

HIGH COURT OF MADHYA PRADESH

BENCH: HON'BLE SHRI JUSTICE AMAR NATH

DATE OF DECISION: 1ST APRIL 2024

Miscellaneous Appeal No.3096 of 2013 and No.2962 of 2013

Appellants: Smt. Prembai, Chammo Bai

Versus

Respondents: Doulaltram, Ranjeet Singh, The Oriental Insurance Co. Ltd.

Legislation and Rules:

Section 173(1) of the Motor Vehicles Act

Subject: Appeals against award in a motor accident claim involving death, focusing on the compensation amount and liability of the insurance company.

Headnotes:

Motor Vehicle Accident Compensation – Enhancement and Recovery - Appeals – by claimants and by Insurance Company heard together due to their interconnected nature, dealing with compensation for a motor vehicle accident resulting in death. [Paras 1, 2]

Background: Accident involving deceased Mangilal, claim filed by wife and daughter for compensation of Rs. 33,25,000. Tribunal awarded Rs. 4,87,000 with 7.5% interest per annum, directing insurance company to pay and recover from vehicle owner and driver. [Paras 3-7]

Issues and Findings: Appeal by claimants sought enhanced compensation, particularly under loss of spousal and parental consortium, while insurance company contested liability based on alleged policy breach (driver's invalid license). High Court awarded additional Rs. 80,000 considering consortium losses, upheld Tribunal's direction for insurance company to pay and recover amount. [Paras 12-17]

Legal Principles Applied: Reliance on Apex Court judgments – Tribunal's power to direct insurance companies to pay claimants and recover from

vehicle owner/driver, even in cases of policy breach by insured. [Paras 15-20]

Order: Appeal allowed with enhanced compensation; Appeal by insurance company dismissed. Insurance company directed to pay enhanced amount within 60 days, with 6% interest from claim filing date. [Paras 17, 18]

Referred Cases:

- New India Assurance Company Limited Vs. Kusum & Others, (2009) 8 SCC 377
- Pappu & Othes Vs. Vinod Kumar Lamba & Another, (2018) 3 SCC 208
- National Insurance Company Vs. Swarn Singh (2004) 3 SCC 297
- Janabai wd/o Dinkarrao Ghorpade vs. ICICI Lombord Insurance Company Ltd. (2022) 10 SCC 512
- Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram & ors. (2018) 18 SCC 130

Representing Advocates:

Appellants: Rakesh Kumar Jain

Respondent No.3: Ms. Anjali Banerjee

Respondent Nos. 1 and 2/Claimants: Shri Rakesh Kumar Jain (None for Respondent Nos. 3 & 4, though served)

ORDER

By this common order M.A. No.3096/2013 filed by claimants and M.A.No.2962/2013 filed by the Insurance Company shall be decided.

2. These Miscellaneous Appeals under Section 173(1) of the Motor Vehicles Act have been filed against the award dated 30/07/2013 passed by 12th Additional Motor Accident Claims Tribunal, Bhopal District Bhopal in MCC No.1349/2011, by which learned Tribunal awarded a sum of Rs.4,87,000/- (Four lakhs eighty seven thousand) to the claimants on account of death of Mangilal.
3. The facts necessary for disposal of the present appeals, in short, are that on 10/06/2011 at about 08:00 P.M. when deceased Mangilal was standing at roadside behind Ramdev Mandir, village Jalalpura, at that time non-applicant No.1 who was driving the jeep bearing registration No.MP-39-D-0143 rashly and negligently, dashed the deceased, due to which he sustained grievous injuries and died on the spot. Thereafter, claimants i.e. wife and daughter of the deceased filed a claim petition before the Claim Tribunal, Bhopal alleging that deceased Mangilal was aged about 38 years and earned Rs.6,000/- (Six

thousand) per month by labour work. In the claim petition it was prayed that a sum of Rs.33,25,000/- (Thirty three lakhs twenty five thousand) be awarded as compensation.

