC. APPEAL (C) NO. 184 OF 2010

Bajaj Allianz Insurance Company Limited, through Branch Manager, Shivmohan Bhawan, Vidhansabha Marg, Pandri, Raipur (C.G.)

… Appellant

versus

1. Ramesh Soni, S/o Raghuvansh Prasad Soni, aged about 33 years, R/o Village Arjuni, Post Arjuni, Tahsil and P.S. Dongargaon, District Rajnandgaon (C.G.)
2. Omprakash Lode, S/o Shri Ram Lode, aged 18 years, R/o Shivni Bhodni, P.S. Ramtek, District Nagpur (M.H.)
3. Damanjeet Singh Tuli, S/o not known by the appellant, R/o 630 Navneet Vila, Kashmiri Gali, Bejonbag, Nagpur (M.H.)

… Respondents

MISC. APPEAL (C) NO. 309 OF 2010

Ramesh Soni, S/o Raghuvansh Prasad Soni, aged about 33 years, R/o Village Arjuni, Post Arjuni, Tahsil and P.S. Dongargaon, District Rajnandgaon (C.G.)

… Appellant

versus

1. Omprakash Lode, S/o Shriram Lode, aged 18 years, R/o Sivni Bhodni, P.S. Ramtek, District Nagpur (M.H.)
2. Damanjit Singh Tuli, S/o not known, R/o 630 Navjit Vila, Kashmiri Gali, Bezonbag, Nagpur (M.H.)
3. Bajaj Allianz Insurance Company Limited, Branch Office Shivmohan Bhawan, First Floor, Vidhansabha Road, Pandri, Raipur (C.G.)

… Respondents

MISC. APPEAL (C) NO. 311 OF 2010

Ramesh Soni, S/o Raghuvansh Prasad Soni, aged about 33 years, R/o Village Arjuni, Post Arjuni, Tahsil and P.S. Dongargaon, District Rajnandgaon (C.G.)

… Appellant

versus

1. Omprakash Lode, S/o Shriram Lode, aged 18 years, R/o Sivni Bhodni, P.S. Ramtek, District Nagpur (M.H.)

2. Damanjit Singh Tuli, S/o not known, R/o 630 Navjit Vila, Kashmiri Gali, Bezonbag, Nagpur (M.H.)
3. Bajaj Allianz Insurance Company Limited, Branch Office Shivmohan Bhawan, First Floor, Vidhansabha Road, Pandri, Raipur (C.G.)

… Respondents

- Mr. Ghan Shyam Patel, Advocate, under instructions of Mr. Abhishek Sinha, Advocate, for Bajaj Allianz Insurance Company.
- Mr. Goutam Khetrapal, Advocate, for Claimant-Ramesh Soni.
- Mr. H.S. Ahluwalia, Advocate, for Owner-Damanjit Singh Tuli.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/11/2017

1. The present four appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of the award dated 19.11.2009 passed by the Motor Accident Claims Tribunal, Rajnandgaon, in Motor Accident Claim Case No. 3/2009 and 4/2009.

2. The two claim cases arose out of the same accident where the wife-Smt. Neelima Soni and son-Rahul Soni of the claimant-Ramesh Soni had died. The Claim Case No. 3/2009 is in respect of death of Smt. Neelima Soni, aged around 26 years, and Claim Case No. 4/2009 is in respect of death of Rahul Soni, aged around 3 years.

3. MAC No. 183/2010 & MAC No. 311/2010 arise out of Claim Case No.3/2009 and MAC No. 184/2010 & MAC No. 309/2010 arise out of Claim Case No.4/2009.

4. Vide the impugned award dated 19.11.2009, the learned Tribunal, in Claim Case No. 3/2009 has awarded a compensation of Rs. 1,89,500/- and in Claim Case No. 4/2009 has awarded a compensation of Rs. 50,000/- in favour of the claimant-Ramesh Soni with interest thereon at the rate of 7% per annum from the date of filing of the claim applications. While passing the award, the learned Tribunal has fastened the liability for payment of compensation jointly and severally upon the owner, driver and insurer of the offending vehicle.

