(2016) 08 RAJ CK 0072

RAJASTHAN HIGH COURT

Case No: Civil Misc. Appeal No. 89 of 2000

Smt. Manju Lata	APPELLANT
Vs	
Laxmi Narain Sharma	RESPONDENT

Date of Decision: Aug. 2, 2016

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, Section 149(1), Section 166, Section 168, Section 173

Citation: (2017) 1 CivilLJ 258 : (2016) 4 TAC 19

Hon'ble Judges: Mr. Arun Bhansali, J.

Bench: Single Bench

Advocate: Mr. Rajesh Panwar, Advocate, for the Appellant; Mr. S.R. Paliwal, Advocate, for the Respondent

Final Decision: Partly Allowed

Judgement

Mr. Arun Bhansali, J. - This appeal is directed against judgment and award dated 01.11.1999 passed by the Motor Accident Claims Tribunal (First), Jodhpur (''the Tribunal''), whereby, the Tribunal has awarded a sum of Rs. 5,10,000/- along with interest @ 12% per annum from the date of application for compensation (''application'') i.e. 11.04.1994, however, the Insurance Company has been exonerated from the liability to pay compensation.

2. The application was filed by the claimants wife, son and parents of one Rajendra Singh Rajpurohit with the averments that said Rajendra Singh Rajpurohit, who was aged 25 years, was travelling on his Scooter bearing registration No. RJ19-M-6258 from Rasala Road to Sojati Gate when Bus bearing registration No. RJP-467, which was being driven rashly and negligently by Laxmi Narayan, struck the said Rajendra Singh Rajpurohit, which resulted in grievous injuries to him, to which, he ultimately succumbed; it was claimed that deceased was Editor of Rajasthan Law Weekly and his monthly salary was Rs. 2100/- and by working with Newspaper agency, used to

earn another Rs. 1200/- per month; the applicants were dependent on him; his salary was likely to increase in future. Based on the said averments a compensation of Rs. 21,96,000/- was claimed.

3. No reply was filed by the driver and owner of the Bus.

The Insurance Company filed its reply and took usual defences; besides the usual defences, it was claimed that at the time of accident the Bus was not insured; the owner of the Bus after the accident, by concealing the fact of accident, got the Bus insured, which is illegal; the cover note is void as the same was got issued on 14.10.1993 at 05:15 PM at Jaipur, whereas, the vehicle was at Jodhpur; without physical verification, cover note cannot be issued and the Insurance Company has not given any credence to the cover note in question; the premium was paid by cheque and till such time that the amount of cheque is not deposited with the Insurance Company, the risk does not start; the cheque was dated 15.10.1993 and, therefore, the Insurance Company is not liable; the amount claimed as compensation was also disputed.

4. The Tribunal based on the averments of the parties framed four issues; on behalf of claimants four witnesses were examined and ten documents were exhibited; on behalf of Insurance Company two witnesses were examined and five documents were exhibited.

5. After hearing the parties, the Tribunal came to the conclusion that the accident occurred on account of rash and negligent driving of the driver of the Bus; regarding the amount of compensation, the Tribunal found that the deceased was working with Rajasthan Law Weekly and his monthly salary was Rs. 2100/- and used to work with newspaper agency and earn Rs. 1200/-; it was found that though the salary would have increased in future, however, as the future is uncertain, taking the dependency of the claimants at Rs. 2200-2300 and applying a multiplier of 18 a compensation for loss of income was assessed at Rs. 4,80,000/-, a sum of Rs. 15,000/- was awarded towards loss of consortium, Rs. 5,000/- was awarded to the minor son for loss of love and affection, Rs. 4,000/- each to the parents for loss of love and affection and a sum of Rs. 2,000/- was awarded towards funeral expenses. In all a sum of Rs. 5,10,000/- was awarded.

6. While deciding the issue pertaining to liability of the Insurance Company, the Tribunal came to the conclusion that the Insurance Company failed to prove that the driver was not in possession of the valid driving licence; thereafter the Tribunal found that the documents Exhibits-A/1 to A/5 produced by the Insurance Company were reliable; the Bus was insured on 15.10.1993 and the cover note Exhibit-A/1 wrongly indicates the date of insurance as 14.10.1993; the Tribunal heavily relied on Exhibits-A/1 and A/2, which were cover notes issued by the Development Officer and found that cover note No. 786606 was issued on 15.10.1993 and cover note No. 786608, which pertained to the offending vehicle, was shown to have been issued

on 14.10.1993 and found that the cover note in fact has been issued on the next date.

7. The Tribunal also found that on Policy (Exhibit-A/5) the premium has been indicated to have been received on 15.10.1993 and if the premium was paid on 14.10.1993 the same would have been indicated as 14.10993 and based on the suppression in getting the vehicle insured in the back date after the accident had occurred, the Tribunal found that the Insurance Company was not liable.

