HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Mac App No. 26/2021

Universal Sompo General Insurance Company Ltd. …..Appellant(s)/Petitioner(s)

Through: Mr. Dewakar Sharma, Adv.

vs

Sushma Kumari and others ….. Respondent(s)

Through: Mr. Sunil Dutt Sharma, Adv.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
23.12.2024

ORAL:

1. The instant appeal has been filed by the insurance company appellant herein under section 173 of the Motor Vehicles Act, 1988(for short "the Act") challenging award dated 30.12.2016 passed by the Motor Accidents Claims Tribunal, Jammu (for short the "Tribunal"), in claim petition tilted as **Sushma Kumari and others vs Sunny Kumar and others**.

2. Facts giving rise to the filing of the instant appeal would reveal that respondents 1 to 5 herein filed a claim petition under section 166 of the Act before the Tribunal for compensation on account of death of one Kuldeep Raj, being the son of respondents 4 and 5 herein, father of respondents 2 and 3 herein and the husband of respondent 1 herein alleged to have died in a vehicular accident on 24.04.2012 at Sarore Adda near Patrol Pump, Bari Brahamana, Jammu caused by Hyundai Santro Car bearing registration No. JK02AH 4719 owned by respondent 6 herein and driven by respondent 7 herein and insured with the appellant herein.

3. Upon entertaining the claim petition, the learned Tribunal summoned the respondents therein along with appellant herein, whereupon the respondent 3 in the claim petition being the appellant herein alone appeared, whereas respondents 1 and 2 did not chose to appear and consequently came to be set *ex parte* on 14.09.2013.

4. On the basis of the pleadings of the contesting parties being the claimants respondents 1 to 5 herein as also the appellant herein, the Tribunal framed the following issues:

> 1. Whether an accident took place on 24.04.2012 at Sarore Adda by rash and negligent driving of the vehicle bearing registration No. JK02AH-4719 by its driver as a result of which deceased Kuldeep Raj received fatal injuries? OPP
> 2. If issue No. 1 is proved affirmative whether petitioners are entitled to compensation, if so what amount and from whom? OPP
> 3. Whether the offending vehicle was being driven at the time of the accident in violation of terms and conditions of policy of insurance and respondent insurance company is not liable? OPR-3
> 4. Relief…? O. P. Parties.

5. In order to prove issues 1 and 2 supra, the claimants 1 and 4 being respondents 1 and 4 herein appeared as their own witnesses, besides examining one Ashok Kumar, whereas respondent 3 appellant herein did not produce any witness in order to prove issue 3 (supra).

6. The Tribunal after concluding the adjudication of the claim petition in terms of the impugned award awarded an amount of Rs. 43,88,992/- as compensation in favour of the claimants respondents 1 to 5 herein along with interest at the rate of 7.5% till its realization to be payable by the

insurance company appellant herein to the claimants in order to indemnify the insured, the owner of the offending vehicle respondent 6 herein.

7. The insurance company appellant herein has challenged the impugned award on multiple grounds urged in the claim petition.

Heard learned counsel for the parties and perused the record of the Tribunal.

8. Perusal of the statements made by the witnesses of the claimants respondent 1 to 5 herein would reveal that the claimants have had proved that the accident had taken place on 24.04.2012 caused by the offending vehicle driven rashly and negligently by the driver of the offending vehicle as a result whereof, the deceased sustained injuries and consequently died.

9. It also gets revealed from the record available on the file that on 10.11.2016, the claimants respondents 1 to 5 herein had moved an application for summoning of the officials of the Railway Protection Force to prove the pay certificate issued by the Drawing and Disbursing Officer of the Railway Protection Force, Jammu Tawi, pertaining to the deceased as the deceased was an employee of the Railway Protection Force, on the ground that the certificate issued by the competent authority though already on record, the same needs to be proved.

The said application came to be allowed by the Tribunal on 03.12.2016 after the respondents before the trial court including the appellant herein did not file any objections to the same and the Tribunal upon disposal of the said application, opined and concluded that the perusal of the salary

certificate issued by the Assistant Security Commissioner Railway Protection Force dated 16.05.2012 stands issued in favour of the deceased being a public servant and thus, came to be treated as an evidence under section 35 of the Evidence Act not requiring any further evidence to prove the same, while further observing that since the proceedings before the Tribunal are of summary nature, the provisions of Code of Civil Procedure or Evidence Act are not strictly applicable.

The aforesaid order dated 03.12.2016 passed by the Tribunal indisputably has not been thrown challenge to by the appellant herein before the passing of the final award and same assumed finality.

10. A deeper and closer examination of the impugned award would also reveal that the Tribunal, while adjudicating upon the claim petition, has not been oblivious to said order passed by it on 03.12.2016 inasmuch as, the observations and conclusions drawn there in the said order dated 03.12.2016 *qua* the salary certificate of the deceased and consequently while passing the impugned award, has taken into consideration the breakup of the salary drawn by the deceased prior to his death and in the process rightly relied upon the judgments passed by the Apex Court in case tilted as **Raghubir Singh Matolya and others v Hari Singh Malviya and others** reported in **2009 ACJ (SC) 1580** and also the judgment passed in case titled as **Sunil Sharma and others vs Bachintar Singh and others,** reported in **2011 ACJ 1441** and concluded that the monthly income of the deceased would be at Rs 18,329/- and being of the age of 35 years at the time of his death finally on the basis of the

principles laid down by the Apex Court in case tilted as **Sarla Verma and others vs. Delhi Transport Corporation and another,** reported in **2009 (3) Supreme 487** rightly assessed a just and fair compensation payable to the claimants respondents 1 to 5 herein by the respondents therein including the appellant herein being the insurer of the insured (owner of the vehicle).

11. As has been noticed in the preceding paras that the respondents before the Tribunal including the appellant herein did not lead any evidence in the matter before the Tribunal inasmuch as, the appellant herein even failed to contradict the veracity and creditability of the evidence led by the claimants respondents 1 to 5 herein.

Here a reference to the judgment of the Apex Court passed in case tilted as **Anita Sharma and others vs. New India Insurance Company Ltd and others** reported in **2021 (1) JKJ (SC) 140** would be relevant wherein at para 22 following has been held:

> "22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true."

12. Viewed thus, what has been observed, considered and analyzed hereinabove, the instant appeal fails and is, accordingly, dismissed.

13. The Registry is directed to release the award amount claimed to have been deposited before this Court by the appellant herein in favour of the claimants respondents 1 to 5 herein strictly in accordance with the terms of the award passed by the Tribunal after proper identification and verification of the claimants respondents 1 to 5 herein.

(JAVED IQBAL WANI)
JUDGE

Jammu
23.12.2024
Rakesh

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

Rakesh Kumar
2024.12.30 12:55
I attest to the accuracy and
integrity of this document