5. It is this award which is under challenge in the present four appeals.

6. Brief facts relevant for the adjudication of the case are that, the two deceased persons on 3.11.2008 while they were moving on their Hero Honda Pleasure motorcycle from G.E. Road to Railway Station, Rajnandgaon, they were hit by a Truck No. MH31-CB-0299. As a result of the said accident, both persons i.e. Smt. Neelima Soni, aged around 26 years and Master Rahul Soni, aged around 3 years, received grievous injuries to which they succumbed. The matter was immediately reported to the Police Station- City Kotwali, Rajnandgaon where an offence under Section 304-A of IPC was registered against the driver of the offending Truck, namely, Omprakash Lode.

7. MAC No. 183/2010 & MAC No. 184/2010 are the two appeals filed by the Bajaj Allianz Insurance Company Limited assailing the liability which has been fastened upon it. While, MAC No. 309/2010 & MAC No. 311/2010 are the appeals filed by the Claimant-Ramesh Soni seeking enhancement of the compensation awarded.

8. For convenience, we are taking the two appeals of the insurance company first, i.e. MAC No. 183/2010 & MAC No. 184/2010.

9. The contention of Shri Ghan Shyam Patel, learned counsel appearing for the insurance company, is that the offending vehicle at the relevant point of time did not have permit. The licence of the driver of the offending vehicle also had expired at the relevant point of time and it was not renewed for a considerable period of time, thus, there was a clear breach of policy condition as also the violation of the provisions of the Motor Vehicles Act. Therefore, the finding of the learned Tribunal in fastening the liability of payment of compensation upon the insurance company is bad in law and erroneous and the same deserves to be set aside and the liability should be shifted upon the owner-cum-driver of the offending vehicle. Learned counsel for the insurance company has relied upon the decisions of the Hon'ble Supreme Court in the case of **National Insurance Company Limited** v. **Vidhyadhar Mahariwala and Others**[1] and also the case of **Ishwar Chandra and Others** v. **The Oriental Insurance Co. Ltd. and Others**[2] to support their contentions.

10. According to the learned counsel for the insurance company, the owner and the driver of the offending vehicle neither enter appearance before the Tribunal nor produce relevant documents which they were supposed to have in their custody in respect of the driver's licence as also pertaining to the offending vehicle. It was further alleged that even in the present appeals, the owner has not produced relevant documents with which he could claim indemnity from the insurance company. Learned counsel for the insurance company refers to the evidence of the witness from the RTO, Durg, namely, Panchram Kurre (NAW-2), who, referring to the licence of the driver, has stated that the licence of the driver was issued on 17.3.2004 and the endorsement for driving a 'Heavy Goods Vehicle' was made on 12.8.2005 and it was valid up to 11.8.2008. It was further deposed by the said witness that after 11.8.2008 the licence was renewed only on 15.12.2008 i.e. after more than 4 months and the accident occurred during the intervening period i.e. on 3.11.2008.

11. According to the learned counsel for the insurance company, from the record itself it is evident that there was a clear violation of the provisions of Sections 3, 5 and 15 of the Motor Vehicles Act and therefore the finding of the Tribunal deserves to be set aside. According to the insurance company, the issue of the driver not having valid licence stands settled from the landmark decision of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd.** v. **Swaran Singh and Others**[3]

1 2008 (12) SCC 701
2 2007 (10) SCC 650
3 2004 (3) SCC 297

wherein it was held that the owner shall be liable for payment of compensation in a case where the driver was not having a licence at all. It was the contention of the insurance company that the owner should have taken all adequate care to see that the driver had a proper licence to drive the vehicle. Learned counsel for the insurance company thus prayed that the impugned award may be modified to the extent of liability being fastened upon the insurance company.

12. Per contra, Shri H.S. Ahluwalia, learned counsel appearing for the owner of the offending vehicle, opposing the appeals of the insurance company, submits that the finding of the learned Tribunal does not warrant any interference as the Tribunal has reached to the conclusion based on the evidence which have come on record. It was further contended by the learned counsel for the owner that the burden of proof in disowning the liability upon the insurance company is always on the insurance company and in the instant case the insurance company has not proved its case at all so far as the breach of policy condition is concerned. According to the learned counsel for the owner, there is no material brought before the Tribunal with which it could be said that the offending vehicle at the relevant point of time did not have a permit. So far as the licence of the driver of the offending vehicle is concerned, contention of the learned counsel for the owner was that undisputedly the driver had a permit till 11.8.2008 and that the said licence was subsequently also renewed on 15.12.2008 and that the driver was not disqualified to drive during the intervening period between 12.8.2008 to 14.12.2008. It is therefore presumed that the driver had a valid licence all along and the liability thus on this count has been rightly fastened upon the insurance company jointly and severally.

