IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6839-2010 (O&M)
Date of Decision: November 24, 2022

Bajaj Allianz General Insurance Co. Ltd.

...Appellant

VERSUS

Bhopal and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rajneesh Malhotra, Advocate
for the appellant.

Mr.T.P.Singh, Advocate
for respondent No.1.

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ARCHANA PURI, J.

Challenge in the present appeal is to the Award dated 16.08.2010 passed by learned Motor Accident Claims Tribunal, thereby, awarding compensation to respondent No.1-claimant Bhopal, on account of injuries sustained by him, in a motor vehicular accident, which took place on 15.04.2008.

On appraisal of the evidence adduced, learned Tribunal had awarded compensation to the extent of Rs.7,21,010/- to respondent No.1-claimant and the liability to pay the compensation was fastened jointly and severally upon, driver, owner and insurer of the offending vehicle.

Being dissatisfied with the liability, so fastened, appellant-Insurance Company has filed the present appeal. The appellant has also questioned the Award, on account of extent of compensation, so granted.

So far as, the accident and manner of its taking place, is concerned, the same stands amply established, from the evidence, so adduced. In fact, the driver of the offending Innova bearing registration No.DL-4CAE-7980, namely Jaibir, who was best person, to depose about the fact of accident and manner of taking place of the same, has not made appearance before the Tribunal and was proceeded against ex-parte. Even, owner of the offending vehicle, namely Vijender Kumar was proceeded ex-parte before the Tribunal. Even, after passing of the Award, no appeal, as such, has been filed, either by the driver or owner of the offending vehicle. So, on the count of accident having taken place and the imputation of rashness and negligence, upon the driver of the offending vehicle, need not to be dilated further.

Suffice to make mention that respondent No.1-claimant has deposed about the fact of accident and rashness and negligence, on the part of the driver-Jaibir, while driving the offending vehicle and even, fact of injuries sustained by respondent No.1, stand amply established, on the basis whereof, compensation has been granted.

It is now, at the very outset, the liability, so fastened upon the Insurance Company, jointly and severally, with the owner and driver, to make payment of awarded amount, has been challenged.

It is submitted by learned counsel for the appellant-Insurance company that insurance policy in question was issued on 16.06.2007, which was valid and effective, from the said date. However, the accident, whereof respondent No.1-claimant had sustained injuries, had taken place on 15.04.2008. However, the cheque issued by the owner of the offending vehicle, involved in the accident, towards premium fee of the policy of the insurance, was dishonoured, on account of '**payment stopped by drawer**'. It is submitted that the concerned bank had returned the cheque, on account of '**payment stopped by drawer**' vide Ex.R-3, which is dated 18.06.2007. Thereupon, the insurance company had informed about the dishonour of the cheque to Vijender Kumar vide Ex.R4, which is dated 22.06.2007. However, the accident had taken place on 15.04.2008. As such, it is submitted that insurance contract was cancelled by the insurance company and its intimation was served upon the owner of the offending vehicle and therefore, the contract of insurance, in between the insurance company and owner of the offending vehicle, had come to an end, much before the accident. Therefore, the insurance company is not liable to indemnify the owner of the offending vehicle. Thus, it is submitted that the insurance company would be absolved of this obligation to the third party.

On the contrary, learned counsel for respondent No.1-claimant submits that the insurance company cannot be wriggle out of this liability, as it has failed to establish the payment of premium by way of cheque and that the cheque in question Ex.R2, otherwise also, does not stand connected to the payment made by Vijender Kumar, owner of the offending vehicle and precisely, on this account, it cannot be said about the privity of contract, having come to an end.

Where the policy of insurance is issued by an authorised insurer, on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third party, in respect of the liability, which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicle Act, unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle, on receipt of the cheque, paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof, to the owner and other authorities, the insurance company's liability to indemnify the third party, which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation, in respect thereof.

