Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL ST NO. 17530 OF 2017
WITH
CIVIL APPLICATION NO. 2036 OF 2017
WITH
CIVIL APPLICATION NO. 2037 OF 2017

United India Insurance Co Ltd ...Appellant
Versus
Nazima Nisar Shaikh & Ors ...Respondents

Mr Ketan Joshi, *for the Appellant.*

CORAM: G.S. PATEL, J
DATED: 28th July 2017

PC:-

1. For the reasons recorded in civil application No. 2036 of 2017, the delay of 107 days in filing the first appeal is condoned. Civil Application No. 2036 of 2017 is made absolute.

2. Although this is a First Appeal having regard to the narrow nature of the controversy, I am not inclined to admit the appeal at all, but propose to dismiss it for the reasons that follow.

3. The appeal is against an order and judgment dated 5th December 2016 under Section 166 of the Motor Vehicles Act 1988 brought by the heirs and legal representatives of one Nisar Ahmed Shaikh for compensation in the amount of Rs. 22 lakhs on account of his death in a motor accident fatality. On 8th July 2013 Nisar was on his way to Kasarwada to Guirim on the Mumbai Goa Highway. He was driving a Leyland truck bearing No. MH-07-X-0963. He reached a point near Priti International Hotel at Mhapusa, Goa when a Swaraj Mazda tipper No. GA-03-K-9705 driven by one Ashok Devlu Chavan approached at a great speed in the opposite direction. It collided with Nisar's Leyland truck. Nisar sustained grievous injuries and he succumbed to these on 10th July 2013. The driver of the Swaraj Mazda, Ashok Chavan died on the spot.

4. I am leaving aside all questions of income and compensation because the limited ground of challenge is that the driver of the Swaraj Mazda, Chavan, was said not to hold a valid license. This was an issue framed on a specific plea taken by the insurer who is now in appeal.

5. The matter is dealt with in paragraphs 10, 12 and then in paragraphs 24 and 25 of the impugned judgment. The evidence on record was that Chavan was shown to hold a valid license but this was for a light motor vehicle and it was the one of the smart card type licenses issued by the Karnataka Government. This was marked in evidence and the number of this license was KA 28 20120015946. Mr Joshi for the appellant has prepared a compilation and this license is shown at page 55.

6. There is in addition a second license but this seems to be of the old booklet or paper type. It is purportedly issued by the RTO Authorities in Maharashtra in the name of Ashok Chavan with No. MH01/2003/63414. It was granted for both light motor vehicles and heavy goods vehicles. It seems to have been renewed periodically, most recently from 21st August 2012 to 18th August 2015.

7. The insurer unfortunately had evidence but led of it. Pending the trial, it appointed an investigator one Mr Sunil R Dhavan. He claimed that he had obtained information that the license No. 63414 was actually issued on 24th December 2003 for motorcycles only to one Swapnil Naresh Akre. Dhavan's evidence was not led. He obtained a copy through the Right to Information Act of the license issued to Swapnil Akre, No. 2003/C/63414. This was not led in evidence either. It is unclear whether the series mentioned in Akre's motorcycle license is a different series from that which appears on Chavan's purported heavy goods vehicle license.

8. Having regard to the decision of the Supreme Court in *Pepsu Road Transport Corporation v National Insurance Co*[1] and *National Insurance Co Ltd v Kusum Rai & Ors*,[2] proof of invalidity of a driver's license will take the insurer only so far in an attempt to evade liability. It will not absolve the insurer of complete liability unless the driver is also the insured owner. That may be a different matter. Otherwise, it must be shown that the owner-insured was aware of that the driver's license was invalid. If he was not aware of it, his lack of knowledge will not provide an insurer with the necessary

1 (2013) 10 SCC 217.

2 (2006) 4 SCC 250.

exoneration. Viewed from this perspective, and there is no other, I do not think any purpose will be served by admitting this appeal and issuing notice.

9. At the time of accident, the widow was 36 years old and her children were 16 and 14. That was in 2013, four years ago. The deceased Nisar Shaikh was 42 years old. He was in good health and a competent driver employed by opponent No. 4 at a salary of Rs. 15,000/- per month. There is evidence that for some time he worked overseas in Kuwait. His annual income was reckoned at Rs. 1,20,000/-. This is on the basis that the statement of his employer of having paid Rs. 15,000/- was not accepted. The rate was taken on the basis of minimum wages and by adding some further amount for being a skilled driver. His notional income was reckoned at Rs. 10,000/- per month or Rs. 1,20,000/- per annum. In this particular case there is evidence that persuades me that the final decision on income calls for no interference: the employer's own income was said to be Rs.15,000/- and the Tribunal quite correctly felt that it was most unlikely that the employer would pay out his entire income to one employee. The Tribunal was in this case justified in taking the notional income.

10. The Tribunal then made a deduction of one-third, which is also permissible and acceptable and applied correct multiplier of 14 based on the decision in *Sarla Varma v Delhi Transport Corporation*.[3] This yielded a total loss of dependency of Rs. 11,20,000/- which is unexceptionable.

3 (2009) 6 SCC 121.

11. The difficulty is in the next portion where, towards the other heads such as loss of love and affection, funeral expenses, loss of consortium and so on, against a claim of Rs. 3,90,000/- the Tribunal awarded Rs. 10,000/- towards funeral expenses, Rs. 10,000/- towards loss of love and affection and Rs. 1 lakh for loss of consortium. I will retain the award of Rs. 1 lakh for loss of consortium, but will need to adjust the amount awarded towards loss of love and affection and funeral expenses appropriately. The aggregate amount towards funeral expenses should be Rs. 25,000/-, a net addition of Rs. 15,000/-. The amount of loss of love and affection, given that there were two minor children, should Rs. 1 lakh each, net addition of Rs. 1,90,000/-. Thus, to the award there will be a net addition of Rs. 2,05,000/-. The decree will, therefore, be in the amount of Rs. 13,25,000/-.

12. The decree stands modified accordingly. Further the rate of interest at the rate of 6% is on the lower side and should be reckoned at 7.5% per annum which is normally awarded.

13. The entire amount as per the modified decree will be deposited within a period of eight weeks from today and will be invested in a fixed deposit with any nationalized bank. The statutory deposit of Rs. 25,000/- is to be transferred to the MACT with all accrued interest within a period of two weeks from today.

14. The claimants will be at liberty to withdraw the entire amount deposited with all accumulated interest on production of an authenticated copy of this order.

15. The distribution of the amount will be in the same proportion as directed by the Tribunal in clauses 04 to 07 of the impugned award.

16. The appeal is disposed of in these terms. There will be no order as to costs.

17. Civil Application seeking stay does not survive and is disposed of as infructuous.

(G. S. PATEL, J)