(2019) 12 SHI CK 0116

High Court Of Himachal Pradesh

Case No: First Appeal From Order No. 303 Of 2018

National Insurance Company Ltd	APPELLANT
Vs	
Sushma And Others	RESPONDENT

Date of Decision: Dec. 31, 2019

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, 149, 166, 173

Hon'ble Judges: Sandeep Sharma, J

Bench: Single Bench

Advocate: I.N. Mehta, Pavinder, Ajay Shandil, B.R. Sharma

Judgement

Sandeep Sharma, J

1. By way of instant appeal filed under Section 173 of the Motor Vehicles Act, challenge has been laid to award dated 29.3.2018, passed by Motor

Accident Claims TribunalÂIII, Solan, District Solan, Himachal Pradesh, in MACT Petition No.60ADJÂII/2 of 2016, titled as Sushma and others vs.

National Insurance Company Limited and another, whereby learned Tribunal below while allowing the petition under Section 166 of the Act, having

been filed by respondents No.1 to 5 (hereinafter â€˜claimantsâ€™), saddled the appellantÂ insurance company with liability to pay compensation to

the tune of Rs.9,05,500/Â with interest at the rate of 9% per annum from the date of filing of the petition till realization thereof.

2. For having birdâ€™s eye view, the facts which are relevant for the adjudication of the appeal at hand are that in the intervening night of 08/09Â-

10Â2016, truck bearing registration No. HPÂ11ÂBÂ0527 being driven by late Sh. Het Ram met with an accident, as a consequence of which,

deceased Shravan Kumar, who at the relevant time was working as a cleaner in the truck sustained multiple injuries and died on the spot. FIR bearing

No.78/2016, dated 9.10.2016 registered with police Station, Arki, District Solan,H.P., reveals that on the date of alleged incident, truck in question was

being driven by driver namely Sh. Het Ram in rash and negligent manner, who lost control of the vehicle near village Sainj, Tehsil Arki, District Solan,

H.P.,as a consequence of which, vehicle fell into the gorge and both the driver and cleaner of the truck died on the spot on account of the multiple

injuries sustained by them. Deceased Shravan Kumar was aged about 37 years at that relevant time and he was rendering his services as cleanerÂ-

cumÂ coolie in the said truck. As per the claimants, deceased Shravan Kumar was earning sum of Rs.14,000/Â per month and as such, they being his

dependent claimed compensation to the tune of Rs.30,00,000/Â.

3. AppellantÂinsurance company refuted the aforesaid claim put forth by the claimants on the ground that at the time accident driver of the vehicle

was not having valid driving licence and vehicle in question was being driven in violation of the terms and conditions of the insurance policy and as

such, it is not liable to indemnify the insured.

4. Respondent No.2 though denied that the accident took place due to rash and negligent driving by the driver of the truck, but admitted that at the

time of accident deceased Shravan Kumar was rendering his services as cleanerÂcumÂ coolie in the truck. Aforesaid respondent also stated in the

reply that in case Tribunal comes to the conclusion that claimants are entitled for any reasonable compensation, in that event insurance company being

insurer is liable to indemnify him.

5. Learned Tribunal below, on the basis of the pleadings adduced on record by the respective parties, framed following issues on 11.09.2017:Â

1. Whether the deceased Shravan Kumar died on dated 9.10.2016 at place near village Sainj, Tehsil Arki, District Solan, H.P., on account of rash and

negligent driving by the driver of the vehicle bearing No. HPÂ11ÂBÂ0527, as alleged? OPP

2. If issue No.1 is proved in affirmative, whether the petitioners are entitled for the grant of compensation, if so, to what amount and from which of

the respondents?OPP.

3. Whether the petition is not maintainable? OPR.

4. Whether the driver of the offending vehicle was not having valid driving licence at the time of accident? OPRÂ3

5. Whether the offending vehicle was being driven in violation of the provisions of Motor Vehicles Act and terms and conditions of the insurance

policy, as alleged? OPRÂ3

6. Relief:Â

6. Learned Tribunal below on the basis of the totality of evidence led on record by the respective parties, held appellantÂInsurance Company liable to

pay compensation to the tune of Rs. 9,05,500/Â with interest at the rate of 9% per annum from the date of filing of the petition till realization. In the

aforesaid background, appellantÂinsurance company has approached this Court in the instant proceedings.

7. Having heard learned counsel representing the parties and perused the material available on record visÂaÂvis reasoning assigned in the impugned

award, this Court finds that primarily challenge of the appellantÂinsurance company to the award is on three grounds(i) since vehicle in question at the

time of the accident was being driven by the driver under the influence of liquor, Tribunal below ought not have held insurance company liable to pay

compensation(ii) deceased Shravan Kumar was travelling as gratuitous passenger and as such, appellantÂinsurance company is not liable to pay any

compensation; and (iii) Tribunal below has wrongly assessed the income of the deceased at the rate of Rs.210/Â per day, especially when no

evidence in this regard ever came to be led on record.

