

(2016) 09 AHC CK 0195

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

Case No: First Appeal From Order No. 174 of 2015.

The Oriental Insurance Co. Ltd.
Throu Its Branch Manager -
Appellant @HASH Smt. Sunnai
(Sanney) and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 29, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 16 Rule 6
- Motor Vehicles Act, 1988 - Section 173
- Uttar Pradesh Motor Vehicles Rules, 1998 - Rule 221

Citation: (2016) 10 ADJ 502 : (2017) 1 AllWC 568

Hon'ble Judges: Attau Rahman Masoodi, J.

Bench: Single Bench

Advocate: Mohd. Saeed, Advocate, for the Appellant; Mohd. Arif Jafri and Waquar Hashim, Advocates, for the Respondents

Final Decision: Disposed Off

Judgement

Attau Rahman Masoodi, J. - FAFO No. 1029 of 2014 filed for enhancement of compensation arises out of the award rendered on 8.9.2014 in Claim Petition No. 114 of 1993 and FAFO No. 174 of 2015 arising out of the same award filed by the insurance company were heard together.

2. Sri Anil Srivastava, learned counsel for the appellants in FAFO No. 174 of 2015 and Sri Mohd. Saeed, learned counsel for the claimants were heard at length. The owner of the vehicle i.e. opposite party no. 4 though being served, has remained unrepresented and the respondent no. 5 who died during pendency of the claim petition itself, stands deleted from the array of parties.

3. It is also informed that opposite party no. 2 during pendency of claim petition had died, therefore, the appeal would not be maintainable against him as well. In these circumstances, the surviving respondents are respondent no. 1, 3 and 4 out of whom 1 and 3 are the claimants whereas respondent no. 4 is the owner of the offending vehicle.

4. In enhancement appeal no. 1029 of 2014 Sri Mohd. Saeed represented the appellant whereas Sri Waqar Hashim argued on behalf of the insurance company, however respondent no. 2 i.e. the owner though being represented through Mohd. Arif Jaffri, learned counsel, despite a written notice, has chosen not to appear and the proceedings being fixed for hearing have thus proceeded treating the notice to be sufficient. The written notice served upon Sri Mohd. Arif Jaffri, is taken on record.

5. From the perusal of record it is seen that by order dated 29.8.2013 passed by the learned Tribunal, it was left open to the owner of the vehicle and the claimants both to place a copy of the insurance policy on record and this order has remained unchallenged throughout.

6. On the premise of the aforesaid order, Sri Anil Srivastava, learned counsel for the Oriental Insurance Company has argued that once the responsibility of filing the insurance policy was shifted upon the claimants and the owner, there was no occasion for the insurance company to have placed on record the relevant document although in the written statement filed before the Tribunal on behalf of the insurance company paragraphs 17 and 22 make a specific admission as regards the insurance of vehicle, which are reproduced as under:

"17. That in reply to para 17 of the petition it is admitted to the extent that the alleged vehicle was insured with the answering opposite party with liability limited to the extent as enumerated in the policy terms and conditions and as laid down in the Motor Vehicle Act.

22. That the contents of para 22 of the petition are specifically denied. It is stated that the petitioner has not only claimed and set excessive and exorbitant claim but the said claim is also unreasonable. It is stated that the claimant is not entitled to any claim/compensation from the answering opposite party, specially when the liability of the answering opposite party is limited to the extent as per the terms and conditions of the policy. It is also stated that the liability of the answering opposite party is limited in case of property damage of third party."

7. Not only that the written statement had admitted the existence of the insurance policy of the vehicle in question but the evidence of one Jagdish Prasad, a clerical staff of the insurance company was also led before the Tribunal who in his examination-in-chief stated that the document of driving licence is filed as paper no. C-29 whereas the document of insurance policy is filed as Ga-30. As regards the driving licence, it was stated by the witness that the said document was obtained through a surveyor who is not a permanent employee of the company but

apparently driving licence being valid, the same cannot be doubted. Insofar as paper Ga-30 (insurance policy) is concerned, the owner of the vehicle while conducting cross-examination did not ask any question although the policy filed did not relate to the owner's vehicle. The statement made in the cross-examination merely shows that document Ga-30 is the insurance policy placed on record. Thus, learned Tribunal while deciding the claim on issues no. 3 and 5, has proceeded on the basis of evidence led by the claimants and the insurance company alone. In the light of pleadings and the evidence led before the Tribunal, the point of determination that crops up for consideration before this Court is; whether the deceased being the owner of the goods was an authorised passenger and if yes, whether such a person was covered within the scope of insurance policy or not.

8. It may be noticed that prior to the amendment of 1994 in the Motor Vehicles Act, 1988, there was no statutory obligation on the part of the owner of transport vehicle to insure liability of the insurance company for extra passenger i.e. the owner of the goods or his representative. However if the contract of insurance provided that extra cover, then the liability of the insurer was construed as per terms of the policy.

9. It is an admitted position that the deceased being owner of the goods was not an unauthorised passenger but what is disputed is that the authorised passenger was not insured as per the contract of insurance policy issued by the insurance company. Once the deceased was admittedly an authorised passenger and the existence of insurance policy was also admitted in the written statement filed by the insurance company, the question that immediately crops up is as to the extent of liability of the insurer. The liability was denied by the insurer by filing an additional written statement on 25.7.2013 wherein paras 1 and 6 state as under:

"1. That by way of order dated 29.05.1999, the answering opposite party/Oriental Insurance Co. Ltd. Was absolved of its liability and the liability of award was fixed upon opposite party no. 1, as the deceased was travelling in the alleged vehicle as a gratuitous passenger. Further by way of order dated 17.02.2012, order dated 29.05.1999 was set aside on depositing Rs. 1,00,000/- before the Hon"ble Tribunal, by the owners, such the need of this additional written statement of opposite party no. 3 before this Hon"ble Tribunal arose, as opposite party no. 1, filed its written statement before this Hon"ble Tribunal on dated 15.09.2012.