8. It is submitted by learned counsel for the appellant that the Tribunal has erred in coming to the conclusion that the Insurance Company was not liable on account of alleged aspect that the insurance was obtained after the accident had taken place; it was submitted that it was not proved on record that the insurance was got done after the accident has occurred; statements of both the witnesses NAW-1 - D.K. Verma, the Development Officer, who issued the cover note and NAW-2 **&#65533;** Ramnath, Dy. Manager of the Insurance Company cannot be relied on as while D.K. Verma has interest in taking a stand in favour of Insurance Company as charge-sheet was issued to him and Ramnath, who is the Inquiry Officer, has only stated the facts from the charge-sheet only; it was submitted that in any case despite the above allegations about getting the policy issued in the back date, the policy was not cancelled and the same continued. If there was substance in the allegations made by the Insurance Company the policy should have been cancelled by it. It was argued that in view of the provisions of Section 149 (1) of the Act, the Insurance Company is liable to make payment of compensation and has wrongly been exonerated by the Tribunal.

9. Reliance was placed on **Oriental Insurance Co. Ltd. v. Inderjit Kaur & Ors., (1998) 1 SCC 371**, **New India Assurance Co. Ltd. v. Rula & Ors., (2000) 3 SCC 195** and **Hindustan General Ins. Society Ltd. v. Khushiram, 1982 A.C.J. (Supp.) 437**:

Regarding the amount of compensation it was submitted that once the Tribunal had accepted the income of the deceased at Rs. 3200/-, the Tribunal should have awarded just compensation by taking into account future prospects. The Tribunal without any reason has simply found the dependency at Rs. 2200 **&#65533;** 2300 and the same deserves to be enhanced adequately looking to the age of the deceased.

Vehemently opposing the submissions made by learned counsel for the appellants, learned counsel for the respondent submitted that from the material available on record including Exhibits-A/1 to A/5 it is proved beyond doubt that the cover note was got issued by the owner of the vehicle after the accident had occurred, in back date and, therefore, the contract of insurance, if any, is void for suppression of material facts and, therefore the Tribunal was justified in exonerating the Insurance Company. It was submitted that the Tribunal has granted just compensation to the claimants looking to the circumstances of the case and the same does not call for any interference.

10. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

11. So far as the quantum of compensation is concerned, the claimants produced a certificate Exhibit-17 from Rajasthan Law Weekly indicating that the deceased was working with it at a salary of Rs. 2100/- per month and that he was working from March, 1993. The compensation was also claimed on the basis that the deceased was working with newspaper agency as well.

The Tribunal accepted the income of the deceased at Rs. 3200, however, did not grant any amount under the head of future prospects. For grant of future prospects, the requirement is a stable job. The deceased was aged 25 years and was working for over one year at fixed salary with the Rajasthan Law Weekly and looking to his age, at least qua the amount of Rs. 2100, the employment with Rajasthan Law Weekly can be said to be a stable employment and the income from the newspaper agency apparently cannot be said to be a stable enough for taking the same into consideration for award of future prospects. As the deceased was aged 25 years qua the sum of Rs. 2100/-, 50% amount needs to be added as future prospects.

12. In view thereof, the claimants would be entitled to compensation towards loss of income at Rs. 3200 + 1050 = 4250 - 1415 = 2835 x 12 x 18 = 6,12,360/- rounded of to Rs. 6,12,500/-. The rest of the amount awarded under different heads by the Tribunal to the tune of Rs. 30,000/- does not call for any interference. Further, on the amount of enhanced compensation the claimants would be entitled to interest @ 7% per annum from the date of application i.e. 11.04.1994.

13. Coming to the issue of the liability of the Insurance Company for making payment of the amount of compensation, it would be seen that in the reply to the application the Insurance Company only took the stand that as the insurance cover note was not issued without physical verification as the vehicle was not available at Jaipur, the Insurance Company does not give credence to the cover note No. 786608 and the owner did not disclose the fact of accident at the time of the insurance and, therefore, the cover note was void. The application for compensation was filed before the Tribunal on 11.04.1994 and the Insurance Company was served with the application on 06.09.1994. The policy in question was in existence from 14.10.1993 to 13.10.1994 and despite becoming aware of the said aspect, no steps were taken for cancellation of the insurance policy, which remained in currency for the entire period. The Tribunal laid great emphasis on the fact that the cover note No. 786608 which pertained to the offending vehicle was claimed to have been issued on 14.10.1993, whereas, the cover note No. 786606 by the same Development Officer was issued on 15.10.1993, for coming to the conclusion that the later number cover note cannot be issued on a previous date. However, it would be relevant to notice that the Insurance Company did not produce the cover note No. 786607. Further, though the Tribunal relied on all the documents pertaining to the inquiry against the Development Officer, it ignored the explanation regarding the contradiction in

the dates pertaining to the two cover notes given by NAW-1 - D.K. Verma in his response Exhibit-A/5, which reads as under:-