8. Careful perusal of the reply filed by the appellantÂ insurance company before the Tribunal below though reveals that specific plea with regard to

breach of terms and conditions of the insurance policy was taken by the insurance company, but there is no specific mention, if any, with regard to

alcohol allegedly consumed by the deceased driver of the illÂ fated vehicle at the time of alleged accident.

9. No doubt, FSL Report Ex.RW1/C reveals that the quantity of ethyl alcohol in the blood of the deceased Het Ram was found to be 308.29 mg %,

meaning thereby vehicle in question was being driven under the influence of liquor, but it has been held by this Court in case titled Khem Chand versus

Smt. Uma Devi and others, 2010(1) Him. L.R.232 that intoxication of the driver is not a ground available to the insurance company under Section 149

of the Act and as such, liability, which is statutory under Section 147, has to be satisfied by the insurer. Otherwise also, by now it is well settled that a

claim which falls within the purview of an Act policy i.e. a liability falling within the ambit of Section 147 of the Motor Vehicles Act, 1988 can only be

contested by the insurance company on the grounds available to it under Section 149 of the Act, meaning thereby insurance company is not permitted

to contest the proceedings on any other grounds. Careful perusal of Section 149 of the Act, nowhere suggests that the appellantÂinsurance company

could refuse the claim of the claimants on the ground of intoxication of the driver. It would be profitable to reproduce paras No.3 to 5 of the judgment

hereinbelow:Â

â€œ3. It would also be pertinent to mention here that the Insurance Company had filed an appeal being FAO No. 181 of 2006 wherein it had raised a

plea that no liability could have been fastened on it. The appeal was dismissed by this Court on October 18, 2006.

4. The law is very well settled that a claim which falls within the purview of an Act policy i.e. a liability falling within the ambit of Section 147 of the

Motor Vehicles Act, 1988 (the Act) can only be contested by the Insurance Company on the grounds available to it under Section 149 of the Act. It

is not permitted to contest the proceedings on any other grounds. Intoxication of the driver is not a ground available to the Insurance Company under

Section 149 of the Act. Therefore, the liability, which is statutory under Section 147 of the Act, has to be satisfied by the insurer. It may be clarified

that in case the insurer in addition to the liability which it is bound to cover under the Act covers other liability then in case of such extended liability, it

may raise the defences available to it as per terms of the policy, but as far as statutory liability is concerned, the insurer has no authority to incorporate

any term in the policy which is not contemplated in terms of Section 149 of the Act. Therefore, the Insurance Company could not have been permitted

to raise this defence and it could not be permitted to recover the awarded amount from the insured.

5. In this case, I also find that the clause in the policy relied upon by the Insurance Company is not applicable. This clause which provides that the

Insurance Company shall not be liable if the person driving the vehicle is intoxicated with the knowledge and consent of the insured is incorporated in

SectionÂI of the policy. This section only deals with own damage claims i.e. damage caused to the vehicle in question. SectionÂII of the Act deals

with third parties and does not contain a similar clause. Therefore, it is apparent that even the policy did not contemplate that the Insurance Company

would not be liable in condition, with the knowledge of the ownerâ€.

10. In the case hand, PWÂ1, Smt. Sushma in her affidavit categorically deposed before the Court below that the accident occurred on account of the

rash and negligent driving by the driver Het Ram, but interestingly no suggestion, worth the name, ever came to be put to the aforesaid witness by

learned counsel representing the appellantÂinsurance company that accident did not occur on account of the rash and negligent driving by Driver Het

Ram. No specific suggestion, if any, ever came to be put to PWÂ1 with regard to intoxication of the driver driving the vehicle at the time of the

accident. Honâ€™ble Apex Court in case titled Rajinder Prashad vs. Darshana Devi, 2001(3) Civil Court Cases 622, has categorically held that in the

absence of crossÂexamination on a particular point, the version deposed in examinationÂinÂchief on that point is to be presumed correct.

11. Similarly, this Court finds that no specific plea ever came to be raised on behalf of the appellantÂinsurance company before the tribunal below that

at the time of alleged accident deceased Shravan Kumar was travelling as a gratuitous passenger and as such, appellantÂ insurance company cannot

be permitted to raise this question at the appellate stage. Otherwise also, evidence available on record clearly reveals that claimants successfully

proved on record that at the time of alleged accident, deceased Shravan Kumar was rendering his services as a CleanerÂcumÂCoolie in the truck

owned by respondent No.6.

12. Respondent No.6, Roshan Lal in his evidence led by way of affidavit Ex.RW1/A, categorically deposed that deceased Het Ram was driver of the

Truck and deceased Shravan Kumar was cleaner employed by him in his truck. He further deposed that he engaged the deceased Shravan Kumar as

a Cleaner on 20.09.2016 on a monthly salary of Rs. 3500/Â. CrossÂexamination conducted upon this witness nowhere suggests that appellantÂ-

insurance company was able to shatter the testimony of aforesaid witness, who specifically denied the suggestion put to him that deceased Shravan

Kumar was not working with him as cleaner, rather he explained that prior to joining his services, he was working at a mechanic shop at place called

Darlaghat. He also stated that he was paying sum of Rs. 200/Â per day to the cleaner apart from the salary.

