

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)
M.A. No. 103 of 2020

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Royal Sundaram Alliance Insurance Co. Ltd. Appellant
Versus
Savitri Devi & Others Respondents

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

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For the Appellant : Mr. Ashutosh Anand, Advocate.
For the Respondents :

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05/30.06.2021.

Heard, learned counsel for the appellant, Mr. Ashutosh Anand.

The Royal Sundaram Alliance Insurance Co. Ltd. has preferred this appeal against the Award dated 09.12.2019 passed by learned Presiding Officer, Motor Vehicles Accident Claims Tribunal, Ranchi in Motor Accident Claim Case No. 78/2015, whereby the claimants namely, (i) Savitri Devi, wife of Late Sukar Munda and (ii) Shiv Shankar Munda, son of Late Sukar Munda have been awarded compensation to the tune of 6,99,200/-, out of which 30% has been deducted as contributory negligence, as such, claimants are entitled for compensation to the tune of Rs. 4,89,440/- along with interest @ 7.5% per annum from the date of admission of the claim case i.e. 24.05.2018 till the date of actual indemnifying the award.

Learned counsel for the appellant, Mr. Ashutosh Anand has assailed the impugned award on the ground that policy was valid from 15.03.2015 to 14.03.2016, but the accident took place prior to coverage of the insurance period, as such, in view of Section 147(3) of the Motor Vehicles Act, the Insurance Company is not liable to compensate or indemnify the award.

Section 147(3) of the Motor Vehicles Act is re-produced hereunder:-

“147(3) – A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.”

Learned counsel for the appellant has further submitted that the owner of the offending vehicle, Manoj Kumar Choubey has not appeared in the court below nor file the driving license of the driver of the offending vehicle as well as permit of plying the offending vehicle, as such, the learned Tribunal has wrongly fastened the liability upon the Insurance Company.

Learned counsel for the appellant has further submitted that the income of the deceased has been considered to be Rs. 6,500/- per annum, who was a labourer aged about 55 years, which is exorbitantly high.

From perusal of office note, it appears that no analogous appeal is pending before this Court. The owner or claimants have not preferred any appeal against the impugned award.

From perusal of the impugned award, it appears that though the Insurance Company has appeared before the learned Tribunal as opposite party no. 2 as stated at para-5 of the award, but did not filed their show cause or written statement to the claim petition, as such Insurance Company was debarred from filing written statement vide order dated 03.04.2019.

From perusal of impugned award, it further appears that Issue No. 5 i.e. *“Whether the insured/owner of the alleged offending vehicle Truck bearing registration No. JH-01AT-8718 has violated any of the terms and conditions of the insurance policy?”* has been decided by the learned Tribunal at para-11 of the award, relevant facts is quoted hereunder:-

“It has been submitted that from the perusal of the insurance policy it is apparent that the policy was signed at Chennai on 14.03.15 in lieu of cover note and thereafter, the company had accepted the money paid on 14.3.15 whereas the accident took place only in the evening hours of 14.03.15”.

As such insurance coverage was itself from 14.03.15 though the F.I.R. has been lodged before the Nagri P.S. vide P.S. Case No. 35/2015 dated 15.03.15 for an accident which took place on 14.03.2015.

Accordingly, in view of such finding given by the learned Tribunal, it appears that Insurance Company is not diligent in filing written statement, rather, every time they are taking such plea, which have not been agitated before the learned Tribunal and trying to defy the just and fair claim on one pretext or another while indemnifying the award to the claimant.

Under the aforesaid circumstances, since the written statement has not been filed by the Insurance Company and the policy was signed on 14.03.2015, for an accident of evening of 14.03.2015, this Court holds that the finding recorded the learned Tribunal does not require any interference as premium must have been taken during the office hour of 14.03.2015 at Chennai and the accident took place only in the evening.

So far issue with regard to driving licence of the driver and permit are concerned, no such pleading has been made by the Insurance Company, as such, the Insurance Company is not entitled to raise the issue which has not been agitated before the learned Tribunal in view of the judgment passed by the Apex Court passed in the case of ***Ramchandra Vs. United India Insurance Co. Ltd.*** reported in ***(2013) 12 SCC 84 (Para-26)***. Para-26 of the said judgment is re-produced hereunder:-

“26. Hence, at the stage of appeal before the High Court, we find no legal justification for the High Court to leave it open to the Insurance Company to realise the amount of compensation beyond Rs. 32,091 from the insured/owner as the plea of the respondent Insurance Company all through was that the claimant is not entitled to any compensation beyond the extent of liability under the Workmen's Compensation Act and the respondent Insurance Company had not taken the alternative plea either before the Tribunal or the High Court that in case the claimant is held entitled to compensation beyond the extent of liability under the Workmen's Compensation Act, the same was not payable as no extra premium was paid by the insured/owner under the policy of insurance. The Insurance Company had failed to raise any plea before the courts below i.e. either the Motor Accidents Claims Tribunal or the High Court and it did not even contend that in case the claimant is entitled to any compensation beyond what was payable under the Workmen's Compensation Act, it is the

insured/owner of the vehicle had not paid any extra premium. Thus, this plea was never put to test or gone into by the Motor Accidents Claims Tribunal since the Insurance Company neither took this plea nor adduced any evidence to that effect so as to give a cause to the High Court to accept this plea of the Insurance Company straightway at the appellate stage.”

So far quantum of compensation is concerned, the Insurance Company though has not filed any written statement before the court below nor adduced any contrary evidence with regard to income of the deceased, but assailed the same before the court of appeal, though they are not entitled in view of the judgment passed by the Apex Court passed in the case of ***Ramchandra (Supra)***.

However, this Court has examined that Rs. 6,500/- per month of a person of 55 years is not exorbitantly high. The Apex Court has held in the case of ***Chameli Devi & Others Vs. Jivrail Mian & Others*** reported in ***2019 (4) TAC 724 (SC)*** that in absence of any documentary evidence, the income of Carpenter has been considered as Rs. 5,000/- per month where the deceased died in the year 2001, as such for an accident which took place in the year 2015 (i.e. after 14 years), the amount of monthly income has been considered @ Rs. 6,500/- per month is not a high income of the deceased and no such plea has been taken by the Insurance Company before the learned Tribunal, as such this Court is not inclined to interfere with the same.

Considering the same, the appeal, being devoid of merits, is hereby dismissed.

However, the statutory amount deposited by the Insurance Company shall be remitted to the learned Tribunal within a period of four weeks from today by the Registrar General of this Court. The same shall be indemnified to the claimants by the learned Tribunal / Executing Court after due notice and verification.

The balance amount shall be paid by the appellant-Insurance Company within a reasonable time as the accident is of dated 14.03.2015.

(Kailash Prasad Deo, J.)

Sunil-Jay/-