Sr. No.8
Regular List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Mac App No.06/2020

NATIONAL INSURANCE CO. LTD. ... APPELLANT(S)

Through: - Mr. Nissar A Dandru , Advocate.

Vs.

LATEEF AHMAD KOHLI & ORS ...RESPONDENT(S)

Through: - Mr. G. M. Shah, Advocate-for R1.
None for R2 & R3.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
16.12.2024

1) The appellant-insurance company has challenged award dated 28.10.2019 passed by the Motor Accidents Claims Tribunal, Pulwama (for short "the Tribunal"), whereby an amount of Rs.11,16,000/ has been awarded as compensation in favour of the claimant/respondent No.1 and the same has been held to be payable by the appellant-insurance company.

2) The claim petition, which is subject matter of the impugned award, arises out of a road traffic accident involving an Alto car bearing Chassis No.493657, that was proceeding from Jammu towards Srinagar on 20.08.2014. The vehicle, upon reaching Sempora Pantha Chowk, knocked down a young girl, namely, Mst. Nageena, who happened to be the daughter of respondent No.1/claimant. The accident took place due to rash and negligent driving of the vehicle in question by its driver, respondent No.2 herein, and the vehicle in question was owned by respondent No.3. The accident result in death of Nageena. As per the claim petition, the deceased was aged 18 years at the time of her death and she was undergoing studies. The claimant/respondent No.1 sought compensation in the amount of Rs.20.00 lacs from the owner, driver and insurer of the offending vehicle.

3) The claim petition was contested by the appellant-insurance company by filing a reply thereto. In its reply, the appellant-insurance company pleaded that the vehicle bearing Chassis No.493657, allegedly involved in the accident, was insured with the said company on the date of the accident. It was claimed by the appellant-insurance company that there has been breach of policy conditions on the part of the owner and driver of the offending vehicle and, as such, the insurance company is not liable to indemnify the insured. It was further contended that the claimant has sought exaggerated amount of compensation.

4) The driver of the offending vehicle, respondent No.2 herein, also filed his objections to the claim petition, in which he claimed that he was driving the vehicle in question at a normal speed but the accident was caused due to the reasons attributable to the deceased and that there was no negligence on his part. It was also claimed by respondent No.2 that compensation, if any, is payable by the insurance company and the owner of the vehicle.

5) On the basis of the pleadings of the parties, the learned Tribunal framed the following issues:

1. *Whether on 20.08.2014, the offending vehicle bearing no. (Chassis no.493657) driven by respondent no.1 at Sempora Srinagar hit the deceased namely Nageena resulted her on spot death? OPP*
2. *Whether the accident was caused due to the carelessness, rash and negligent driving of the respondent No.1(Driver) OPP*
3. *Whether the respondent No.2 (owner) had permitted the respondent No.1 (Driver) to drive the offending vehicle on the date of accident with invalid and ineffective driving licence (DL) and other vehicular documents. If yes, the respondent No.2 insured has committed breach of insurance contract absolving the respondent No.3 (Insurance Company) from its liability on account of petitioners claim? OPR*
4. *In case issue no.1 is proved in affirmative, to what amount of compensation, the petitioner is entitled to, from whom and in what proportion? OPP*
5. *Relief.*

6) On the basis of the evidence led by the parties, the learned Tribunal came to the conclusion that the accident, in which deceased Nageena had died, was caused due to rash and negligent driving of the vehicle bearing Chassis No.493657, that was being driven rashly and negligently by its driver. The Tribunal also found that there was no breach of policy conditions on the part of the insured, as such, it is the appellant-insurance company who is liable to indemnify the insured.

7) Coming to the quantum of compensation, the learned Tribunal, on the basis of the evidence on record, concluded that the deceased was a non-earning person and her annual income has to be taken as Rs.47,000/ and on that basis, the loss of dependency was worked out by the Tribunal as Rs.5,58,000/ after applying the multiplier of 18 and deducting the personal expenses to the extent of 1/3rd. An equivalent amount was assessed as non-pecuniary compensation by the learned Tribunal, making the total compensation payable to the claimant as Rs.11,16,000.

8) The appellant-insurance company has challenged the impugned award on the grounds that as per the evidence on record, the offending vehicle was bearing Chassis No.493657 and Engine No.5277140 but the vehicle which was insured with it was bearing Chassis No.493657 with a different Engine number i.e. 5277170. Thus, according to the appellant-insurance company, the offending vehicle was not insured with it at the time of the accident, as such, it is not liable to pay any compensation to the claimant. It has been further contended that the deceased being a non-earning person, her annual income was to be taken as Rs.15,000/ and not Rs.47,000/ as has been done by the Tribunal. It has been further contended that the non-pecuniary compensation, which has been assessed by the learned Tribunal, is also on a higher side and not in accordance with the ratio laid down by the Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi and others,** (2017) 16 SCC 680.

