HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

MA No. 310/2017 in
CCROS 21/2017

Reserved on 29.07.2020
Pronounced on 05.08.2020

Shriram General Insurance Co. Ltd ……Appellant(s)

Through :- Mr.Jugal Kishore Gupta Advocate

v/s

Dheeraj Singh and another

……Respondent (s)

Through :- Mr.Amrit Sarin Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1 In this appeal, the appellant (hereinafter referred to as the 'insurer') has assailed the award dated 11.07.2017 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as the 'Tribunal') in file No. 85 titled 'Nirmal Devi and others vs. Shriram General Insurance Co. Ltd and others' whereby respondent Nos. 1 to 4 (hereinafter referred to as the 'claimants') have been held entitled to a sum of Rs.7,13,500/- on account of death of Sh. Dewan Chand, the husband of clamant No.1 and father of claimant Nos. 2 to 4.

2 The appeal is preferred primarily on following grounds:

(i) That the owner of the offending vehicle was not possessing a valid route permit and that the insurer had filed an application before the Tribunal for summoning of owner of the offending vehicle to prove the aforesaid aspect, but the Tribunal failed to

issue summon to the owner at the address provided in the claim petition and, therefore, denied the insurer an opportunity to prove that the owner was not possessing a valid route permit.

(ii) That as per the official record of Army, one Champa Dogra has been shown as the wife of the deceased Dewan Chand and, therefore, the claimant No.1- Nirmal Devi was not entitled to maintain the claim petition, more so, when she had failed to place on record any documentary evidence to show that she was the wife of the deceased.

(iii) That the deceased was more than 72 years old and, therefore, the Tribunal was not correct in fixing his monthly income as Rs.4500/- per month from agricultural sources.

(iv) That the claimant Nos. 2 to 4 were all major sons and were, thus, not dependent on the income of the deceased and the Tribunal ignoring the said aspect erroneously applied deduction on account of personal living expenses and awarded compensation to them.

3 Mr. Amrit Sarin, learned counsel for the claimants opposes the appeal on the ground that the award passed by the Tribunal is on the lower side and, therefore, he has sought enhancement by way of cross-objections (CCROS 21/2017). He submits that in his cross-objections, he has placed on record a family pension order from the Indian Army which clearly depicts that claimant No.1 was the legally wedded wife of the deceased and had married the deceased after the death of his first wife namely Champa Dogra. It is also urged that the Tribunal took the monthly income of the deceased as Rs.4500/- per month from agricultural sources and omitted to take into account the

income which the deceased was getting by way of pension from the Indian Army.

4 Learned counsel for the claimants also finds fault with the sums awarded by the Tribunal under the conventional heads.

5 Heard learned counsel for the parties and perused the record.

6 The accident that occurred on 03.04.2012 in which the deceased lost his life is not disputed, nor is the negligence of the driver of the offending vehicle. It is, however, contended by Mr. Jugal Kishore Gupta, learned counsel for the insurer that the insurer had taken a specific plea with regard to invalidity of the route permit of the offending vehicle, but the Tribunal did not allow it to prove the same by leading its evidence. He claims to have moved an application for summoning the owner to the witness box but that too was denied by the Tribunal to the insurer arbitrarily.

7 With a view to appreciating the contention of learned counsel for the insurer, I went through the objections filed by the insurer before the Tribunal and find that the insurer had taken a general objection that the offending vehicle, at the time of accident, was being driven without valid and effective driving licence, route permit and fitness certificate and, therefore, the insurer was not liable to pay any compensation to the claimants.

8 It is noteworthy that the Tribunal, on the basis of pleadings of the parties framed the following issues:

> (i) Whether an accident occurred on 03.04.2012 at about 3.30 pm at Kunjwani Bye Pass, Jammu by rash and negligent driving of offending vehicle NO. JK02W-1581 by its driver respondent No.3 as a result of which petitioner Rakesh Kumar received grievous injuries and deceased Dewan Chand received fatal injuries ? OPP

(ii) If issue No.1 is proved in affirmative, whether petitioners are entitled to the compensation if so to what amount and from whom ? OPP

(iii) Whether driving of offending vehicle at the time of accident was not holding a valid and effective driving licence and whether there was violation of terms and conditions of policy of insurance ? if so to what effect ? OPR-1

(iv) Whether the accident was caused due to negligence of driving of motor cycle on which petitioner Rakesh Kumar and deceased Dewan Chand were travelling ? If so to what effect ? OPR-1

(v) Relief ? OP Parties.

9 One would not find the issue with regard to validity or otherwise of the route permit of the offending vehicle having been specifically framed by the Tribunal.

10 There is no effort made by the insurer to have the issues recast by making an appropriate application to the Tribunal.

11 Since the owner and the driver had chosen not to contest the claim petition and had been proceeded *ex parte*, as such, there was none available before the Tribunal to affirm or deny the averments made by the insurer in its objections.

12 No doubt, the insurer had moved an application for summoning of the owner of the offending vehicle as its witness, but the said witness could not be served through the process of the Court because of inadequate address. The insurer was given umpteen opportunities to provide fresh address and particulars of the witness, so that he could be served and his attendance in the Court could be secured, but it miserably failed to do so. In these

circumstances, the Tribunal was well within its rights to close the evidence of the insurer and not to allow the proceedings linger on unnecessarily.