13. It was further contended by the learned counsel for the owner that the responsibility of the owner is to verify the possession of a valid licence by the driver at the time of engagement and that the owner cannot be expected to keep a constant monitoring of the licence of the driver so far as its expiry and renewal is concerned. Learned counsel for the owner further banked on the fact that since the driver was not disqualified in the intervening period, the liability should be fastened upon the insurance company. Harping on the ground that the burden of proof rests upon the insurance company to disown the liability, learned counsel for the owner has also relied upon the decisions of the Hon'ble Supreme Court in the case of **Swaran Singh** (supra) so also the case of **Ishwar Chandra** (supra) insisting upon the fact that the insurance company was supposed to lead proper, cogent and conclusive evidence to establish that the driver at the relevant point of time did not have a valid licence so also the offending vehicle did not have a permit to operate so as to attribute breach of policy condition. Learned counsel for the owner thus prayed for the rejection of the appeals of the insurance company.

14. Having heard the contentions put forth on either side and on perusal of record, what is relevant to be adjudicated in the two appeals of the insurance company are the two issues, that is, firstly, whether the vehicle at the relevant point of time had a valid permit or not and secondly, whether the driver at the relevant point of time had a valid licence or not.

15. Though the learned counsel for the insurance company has submitted that their witness, Ashutosh Singh (NAW-1), has stated before the Tribunal that the offending vehicle was not having a permit, however when we look into the record particularly Exhibit D-2C which is the report of the investigator of the insurance company marked by DW-1, in the internal page 3 at paragraph 6 of the report, the details of the permit has been given, which the offending vehicle at the relevant point of time had and which shows that the offending vehicle had a valid permit in between 5.2.2008 and 5.2.2009. This aspect further stands reiterated in the report of the said investigator in the internal page 6 at paragraph 7 wherein he has while submitting the report has categorically stated that the vehicle at the time of accident was having a proper permit. Thus, the ground so raised of the offending vehicle not having permit at the time of accident does not have any force and strength and the same is accordingly negated.

16. As far as the licence is concerned, undisputedly, the driver of the offending vehicle had a licence to drive a 'Heavy Goods Vehicle' from 12.8.2005 to 11.8.2008 and the said licence was subsequently renewed on 15.12.2008. As per the provisions of the Motor Vehicles Act, the licence has to be renewed within a period of 30 days of its expiry so as to get it continued. In the instant case, the renewal has been done after four months and that there is no evidence brought on record by the driver or the owner to show that the driver had applied for the renewal much in advance, but the same got renewed only after 4 months. Therefore, the only inference which could be drawn is that at the relevant point of time the driver did not have a valid licence and the renewal of the licence was only after about 4 months from the date of accident. Thus, for all practical purposes, it would be a case where the driver on the date of accident did not have a licence and the case would fall in a category of driver having no licence.

17. If we look into the decision of the Hon'ble Supreme Court in the case of **Vidhyadhar Mahariwala** (supra) as also the case of **Ishwar Chandra** (supra), it would clearly reflect that the view of the Hon'ble Supreme Court was based on the earlier decision of the Hon'ble Supreme Court in the case of **Swaran Singh** (supra) as also the case of **National Insurance Co. Ltd.** v. **Kusum Rai and Others**[4] wherein it has been categorically held that it was the obligation on the part of the owner to take adequate care to see that the driver has a proper licence to drive the vehicle. Undisputedly, as per Section 14 of the Motor Vehicles Act, the licence remains valid only for a 30 days period from the date of its expiry and not beyond that, unless it is proved and established that the driver had taken necessary steps for proper renewal but there was a delay on the part of the concerned RTO. There is no such evidence in the present case. In the given circumstances it has to be presumed that both the driver and the owner have not taken adequate steps for ensuring the vehicle being driven with proper valid licence. In the given factual matrix of the case, there appears to be a clear lapse on the part of the owner in ensuring necessary safeguards and adequate care in this regard. Thus, there is a clear breach of policy condition so also the provisions of the Motor Vehicles Act. Considering the factual matrix of the case since it is a case of breach of policy condition, the insurance company is held liable to pay the compensation with a liberty to recover the same from the owner and the driver applying the principle of 'pay and recovery' and it is accordingly ordered so.