"That as regard charge No. 2, it is submitted that cover note No. 786606 was issued on 14.10.93 and its effective date was 15.10.93. By mistake or slip of pen, the issuing date was mentioned as 15.10.93 which is clear from the certificate issued by the State Bank of Bikaner and Jaipur Branch Surajpole Jaipur dated 24.4.1995 showing that premium amount of Rs. 214.00 was paid by bankers Cheque dated 14.10.1993 relating to insurance cover note No. 786606. The said cover note was also prepared in the bank itself. A photocopy of the said certificate is submitted herewith as Annexure -1."

14. A perusal of the said reply indicates that cover note No. 786606 though was issued on 14.10.1993 the issuing date was wrongly mentioned as 15.10.1993 by mistake and that the premium was paid by banker''s cheque dated 14.10.1993, relating to the said cover note.

15. In view of the above state of affairs, cover note No. 786607 was most crucial document, which should have been produced by the Insurance Company, which could have thrown light as to whether the date mentioned on cover note No. 786606 i.e. 15.10.1993 was correct or the explanation of D.K. Verma the Development Officer was correct. The non-production of cover note No. 786607 has not been explained and on that count an adverse inference needs to be drawn against the Insurance Company.

16. So far as the second reason indicated by the Tribunal for coming to the conclusion about the Policy being back dated i.e. the premium having been paid by cheque on 15.10.1993 is concerned, the said observation is de hors any material available on record, inasmuch as, the policy indicates the receipt through ''Scroll No. 645 dated 15.10.1993'', which necessarily means that the amount was deposited on 15.10.1993, which in the circumstances of the case, is obvious as the cover note was issued on 14.10.1993 at 5:15 PM i.e. after the office hours, nowhere in the cover note there is any indication that the amount was paid by cheque dated 15.10.1993, further in case the amount was paid by cheque, the cheque numbers should have been mentioned. Though a specific plea has been taken by the appellant Insurance Company in additional plea that the cheque was given was dated 15.10.1993, even from the other documents pertaining to the inquiry against the Development Officer produced as Exhibit-A/3, A/4 and A/5, it cannot be deciphered that amount was paid by cheque dated 15.10.1993.

17. In view of the fact that a specific plea was taken by the Insurance Company in additional pleas of its reply regarding the cheque being dated 15.10.1993, it was incumbent on the Insurance Company to prove the said aspect, which it has miserably failed and, therefore, the Tribunal was not justified in accepting the said aspect based on the Policy by misreading the contents of the policy.

18. Besides the above, it is admitted position that the policy was not cancelled by the respondents and the same continued for its full term.

19. Hon''ble Supreme Court in the case of Inderjit Kaur (supra) in a case where the cheque received towards the premium was dishonoured but the policy was not avoided by the Insurance Company held as under:-

"9. We have, therefore, this position. Despite the bar created by Section 64-VB of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus without receiving the premium therefor. By reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.

10. The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured."

Further in the case of Rule (supra) the said aspect was reiterated and even in a case where the policy was subsequently cancelled, qua accident, which had occurred before cancellation of the Policy, the Insurance Company was held liable. It was held as under:-

"13. This decision, which is a three-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the insurance policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the issuance of the policy on the date on which the accident took place. If, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party."

In view of the above, the finding of the Tribunal on issue No. 3 pertaining to the liability of the Insurance Company cannot be sustained either on facts or law and the same is, therefore, set aside.

20. In view of the above discussion, the appeal is partly allowed. The award passed by the Tribunal is modified to the extent that all the non-claimants-respondents including the Insurance Company are jointly and severally liable for making payment of compensation and instead of a sum of Rs. 5,10,000/- as compensation,

the claimants would be entitled to compensation to the tune of Rs. 6,42,500/- along with interest @ 7% per annum with effect from the date of application i.e. 11.04.1994. In case pursuant to the impugned award dated 01.11.1999 interest @ 12% has been paid to the claimants, the same shall not be refunded back or adjusted towards the enhanced amount.

Subject to any payment already made the claimants would be entitled to compensation as under:-

Appellant No. 1 &#65533; Wife - Rs. 3,50,000/- along with interest Appellant No. 2 - Son - Rs. 1,50,000/- along with interest Appellant No. 3 - Father - Rs. 71,250/- along with interest Appellant No. 4 - Mother - Rs. 71,250/- along with interest..... Rs. 6,42,250/-

.....The amount of compensation be paid to the claimants appellants in their saving bank accounts within a period of six weeks from the date of this judgment.