13 Despite all his vehemence, Mr. Jugal Kishore Gupta could not justify his inaction except contending that the only address of the owner available with the insurer was what was indicated by the claimants in the claim petition. Be that as it may, it is not a case of denial of opportunity to the insurer to lead its evidence. Rather, it is the inability of the insurer to seek the assistance of the Court for summoning of its witnesses. The accident in the instant case happened on 03.04.2012 and we are in 2020. More than eight years have elapsed since the fling of the claim petition. No useful purpose would be served, nor it would be in the interest of justice to remand the case for the aforesaid purpose as is vehemently sought to be contended by the learned counsel for the insurer.

14 The plea of the insurer that claimant No.1 was not legally wedded wife of the deceased and, therefore, not entitled to file the claim petition is also without substance and cannot be accepted. The claimants in their claim petition have very clearly submitted that claimant No.1 was the second wife of the deceased and the first wife of the deceased had since died. The claimants 2 to 4 were the sons from the first wife . It is further submitted that the marriage of claimant No.1 with the deceased was solemnized about 16 years back .

15 To substantiate the aforesaid averments, the claimants have placed on record a copy of the family pension order which indicates the pention being received by claimant No.1 after the death of the deceased. Although the documents are placed on record by the claimants for the first time in this appeal, yet I see no reason to ignore the same, more so, when there is

sufficient oral evidence on record to indicate that claimant No.1 was the second wife of the deceased having solemnized marriage with him after the death of the first wife.

16 The plea of Mr. Jugal Kishore Gupta that in the Army record, the name of first wife of the deceased has been mentioned, is of no consequence. Admittedly, Champa Dogra was the first wife of the deceased and her name was rightly recorded in the Army record, but after his death, it was claimant No.1 who got married to the deceased and, therefore, was held entitled to receive the family pension after the death of the deceased.

17 Regarding quantum of compensation, the learned counsel for the insurer as well as the claimants have put forth their respective contentions, one dubbing the award as exorbitant and other claiming that it is on the lower side.

18 The Tribunal has taken the income of the deceased as Rs.4500/- per month from agricultural sources. In the absence of contrary evidence brought on record by the insurer, I am of the view that the Tribunal has correctly taken the income of the deceased as Rs.4500/- per month which a daily wager would be entitled to under the Payment of Wages Act. The Tribunal has rightly not taken into account the income which the deceased was getting by way of pension as after his death, claimant No.1 has been receiving the same in the name of family pension. Taking the age of the deceased in the age group of 61-65, the Tribunal has applied the multiplier of 7 which in view of the judgment rendered by the Hon'ble Supreme Court in the case of **Sarla Verma v. Delhi Transport Corporation and another 2009 (6) SCC 121,** is the correct applicable multiplier. No exception could be found with the view of the Tribunal on that count.

19 It is equally true that as per the principles of assessment of compensation laid down in Sarla Verma's case (supra) and affirmed in the case of ***Pranay Sethi and ors, AIR 2017 SC 5157***, no enhancement on account of future prospects is available in the instant case as the deceased at the time of accident was 65 years old. However, I am in agreement with the contention of learned counsel for the insurer that three major sons were not dependent on the income of the deceased and, therefore, the deduction in the instant case ought to have been 50% of the income and not 1/4th as applied by the Tribunal. The Tribunal has not said anything about the dependency of the claimants 2 to 4, nor any of the aforesaid claimants have entered the witness box.

20 In view of the aforesaid, the loss of dependency deserves to be reworked and on doing so, it would come to Rs. 1,89,000/-(2250x12x7). The sums awarded under the conventional heads are also required to be modified so as to bring them in conformity with the judgment rendered in the case of Pranay Sethi (supra).

Funeral expenses	Rs.15000/-
Loss of estate	Rs.15000/-
Loss of spousal consortium to claimant No.1	Rs.40000/-
Loss of parental consortium to claimant Nos. 2 to 4 @ 40000/- each	Rs.1,20,000/-

No amount is admissible under the head 'loss of love and affection'.

21 The award is modified to the aforesaid extent. The claimants would, therefore, be entitled to a sum of Rs.3,79,000/- along with pendent lite and future interest at the rate of 7.5% per annum.

22 Registry shall release the amount in terms of the modified award in favour of the claimants after proper identification and verification. The excess amount shall be refunded to the insurer along with interest earned thereon.

It is made clear that the compensation awarded under the head 'loss of dependency' and spousal consortium shall be paid only to claimant No.1 i.e wife of the deceased and parental consortium to claimant Nos. 2 to 4, whereas rest of the amount shall be shared by all the claimants equally.

MA No. 310/2017 & CCROS21/2017 are disposed of accordingly.

(Sanjeev Kumar)
Judge

JAMMU.
05.08.2020
Sanjeev.

HIGH COURT
JAMMU & KASHMIR

Whether the order is speaking : Yes
Whether the order is reportable: Yes/No

SANJEEV KUMAR UPPAL
2020.08.07 11:25
I attest to the accuracy and
integrity of this document