18. So far as the appeal of the claimant for enhancement is concerned, i.e. MAC No. 309/2010, as regards the claim on the death of three years old minor child, Master Rahul Soni, the learned Tribunal has awarded a compensation of Rs.50,000/-. The Hon'ble Supreme Court in respect of death of minor child, in the cases of **Lata Wadhwa and Others** v. **State of Bihar and Others**[5] and **Kishan Gopal and Another** v. **Lala and Others**[6] have laid the issue to rest and it has been held that where the death occurred in respect of a child below 10 years the compensation payable

4 AIR 2006 SC 3440
5 2001 (8) SCC 197
6 2014 (1) SCC 244

would be Rs. 1.5 Lakh with Rs.50,000/- towards conventional heads, totaling Rs. 2 Lakh. Applying the principles laid down in the aforesaid two decisions, the impugned award is modified to the extent that the claimant shall be entitled for a total compensation of Rs.2,00,000/- instead of Rs.50,000/- as awarded by the learned Tribunal in Claim Case No. 4/2009.

19. So far as the appeal filed by the claimant in respect of death of his wife-Neelima Soni is concerned, i.e., MAC No. 311/2010, the income assessed by the learned Tribunal is Rs.15,000/-. The contention of the learned counsel for the claimant is that the deceased-Neelima Soni was running a beauty parlour from her residence and that she was earning about Rs.200/- a day and therefore the yearly income of Rs.15,000/- which has been assessed by the Tribunal is unreasonably low. But, perusal of record would show that there is no sufficient proof or evidence led by the claimant to establish the actual income of the deceased. However, considering the fact that it is a case where the accident took place in the year 2008, this Court assesses the yearly income of deceased-Neelima Soni at Rs.36,000/- in place of Rs.15,000/-, assessing the income of the deceased at Rs.100/- a day.

20. In view of the recent Larger Bench decision of the Hon'ble Supreme Court **National Insurance Company Limited** v. **Pranay Sethi & Others**[7], the claimant shall be entitled for income under the future prospects at the rate of 40%. Assessing the yearly income of the deceased-Neelima Soni at Rs.36,000/- and adding 40% of the same towards the future prospects, i.e. Rs.14,400/-, the amount would come to Rs.50,400/-. If 1/3rd of Rs.50,400/- amount, i.e. Rs.16,800/-, is deducted towards the personal and living expenses, the amount would reach to Rs.33,600/- which if multiplied applying the multiplier of 17, the amount would become Rs.5,71,200/-.

7 SLP (Civil) No. 25590 of 2014, decided on 31.10.2017

Again considering the principles laid down in the **Pranay Sethi** (supra), the claimant shall be entitled for a compensation of Rs.70,000/- under the conventional heads. Thus, the total compensation payable to the claimant would be Rs.6,41,200/- instead of Rs.1,89,500/- which was awarded by the learned Tribunal in Claim Case No. 3/2009.

21. As a result:

(i) The appeals of the insurance company i.e. MAC No. 183/2010 & MAC No. 184/2010, stand partly allowed to the extent that the liability of payment of compensation shall be upon the insurance company with a liberty to recover the same from the owner-cum-driver.

(ii) The appeals of the claimant i.e. MAC No. 309/2010 & MAC No. 311/2010 are allowed and the impugned award stands modified to the extent that the claimant shall be entitled for a compensation of Rs.2,00,000/- in respect of Claim Case No. 4/2009 and Rs.6,41,200/- in respect of Claim Case No.3/2009. The enhanced amount shall also carry interest at the same rate as has been imposed by the learned Tribunal.

Sd/-
(P. Sam Koshy)
Judge

/sharad/