9) I have heard learned counsel for the parties and perused record of the case.

10) So far as the first contention raised by learned counsel for the appellant-insurance company is concerned, it is true that as per the challan, copy whereof is on the record of the Tribunal, the offending vehicle was found to be bearing Chassis No.493657 and its Engine number was shown as 5277140. However, as per the policy of insurance issued by the appellant-insurance company, the Chassis number of the vehicle in question is the same but the Engine number has been shown as 5277170 and not 5277140. The discrepancy in the Engine number, as reflected in the seizure memo annexed with the challan as also in the invoice issued by the manufacturer of the vehicle and that mentioned in the policy of insurance, appears to be a clerical error because it is a fact of common knowledge that every vehicle is given a unique Chassis number which is not replicated in the case of any other vehicle. In the instant case, the chassis number shown in the policy of insurance perfectly matches with the chassis number shown in the invoice issued by the manufacturer as also with the seizure memo of the vehicle. It is next to impossible that two vehicles may be having the same Chassis number. On this ground alone, the contention of the appellant-insurance company deserves to be rejected.

11) Apart from the above, the appellant-insurance company has not pleaded in its reply to the claim petition that the offending vehicle was not insured with it at the relevant time. Obviously, no issue in this regard was framed by the Tribunal and, therefore, no evidence was led by the claimant on this aspect of the matter. Therefore, at the appellate stage, the appellant-insurance company cannot take the plea that the vehicle in question was not insured with it when there has been a categorical admission on its part in its pleadings before the Tribunal in this regard.

12) So far as the quantum of compensation awarded to the claimant is concerned, it has been contended by learned counsel for the appellant that the notional income of the deceased, who was a student, should have been taken as Rs.15,000/ per annum, as specified in Second Schedule to the Motor Vehicles Act. I am afraid the same cannot be done because it has to be borne in mind that the said Schedule was incorporated in the Motor Vehicles Act in the year 1994. The accident, which is subject matter of the present appeal, has taken place in the year 2014 i.e. after more than 20 years of incorporation of the Second Schedule. The income of a non-earning person, as specified in the Second Schedule, was taken by the Legislature keeping in mind the factors that were prevailing at the relevant time. With the passage of time, there has been increase in inflation and devaluation of the rupee with the increase in cost of living. The value of the rupee has drastically come down since the year 1994 when the notional income of Rs.15000/ was fixed in the Second Schedule to the Motor Vehicles Act, as such, while considering the notional income of a non-earning person after 20 years of incorporation of Second Schedule, upward revision of the same is required to be considered for arriving at the figure of just compensation. This is what has been done by the learned Tribunal by taking into account the cost inflation index notified by the Central Government, whereafter the notional income of the deceased, who was a student aged 16 years as per the birth certificate placed on record of the Tribunal, has been taken as Rs.47000/ per annum. The compensation assessed by the Tribunal on account of loss of dependency, after applying the multiplier of 18 and deducting the personal expenses to the extent of 1/3rd, as Rs.5,58,000/, does not call for any interference by this Court.

13) However, so far as the grant of non-pecuniary compensation by the learned Tribunal is concerned, the same is clearly contrary to the ratio laid down by the Supreme Court in **Pranay Sethi's** case (supra). As per the said judgment, the claimant, who happens to be the father of the deceased girl, is entitled to compensation under the head 'loss of filial consortium' @Rs.40,000/. Besides this, he is also entitled to an amount of Rs.15,000/ on account of loss of estate and another sum of Rs.15,000/ on account of funeral expenses. Thus, the total compensation that is admissible to the claimant/respondent No.1 would come to Rs.6,28,000/ along with interest @6% per annum from the date of filing of the claim petition till the date of actual payment.

14) In view of what has been discussed hereinabove, the appeal is partly allowed and the compensation awarded by the learned Tribunal is modified to the extent that the claimant/respondent No.1 shall be entitled to a total amount of Rs.6,28,000/ along with interest @6% per annum from the date of filing of the claim petition till the date of actual payment. Out of the amount deposited with the Registry of this Court, the aforesaid amount shall be released in favour of the claimant/respondent No.1 forthwith after proper verification and identification and the balance amount, if any, be refunded to the appellant.

(Sanjay Dhar)
Judge

Srinagar
16.12.2024
"Bhat Altaf-Secy"

Whether the order is reportable: ***Yes***