13. RWÂ2, H.C.Girish Kumar came to be examined by the appellantÂinsurance company to prove that it has come in the investigation of the criminal

case that Shravan Kumar was working as a mechanic at place Darlaghat at the time of alleged accident, but in crossÂexamination aforesaid witness

categorically admitted that he did not take the record from the shop which could show that at the time of alleged accident deceased Shravan Kumar

was working as a mechanic. This witness was unable to state before the tribunal below that who is the owner of the mechanic shop where deceased

Shravan Kumar was allegedly rendering his services as a mechanic.

14. FIR Ex.PW2/A clearly reveals that complainant Krishan Chand reported the matter to the police on 9.10.2016 and stated that at about 6:45 AM

when he went to a nallah, he after having noticed the smell of diesel, went to the see the spot alongwith his brother Teerth Ram and found that a truck

bearing registration No.HPÂ11ÂBÂ0527 lying in accidental condition. He also stated that persons namely Het Ram Driver and Shravan Kumar

cleaner were found dead . Most importantly, it has come in the statement of this witness that he knew both the persons by name. In view of the

aforesaid evidence available on record, this Court is unable to accept the contention of Mr. I.N.Mehta, learned counsel representing the appellantÂ-

insurance company that at the time of alleged accident, deceased Shravan Kumar was travelling as a gratuitous passenger.

15. In the case at hand, PWÂ1 claimed that deceased Shravan Kumar while rendering his services as a Cleaner was earning 8000/Â per month.

RWÂ1 owner of the vehicle though also stated that deceased Shravan Kumar was working under him as cleaner and his monthly income was Rs.

8000 to 10,000/Âper month, but in his crossÂexamination he failed to produce any record, if any, suggestive of the fact that deceased Shravan Kumar

was in receipt of Rs.8000 to 10,000/Â per month as salary. Since, no documentary evidence ever came to be led on record by the claimants, tribunal

below rightly rejected the claim of the claimants that at the time of accident deceased was earning Rs.8000/Â per month, but since factum with regard

to employment of deceased Shravan Kumar in the truck owned by respondent No.6 stood duly proved, Tribunal below rightly assessed the income of

the deceased Shravan Kumar at Rs.210/Â per day i.e. minimum wages of labourer in the year, 2016. Since it is not in dispute that in the year, 2016,

minimum wages of labourer was Rs.210/Â per day, no fault, if any, can be found with the findings returned by the tribunal below qua aforesaid issue.

Since at the time of alleged accident deceased was 39 years old, tribunal below rightly applied multiplier of â€˜15â€™.

16. Mr. I.N.Mehta, learned counsel representing the appellantÂInsurance company while placing reliance upon judgment passed by Hon'ble Apex

Court in Laxmidhar Nayak and ors v. Jugal Kishore Behera and Ors, (Civil Appeal No. 19856 of 2017, arising out of SLP(C) No. 31405 of 2016),

contended that the interest awarded by the learned Tribunal below is on higher side.

17. Having carefully gone thorough the judgment passed by Hon'ble Apex Court in Laxmidhar Nayak (supra), as relied upon by learned counsel for

the appellantÂ Insurance Company, this Court is not inclined to agree with the contentions of the learned counsel representing the appellant that

interest awarded by the learned Tribunal below is on higher side. In the case referred hereinabove, Hon'ble Apex Court reduced the rate of interest in

the peculiar facts and circumstances of the case and certainly laid no thumb rule/law that interest cannot be awarded at the rate of 9% per annum.

18. Recently, Hon'ble Apex Court in Reliance General Insurance Co. Ltd. v. Shalu Sharma, (2018) 2 SCC 753, awarded 9% interest and as such, this

court finds no reason to interfere with the rate of interest awarded by the learned Tribunal below. The Hon'ble Apex Court in the aforesaid judgment

has held as under:

â€œThe Tribunal has awarded a sum of Rs 3,14,335 towards medical expenses. An addition of Rs 70,000 would be required to be made in terms of

the decision in Pranay Sethi (supra) on account of the conventional heads of loss of estate (Rs 15,000), loss of consortium (Rs 40,000) and funeral

expenses (Rs 15,000). Hence, the total compensation is quantified at Rs 27,66,522 on which the claimants would be entitled to interest @ 9% p.a.

from the date of the filing of the claim petition. The apportionment shall be carried out in terms of the award of the Tribunal. We order accordingly.â€

19. Consequently, in view of the detailed discussion made hereinabove, this Court finds no illegality and infirmity in the impugned award passed by the

learned Tribunal below, which otherwise appears to be based upon the proper appreciation of evidence adduced on record and as such, same is

upheld.

20. All pending miscellaneous applications, if any, are disposed of. Interim directions, if any, are vacated.