Now, adverting to the case in hand. The cheque, so relied upon by the insurance company, which is asserted to have been issued for payment of premium, is Ex.R2 dated 13.06.2007. Copy of the certificate-cum-police schedule is Ex.RX. Close perusal of the same reveals that there is no mention made of the premium, having been paid by the owner by way of cheque. Even otherwise, the cheque Ex.R2 had been issued by one Kuldeep Kumar and that is for an amount of Rs.29,826/-, whereas, as per Ex.RX, the total final premium amount is Rs.29,072/-. As such, the amount so depicted in the cheque, does not match with the policy issued by the insurance company. Nowhere, it is the case pleaded by the appellant-insurance company, about the cheque, having been issued for the excess amount of Rs.754/-. In the light of the same, learned Tribunal had rightly reached the conclusion, about the sufficient connectivity, not being established, between the cheque in question and the payment, as such, made on account of privity of contract, with the appellant-insurance company.

As rightly done by learned Tribunal, even for the sake for arguments, if we begin with the assumption of the cheque Ex.R2, to have been so issued, vis-a-vis, premium of insurance of Innova bearing registration No.DL-4CAE-798 and that cheque had bounced, on account of '**payment stopped by drawer**', even then, the insurance company cannot wriggle out of its liability, as the insurance company has not complied with the requisite provisions of Section 147(4) and (5) of the Motor Vehicles Act, as the insurance company had not informed the registration authority, about the cancellation of the insurance policy. Though, the insurance company had sent a letter regarding dishonour of the cheque, only to the owner on 22.06.2007, copy whereof is Ex.R4, but however, it was statutorily incumbent upon the appellant-insurance company to intimate about that cancellation of the policy to the registration authority, which would have prevented the vehicle to ply on the road, otherwise, it cannot avoid liability to pay compensation to the third party.

In this regard, it is pertinent to make mention to the judgment passed in ***Paras vs. Kamal Kishore, 2012(2) RCR (Civil) 197***, wherein, reference has been made to the judgment passed by the Hon'ble Supreme Court in ***Daddappa vs. Branch Manager, National Insurance Co. Ltd., 2008 ACK 581(SC)***, wherein following view had been given:-

> *"We are not oblivious of the distinction between the statutory liability of the insurance company vis-a-vis a third party in the context of sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned*

> *have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim."*

In the light of the aforesaid view so expressed, in ***Paras's case (supra)***, it was held that 'it is very clearly stated by the Supreme Court that the liability of Insurance Company get cancelled only when all concerned have been intimated about the cancellation of the insurance policy. That did not occur in the instant case (in the case under consideration in said authority). Precisely, on this account, insurance company was held liable to pay the compensation.

The Motor Vehicles Act itself, is a beneficial piece of legislation for the third parties. Considering the same, it is evident that insurance of the vehicle to run at the public places is mandatory in nature. In the light of the same, it is implied that the insurance company will inform all concerned, inclusive of the regional transport authority and the appropriate police authority, dealing with the traffic simultaneously with the information of cancellation of the insurance coverage to the owner/insured. As per the scheme of the Act, such assurance is to be given, not only to the insured but also to the third party, who sustained injury or succumbed death, due to road accident and their legal representatives. They are not aware about the import, period and extent of the contract between the insurer and the insured. Also, they are not aware about any default. They presuppose that when a vehicle runs in the public place, it has all valid documents to run. One of such valid documents is contract of insurance between the insurer and insured to cover the third party risk. It is essential for the insurer to take defence before the Tribunal that it had not only cancelled the insurance coverage and informed the insured, but also simultaneously, intimated all concerned to prevent the vehicle from plying on the road, otherwise it cannot avoid the liability, to pay compensation to the third parties. When the insurance coverage under the Act is compulsory, it has two-fold duties i.e. prevention and compensation. When they have discharged their duty of prevention, in absence of coverage by notice to the appropriate authorities, their liability can be extinguished and the authorities will be strictly liable to ensure seizure of such vehicle from public place for not having insurance coverage. Notice to them, means notice to public. In the absence of the same, an Insurance Company cannot be discharged from their liability to make payment of compensation to a third party. As such, provisions under the statute cannot be frustrated by means of solitary information of the insurer to the insured about cancellation of insurance contract for dishonourment of requisite cheque. It is strict liability of the insurer under the law.

However, in the case in hand, the insurance company, has only given intimation at the maximum, to the insured vide letter dated 22.06.2007 Ex.R4. It is, nowhere, the case of the insurance company about any such intimation, having given to concerned authorities about the cancellation of the insurance policy, as envisaged under Section 147 (5) read with Section 149(1) of the Motor Vehicles Act.