6. That as per order dated 29.05.1999, the Hon"ble Tribunal had clearly observed and held that the deceased was travelling in the alleged vehicle, at the time of alleged occurrence, as a gratuitous passenger and which is clearly the violation of the policy of insurance and thereby by way of said order had absolved the liability of opposite party no. 3, as against the payment of award, but had fixed the liability on opposite party no. 1, on account of violation of the conditions of the policy of insurance."

10. The statement made in paras 1 and 6 of the additional written statement when read along with para 17 and 22 of the written statement already reproduced above, lead to an inconsistency. On the one hand the insurance company admitted the existence of insurance policy but on the other hand, it is stated that the deceased was a gratuitous passenger.

11. Looking to the anomalous stand advanced bdy the insurance company, the owner of the vehicle filed an application on 29.8.2013 for summoning the copy of insurance policy, which was disposed of by an order passed on the same date, which reads as under:

"fnukad 29-08-2013

;kfpdk izLrqr gqbZA iqdki dj;h x;hA iqdki ij ;kfpuh ds vf/koDrk mifLFkr gSA ;kfpuh ih0MCyw0 1 ds :i esa iwoZ esa ijhf{kr gks pqdh gSA o"KZ 1993 ds eksVj nq?kZVuk izfrdj ;kfpdk ds bl ekeys esa igys fu.kZ; fnukad 29-05-1999 dks ikfjr gqvK Fkk bl fu.kZ; dks fujLr djus ds fy, foi{kh la[k; 1 Qk:[k vgen dh rjQ ls vkns"K 9 fu;e 13 lifBr /kkjk 151 lh0ih0lh0 ds vUrxZr izkFkZuk i= izLrqr fd;k x;k Fkk tks Lohdkj gqvK Fkka vc ;kfpdk okLrs ;kph lk{; fu;r gSA ;kfpuh xokgh ds fy, mifLFkr gS ijUrQ 12-45 ih0,e0 rd foi{kh la[k; 1 dh rjQ ls dksbZ mifLFkr ugha vk;kA foi{kh la[k; 3 chek dEiuh ds vf/koDrk vkt U;k;ky; esa mifLFkr vk pqds gSA ;kfpdk iqu% 2-30 ih0,e0 ij is"K gksA"

12. Once the burden was shifted upon the claimants and the owner as per the order dated 29.8.2013, the insurance company did not choose to file the policy in relation to the vehicle in question so as to defend its liability.

13. Surprisingly while dealing with the issue which was open to be decided on the basis of a documentary evidence, the Tribunal misdirected its procedure and allowed more doubt to creep in and in this manner the Tribunal has failed to record a clear finding of fact on the aspect of extent of the liability of insurer.

14. This Court does not appreciate such a practise on the part of the Motor Accident Claims Tribunal where the proceedings though of summary nature are bound to be decided fairly and with due application of mind. Insofar as the procedure is concerned, by virtue of Rule 221 of U.P. Motor Vehicles Rules, 1998 Order 16, Rule 2 to 21 CPC are applicable wherein Order 16, Rule 6 in particular empowers the Tribunal to summon a document from the authority possessed with the same that may be decisive for adjudication of a claim. The application filed by the claimants for summoning of the insurance policy at worst was liable to be allowed at the cost of claimants but the order passed by the Tribunal leaving it open to the claimant and the owner to file such a document has allowed an uncertainty to creep in, resultantly, due to lack of necessary evidence on record, even this Court cannot record a finding one way or the other conclusively. Not only that the appellant has failed to file a copy of the insurance policy till date but the position is not better when the conduct of claimant or the owner is viewed.

15. The parties contesting the claim including the insurance company as well as the Tribunal having failed to lay hands on such a vital document, as a matter of fact,

have contributed to the resultant injustice which could be avoided by showing due diligence by the Tribunal at an appropriate stage. The procedure to be adopted by the Tribunal is bound to be meticulously just and fair for the reason that it serves the purpose of justice. The Tribunals must bear in mind that the summary claims have not only to be decided expeditiously but judgements rendered by the Tribunals have to stand the test of real and expeditious justice. The case at hand is a glaring example where the procedure prescribed under law has not been seriously observed. Not only that the appeal filed by the insurance company but the appeal for enhancement being bereft of merit call for an interference to the extent that the matter in its entirety is remitted to the Tribunal for returning a clear finding on the question of extent of insurance of passengers as per insurance policy relating to the vehicle in question. Thus, the award in question is set aside and the matter in its entirety is remitted to the Tribunal for fresh decision.

16. Let record of the case be sent back to the Tribunal for rendering a decision by recording a clear finding on issues no. 3 and 5. For this purpose it is open to the Tribunal to call for the requisite insurance policy from the insurance company and in the event of failure on their part to file the same a clear finding fixing the liability thereof be recorded and the issues be decided accordingly. Quantum of compensation be also adverted to afresh by considering the relevant material. This exercise shall be undertaken by the Tribunal within a period of six months from the date a certified copy of this judgement is filed. The parties shall appear before the Tribunal on 7.11.2016.

17. In the result the FAFO No. 174 of 2015 is allowed and the enhancement appeal, namely, FAFO No. 1029 of 2014 being dependent upon t