4. The non-applicant No.1/driver of offending vehicle did not contest the case and learned Tribunal proceeded ex-parte against nonapplicant No.1.
5. Non-applicant No.2/owner of offending vehicle filed the written statement before the Tribunal by denying the averments mentioned in the claim petition. It was also denied that any accident took place by the offending vehicle on the date of incident. However, it was alleged that on the date of incident the offending vehicle was insured with nonapplicant No.3, so if any amount of compensation is awarded, it is nonapplicant No.3, who is liable to pay the same.
6. Non-applicant No.3/insurance company also contested the case by filing written statement. Insurance Company also denied the averments mentioned in the claim petition. It was also alleged that on the date of incident non-applicant No.1, who was driving the offending vehicle was not possessing the valid driving licence to drive the offending vehicle, so there was breach of insurance policy, hence Insurance Company is not liable to pay any amount of compensation and prayed for dismissal of the claim petition against non-applicant No.3/Insurance Company.
7. Learned Tribunal, after framing of issues and recording of evidence partly allowed the claim petition and awarded a sum of Rs.4,87,000/- (Four lakhs eighty seven thousand) alongwith interest @ 7.5% per annum and directed the Non-applicant No.3/Insurance Company to pay the amount of compensation to the claimants and thereafter recover the same from non-applicant Nos.1 & 2 i.e. owner and driver of the offending vehicle.
8. Being aggrieved by the impugned award claimants filed M.A.No.3096/2013 alleging that the amount awarded by the learned Tribunal is on lower side, which deserves to be enhanced, whereas nonapplicant No.3/Insurance Company filed M.A.No.2962/2013 challenging quantum as well as liability of Insurance Company.
9. Learned counsel for the appellants/claimants (M.A.No.3096/2013) submits that the learned tribunal has not awarded any amount under the head of loss of spousal consortium to wife and loss of parental consortium to daughter, which should be awarded. No other findings regarding quantum has been challenged by the learned counsel for the appellants during arguments. It is prayed that the appeal filed by claimants be allowed and amount of

compensation be enhanced and appeal filed by Insurance Company be dismissed.

- 10.** Learned counsel for the Insurance Company (Appellant in M.A.No.2962/2013) submits that the non-applicant No.1, who was driving the offending vehicle on the date of incident was not possessing valid driving licence to drive the offending vehicle and offending vehicle was not having a valid fitness certificate, therefore, the offending vehicle was being driven in violation of terms and conditions of the policy, therefore, learned Tribunal committed error in holding the Insurance Company liable to pay the compensation amount and thereafter recover the same from owner and driver of the offending vehicle. In support of her contention learned counsel placed reliance on the judgment passed by Hon'ble Apex Court in the case of ***New India Assurance Company Limited Vs. Kusum & Others, (2009) 8 SCC 377***. So far as quantum is concerned, learned counsel for the Insurance Company submitted that the amount awarded by the learned Tribunal is just and proper, which requires no enhancement. It is prayed that the appeal filed by the Insurance company be allowed and finding of the learned Tribunal regarding pay and recover the amount of compensation be set aside and appeal filed by claimants be dismissed.
- 11.** I have heard the rival contentions of the learned counsel for the parties, perused the record and gone through the citation upon which reliance is placed by learned counsel for the Insurance Company.
- 12.** So far as appeal filed by claimants (M.A.No.3096/2013) is concerned, appellant No.1 is the wife and appellant No.2 is the daughter of the deceased. From perusal of impugned award it appears that learned Tribunal has not awarded any amount under the head of loss of spousal consortium to wife and loss of parental consortium to daughter, which should be awarded keeping in view the judgments passed by Hon'ble Apex Court in the cases of ***Janabai wd/o Dinkarrao Ghorpade vs. ICICI Lombord Insurance Company Ltd. (2022) 10 SCC 512*** and ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram & ors. (2018) 18 SCC 130***. Hence, a sum of Rs.40,000/- (Forty thousand) is awarded towards loss of spousal consortium to the wife and Rs.40,000/- (Forty thousand) is awarded towards loss of parental consortium to the daughter of the deceased. On other heads, the amount awarded by the learned Tribunal is just and proper, which requires no interference. Thus, there shall be enhancement to the tune of Rs.80,000/(Eighty thousand).