In the light of the same, this conduct of insurance company is to be treated as statutory default. Therefore, the insurance company, as such, in no manner, can be absolved from its obligation, to pay the compensation, on the ground that the cheque for the insurance policy, given by owner

Vijender Kumar has been dishonoured and therefore, there was no proper insurance and insurance company was not liable to pay any compensation.

Thus, on the count of no liability, being thereupon the insurance company, the submission is bereft of merit and the same is hereby rejected.

Also, further learned counsel for the appellant submits that compensation, so worked upon by the Tribunal, is too excessive and needs to be scaled down. However, this submission also holds no ground and needs to be rejected.

From the evidence adduced, it stands established that respondent No.1-claimant had sustained several injuries, in the accident in question. In his affidavit Ex.PW6/A, he has categorically deposed about having received multiple serious and grievous injuries on his body. He had suffered compound fracture, shalft femure, fracture in tibia and his right leg was amputated after operation and had become permanently disabled. Even PW-1 Dr.Ritesh Singh, Orthopadic Surgeon of Hyderabadi Hospital, Panipat, has deposed about admission of respondent No.1-claimant in hospital on 15.04.2008 and discharge from the hospital on 10.05.2008.. He proved the MLR Ex.P1 and he also deposed about the patient to have been operated upon for multiple injuries. He gave the details of the injuries. He also categorically deposed about having operated five times. Discharge summary is Ex.P2. He has further deposed about respondent No.1-claimant, to have been admitted in hospital, again on 20.05.2008 and discharged on 26.05.2008 and again admitted on 07.08.2009 and discharged on 10.08.2009 and proved discharge summaries as Ex.P10 and Ex.P11. Even, medical bills have been proved by way of examination of PW-2 Krishan Dutt, which are Ex.P12 to Ex.P63. The disability certificate has been proved by PW-3 Karam Chand and the disability certificate is Ex.P64. The doctor concerned, who was member of the medical board constituted to assess the percentage of disability, has been examined as PW-4. PW-4 Dr.Rahul Diwan has categorically deposed about the disability to have been assessed to be 78%, which is permanent and the certificate is Ex.P64. Besides the same, PW-5 Sonu Saluja, Accountant of Hyderabadi Hospital, has also proved the bills/receipts Ex.P65 to Ex.P107, qua the expenditure incurred on the treatment of respondent No.1-claimant.

It is pertinent to mention that the claimant had suffered right leg amputation below knee.

Considering the aforesaid evidence, learned Tribunal had granted compensation, on account of pain and suffering, to the extent of Rs.60,000/-, on account of special diet and engagement of attendant, to the extent of Rs.40,000/-. Besides the same, the learned Tribunal had worked upon the loss of income, while applying the structured formula of multiplier and had taken the income of the deceased to be Rs.3,900/- per month, as fixed by the State Government for the unskilled worker, at the relevant time and working in this manner, the compensation, on the count of disability, has been taken to be **Rs.4,74,550**/-. Besides the same, the total of the bills of the expenditure incurred on his treatment, is taken to be Rs.1,46,460/-. While making the total of the same, the compensation to the extent of **Rs.7,21,010/-** had been granted.

In ***Smt.Sarla Verma vs. Delhi Transport Corporation and***

anr., 2009(3) RCR (Civil) 77, the Supreme Court held that the just compensation is adequate compensation and the Award must be just that- '**no less and no more**'. Always an attempt should be made to provide appropriate recompense, to negotiate with the unforeseeable and the fortuitous twists, is his impaired life after accident. Therefore, while the money awarded by Courts can hardly redress the actual sufferings of the injured victim (who is deprived of the normal amenities of life and suffers the unease of being a burden on others), the courts can make a genuine attempt to restore the self-dignity of such claimant, by awarding '**just compensation**'.

While attempting to grant compensation on same lines, more particularly, keeping in view the injuries, so suffered by the respondent No.1-claimant, as stated aforesaid, the compensation so granted by learned Tribunal is '**just compensation'**, which calls for no scaling down, as submitted on behalf of the Insurance Company.

In the light of the aforesaid observation, the present appeal sans merit and is hereby dismissed.

November 24, 2022 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**