
(2012) 10 DEL CK 0228

Delhi High Court

Case No: MAC. APP. 868 of 2010

M/s. National Insurance
Company Ltd.

APPELLANT

Vs

Smt. Jeet Kaur and
Others

RESPONDENT

Date of Decision: Oct. 8, 2012

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A
- Penal Code, 1860 (IPC) - Section 201, 302, 34

Hon'ble Judges: G.P. Mittal, J

Bench: Single Bench

Advocate: D.K. Sharma, for the Appellant; Navneet Goyal, with Ms. Suman Rawat, for the Respondent

Final Decision: Dismissed

Judgement

G.P. Mittal, J.

The Appellant National Insurance Company Limited impugns a judgment dated 30.09.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 3,75,000/- was awarded for the death of Gurmail Singh, who died in a motor vehicle accident which occurred on 03.08.1994. On 03.08.1994 Harbans Singh while driving truck No. DLG-5712 was proceeding from Delhi to Vardhman (West Bengal). Gurmail Singh, (the deceased in the instant Petition) was accompanying Harbans Singh as a co-driver. While the truck reached the area of Champaran (Bihar), they were attacked by robbers and who committed their murder. An FIR No. 0116 u/s 302/201/34 IPC was registered at Police Station Champaran.

2. Two Claim Petitions were filed by the legal representatives. One for the death of Harbans Singh and the other for the death of Gurmail Singh, who was stated to be the co-driver. In the instant Appeal, I am only concerned with the Claim relating to the death

of Gurmail Singh.

3. The Claim Petition was initially dismissed on the ground, inter alia, that the death was not on account of any accident, the Claims Tribunal held that if the injuries are sustained by a felonious act, the provisions of the Motor Vehicles Act will not apply. This Court in FAO 195/1996, decided on 29.05.2008 while relying on [Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another](#), allowed the Appeal on the ground that in the instant case death could be said to be an accident in the process of committing the offence of robbery.

4. During inquiry before the Claims Tribunal, it was claimed that the deceased was getting a salary of Rs. 2,500/- per month. The Claims Tribunal accepted the salary as testified by the First Respondent; deducted one-third towards personal and living expenses and applied the multiplier as per the age of the deceased to compute the loss of dependency as Rs. 3,60,000/-. The Claims Tribunal further awarded a sum of Rs. 5,000/- each towards loss of love and affection, funeral expenses and loss to estate.

5. The following contentions are raised on behalf of the Appellant Insurance Company:-

(i) The deceased being son of the insured was not a third party. He was travelling as a gratuitous passenger and was thus not covered under the policy of insurance.

(ii) Income of Rs. 2,500/- accepted by the Claims Tribunal was on the higher side.

(iii) The multiplier has to be applied as per the age of the deceased or the Claimants whichever is higher. In the instant case, the multiplier should have been applied as per the age of the Claimant who was deceased's mother and was elder in age.

(iv) The non-pecuniary damages are on the higher side.

LIABILITY:-

6. The Claimants placed on record original cover note Ex. P-6 which shows that some premium was paid to cover the legal liability to the paid driver. The cover note shows that the insurance cover was valid for the period 27.04.1994 to 26.04.1995 which covers the date of the accident. The Appellant Insurance Company preferred not to produce on record the details of the terms of the insurance policy to prove risk of the accident covered by the insurance policy. Normally, risk to the paid driver is covered by IMT-28, which is extracted hereunder:-

IMT. 28. LEGAL LIABILITY TO PAID DRIVER AND/OR CONDUCTOR AND/OR CLEANER EMPLOYED IN CONNECTION WITH THE OPERATION OF INSURED VEHICLE

(For all Classes of vehicles.)

In consideration of an additional premium of Rs. 25/- notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer shall indemnify the insured against the insured's legal liability under the Workmen's Compensation Act, 1923, the Fatal Accidents Act, 1855 or at Common Law and subsequent amendments of these Acts prior to the date of this Endorsement in respect of personal injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the vehicle insured herein and will in addition be responsible for all costs and expenses incurred with its written consent.

Provided always that

(1) This Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurer or group of insurers a Policy of Insurance in respect of liability as herein defined for insured's general employees;

(2) The insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations;

■(3) The insured shall keep record of the name of each paid driver conductor cleaner or persons employed in loading and/or unloading and the amount of wages and salaries and other earnings paid to such employees and shall at all times allow the insurer to inspect such records on demand.

(4) In the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed.

Subject otherwise to the terms conditions limitations and exceptions of the Policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988.

7. It was admitted by the learned counsel for the Appellant Insurance Company that a sum of Rs. 75/- was paid by the insured to cover liability of employees. Thus, it would be clear that liability of three employees was covered by the cover note Ex. P-6.

8. Respondent Jeet Kaur in her Affidavit Ex. PW-1/A testified that deceased Gurmail Singh was working as a co-driver on truck No. DLG-5712. On 03.08.1994 her son was on duty on the earlier stated vehicle as a co-driver under Shri Harbans Singh. She added that he was earning Rs. 2,500/- per month at the time of his death in the accident. The First Respondent was cross-examined with regard to the employment and the amount of salary. The First Respondent denied that the deceased was not an employee under Harbans Singh or that he was not getting a salary of Rs. 2,500/- per month. Deceased Gurmail Singh would not travel as a gratuitous passenger with his father all the way from Delhi to West Bengal. It is established that the deceased was working as a driver on the truck. Thus, he cannot be said to be a gratuitous passenger. As stated above, the liability

to paid driver is covered by IMT-28 and thus, the Appellant Insurance Company cannot shirk its responsibility to indemnify the insured.

DECEASED'S INCOME

9. As stated earlier, the First Respondent testified that her son was earning Rs. 2,500/- per month. The Minimum Wages of a skilled worker at the time of the accident were Rs. 1844/-. The salary of a truck driver @ Rs. 2,500/- per month at the relevant time, therefore, cannot be said to be excessive or exorbitant. Thus, the Claims Tribunal was right in accepting the deceased's salary as Rs. 2,500/- per month.

APPLICATION OF MULTIPLIER

10. Since this was a Petition u/s 163-A of the Motor Vehicles Act, 1988 (the Act) the compensation was to be awarded as per the structured formula as given in the Second Schedule to the Act. Deduction towards the personal and living expenses would be one-third and the multiplier would be as per the age of the deceased, which has been adopted by the Claims Tribunal. (New India Assurance Co. Ltd. v. Pitamber & Ors., MAC APP. 304/2009; Pitamber & Ors. v. Nirdosh Kumar & Anr.. MAC. APP. 345/2009 both decided on 23.01.2012).

11. The compensation towards loss of dependency is thus in consonance with the Second Schedule and does not call for any interference.

12. The compensation of Rs. 15,000/- awarded towards non-pecuniary damages is a little more than what is provided under the Second Schedule to the Act. As per the Second Schedule only a sum of Rs. 2,500/- could be provided towards funeral expenses and Rs. 2,000/- as loss to estate. The Claims Tribunal awarded a total sum of Rs. 15,000/-. This accident relates to the year 1994. For an amount of Rs. 10,500/- I would be slow to interfere with the impugned judgment.

13. Thus, the Appeal is devoid of any merit; the same is accordingly dismissed.

14. The compensation awarded shall be released in favour of the Claimants in terms of the order passed by the Claims Tribunal.

15. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. Pending Applications stand disposed of.