13. So far as appeal filed by Insurance Company (M.A. No.2962/2013) is concerned, learned Tribunal in Para-16 of the impugned award has arrived at a conclusion that on the date of incident the offending vehicle was being driven by non-applicant No.1 without having any valid and effective driving license. Learned Tribunal considering the various citations of Hon'ble Apex Court has arrived at a conclusion in Para-17 of the impugned award that since the offending vehicle was insured with the Insurance Company/non-applicant No.3, hence Insurance Company is liable to pay the award amount and will have a right to recover the same from owner and driver of the offending vehicle.
14. During course of arguments, Ms. Anjali Banerjee, learned counsel for the Insurance Company placed reliance on ***New India Assurance Co. Ltd. Vs. Kusum & Ors., (supra)***, but on going through the same it reveals that the fact of that case do not match with the present case, so above-mentioned citation do not assist much to the appellant/Insurance Company.
15. In the case of ***Pappu & Othes Vs. Vinod Kumar Lamba & Another, (2018) 3 SCC 208*** Hon'ble Apex Court has again reiterated the principle of law laid down in the case of ***National Insurance Company Vs. Swarn Singh (2004) 3 SCC 297*** and held that even if the insurer succeeds in establishing its defence, the Tribunal or Court can direct the Insurance Company to pay the award amount to the claimants and, in turn, recover the same from owner of the vehicle. Para-17 to 20 of the above mentioned judgment are reproduced as below :-
17. This issue has been answered in ***National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733]*** In that case, it was contended by the insurance company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, this Court held that even if the insurer succeeds in establishing its defence, the Tribunal or the court can direct the insurance company to pay the award amount to the claimant(s) and, in turn, recover the same from the owner of the vehicle. The three-Judge Bench, after analysing the earlier decisions on the point, held that there was no reason to deviate from the said well-settled principle. In para 107, the Court then observed thus :
- “107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard

to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.”

18. Further, in para 110, the Court in *National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733]* observed thus :

“110. The summary of our findings to the various issues as raised in these petitions is as follows:

- (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
- (ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2) (a)(ii) of the said Act.
- (iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.
- (iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish “breach” on the part of the owner of the vehicle; the burden of proof where for would be on them.
- (v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.
- (vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply “the rule of main purpose” and the

concept of “fundamental breach” to allow defences available to the insurer under Section 149(2) of the Act.

- (vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii)-(ix) ***

- (x) *Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third-party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.*

- (xi) *The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.”*

19. In the present case, the owner of the vehicle (Respondent 1) had produced the insurance certificate indicating that Vehicle No. DIL 5955 was comprehensively insured by Respondent 2 (insurance company) for unlimited liability. Applying the dictum in *National Insurance Co. Ltd. [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733]*, to subserve the ends of justice, the insurer (Respondent 2) shall pay the claim amount awarded by the Tribunal to the appellants in the first instance, with liberty to recover the same from the owner of the vehicle (Respondent 1) in accordance with law.

20. Accordingly, the appeal is allowed to the extent that the compensation amount awarded by the Tribunal and confirmed [*Dhrupati v. Vinod Kumar, 2014 SCC OnLine All 16493*] by the High Court shall be paid and satisfied by the insurer (Respondent 2) in the first instance, with liberty to recover the same from the owner of the vehicle (Respondent 1) in accordance with law.

16. In view of aforesaid discussion, this Court is of the opinion that the learned Tribunal did not commit any error in directing the appellant Insurance Company to pay the award amount to the claimants and thereafter recover the same from non-applicant Nos.1 & 2 i.e. owner and driver of the offending vehicle.

17. Thus, the appeal filed by the claimants (M.A.No.3096/2013) is allowed and appeal filed by Insurance Company (M.A.No.2962/2013) stands dismissed. As discussed above, the claimants will be entitled for an additional sum of Rs.80,000/- (Eighty thousand), so the Insurance Company is directed to pay the same to the claimants within a period of 60 days from the date of receipt of certified copy of this order. This enhanced amount shall fetch interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment.
18. Other terms and conditions of the award shall remain intact.
19. It is pertinent to mention here that the appellants/claimants have valued the M.A.No.3096/2013 as Rs.40,000/- (Forty thousand) and paid the Court fee as per valuation, therefore, appellants/claimants are directed to pay the Court fee on additional amount of Rs.40,000/- (Forty thousand) also within a period of 30 days from the date of receipt of certified copy of this order. If the Court fee is not paid within the stipulated period, then this order will be restricted only up to the amount of Rs.40,000/- (Forty thousand).
20. Records of the claims Tribunal be sent back alongwith the copy of this order for information and necessary compliance.
21. Let copy of this order be enclosed in both the appeals.

No order as to costs.

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