HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Mac App No. 100/2023

The New India Assurance Co. Ltd. …..Appellant(s)/Petitioner(s)

Through: Mr. Amrit Sarin, Adv.

vs

Nirmal Devi and others ….. Respondent(s)

Through: Mr. Jatinder Choudhary, Adv. for Nos. 1 to 3
None for Nos. 4 and 5

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
04.12.2024

ORAL:

1. In the instant appeal filed under and in terms of the provisions of the Motor Vehicles Act, 1988(for short the Act), the appellant/insurance company has called in question award dated 25.07.2023 passed by the learned Motor Accidents Claim Tribunal, Jammu (for short the Tribunal) in case titled as "Nirmala Devi and others vs Gurdeep Singh and others".

2. Facts emanating from the record would reveal that the claimants/respondents 1 to 3 herein preferred a claim petition under and in terms of the provisions of the Act for compensation on account of death of one Ajay Kumar, being the son of respondent 1 and brother of respondents 2 and 3 herein claimed to have died in a vehicular accident on 14.11.2014 while riding on a motorcycle as a pillion rider, caused by a truck bearing registration No. JK02M 5473 owned by respondent 5 herein and driven by respondent 4 herein and in the said claim petition, the claimants/respondents 1 to 3 herein besides impleading the above named owner and driver of the offending truck as respondents, also impleaded the

insurance company/appellant herein as a party respondent 3 owing to the fact that the offending truck was insured with the said insurance company and the Tribunal after entertaining the claim petition filed by the claimants/respondents 1 to 3 herein, issued notice to the respondents in the claim petition, in response to which the respondents in the claim petition including the appellant herein appeared and filed their objections thereto.

3. On the basis of the pleading of the contesting parties, the learned Tribunal has framed the following issues:

1. Whether an accident took place on 14-11-2014 at 8.00 PM near Rail Head, Railway turn Trikuta Nagar, falling under the jurisdiction of Police Station Bahu Fort, Jammu duo to rash and negligent driving of offending vehicle bearing registration No. JK02M-5473 (Truck) by its driver, as a result of which, deceased Ajay Kumar received fatal injuries and died?.....OPP,
2. If issue No. 1 is proved in affirmative, whether petitioner No.1 is entitled to compensation, if yes, to what amount and from whom?.....OPP.
3. Whether there was any violation of terms and conditions of insurance policy with respect to the offending vehicle on the date of occurrence and the driver of the offending vehicle on the date of occurrence and the driver of the offending vehicle was not holding a valid and effective driving license? If so, to what effect?....OPR3
4. Relief?.....Parties

4. The Tribunal, after considering the claim petition as also the evidence led by the contesting parties being the claimants/respondents 1 to 3 herein as also the appellant herein in terms of the impugned award, held the claimants/respondents 1 to 3 herein entitled to the compensation of Rs. 24,55,000/- to be payable by the insurance company/appellant herein to the

claimants/respondents 1 to 3 herein in order to indemnify the owner of the offending vehicle.

5. The insurance company/appellant has challenged the impugned award on the following grounds in the instant appeal:

(i) That the award impugned is bad in law and on facts of the case, the same thus is liable to be set aside.

(ii) That the deceased son of the respondent No. 1 was bachelor as such the deductions towards own pocket expenses would have been 50% of his income but the tribunal has taken the same as 1/3rd, the award thus is bad in law and as such is liable to be set aside.

(iii) That the violation of the policy of insurance is evident particularly when the insured truck was carrying load over and above the permissible height. Had it been not so, the goods loaded on the truck would have not struck against the barrier and the gaddar would have not collapsed and further would have not fallen on the deceased. Since the insured truck was overloaded as such the liability of the appellant insurance company cannot be presumed to be attracted in law. The award impugned thus is bad in law and the same is liable to be set aside.

(iv) That the respondents 2 and 3 being sister and brother of the deceased cannot be presumed to be dependent on the deceased, which has rightly been held so by the tribunal, therefore, there is only one dependent who is the mother/respondent No. 1 of the deceased. The dependency for one dependent is also 50% of the income of the deceased but the tribunal has taken the same as 1/3rd despite the fact that the tribunal has not considered respondents 2& 3 as dependents. The award impugned on this score also is bad and is liable to be set aside.

(v) That the violation of the conditions of the policy is evident, the liability of the appellant insurance company, as such, is not attracted, therefore, the appellant insurance company is entitled to recover the amount of award from the insured but the tribunal without recording any finding on the same No. III has straight way directed the appellant insurance company to pay the amount of compensation without giving liberty to it to recover from the owner/insured of the truck. The award impugned thus is bad and is liable to be set aside.

(vi) That the delay in disposal of the claim petition has deliberately been caused by the respondents 1-3 especially when the said respondents took 09 years and more to produce three witnesses to prove issues I & II, therefore, the interest part of award from the date of filing of the claim petition till realization is bad and the

> award impugned on the score of interest part of the same is also liable to be set aside."

Heard learned counsel for the parties and perused the record.

6. Perusal of the record would reveal that after framing of the aforesaid issues, in order to prove the issues 1 and 2 supra, the claimants/respondents 1 to 3 herein besides appearing their own witnesses by filing affidavits, also filed the witness affidavit of one Anil Kumar, whereas on the insurance company/appellant herein in order to prove issue 3 supra produced one witness namely, Kapil Bhat, Deputy Manager of the Insurance company appellant herein.

Further perusal of the statements of the witnesses produced by the claimants/respondents 1 to 3 herein would reveal that the claimants proved with credible and cogent evidence, the date of accident caused by the offending vehicle as also the death of the deceased therein in the said accident on account of the injuries sustained by him, besides proving the fact of rash and negligence driving of the offending vehicle by its driver, inasmuch as, their entitlement to the compensation on account of the death of the deceased for having lost the earnings of the deceased being depended upon him.

Further perusal of the statement of the above-named witness of the insurance company appellant herein tends to show that the said witness deposed before the Tribunal that at the time of accident, the articles loaded in the offending vehicle were against the Motor Vehicle Rules and the said articles had got stucked against the gaddar of the bridge where the accident came to be caused for that reason. A closer examination of the statement of

the said witness reveals that during the cross examination, the witness admitted that he did not conduct any investigation therein in the said accident, but has made his statement on the basis of the documents, while stating further that there has been no condition in the insurance policy that if the vehicle is overloaded, the insurance company will not be liable to indemnify the insured.

It is significant to note here that insofar as issue 3 supra is concerned, onus whereof to prove the same had been upon the insurance company appellant herein and the said issue required insurance company appellant herein to prove the violation of the terms and conditions of the insurance policy with regard to the offending vehicle besides that the driver of the offending vehicle was not holding a valid and effecting driving licence, however, as has been noticed in the preceding paras, the insurance company appellant herein has not proved the violation of any of the terms and conditions of the insurance policy or else the plea that the driver of the offending vehicle was not holding a valid and effective driving license and in absence of any such evidence, it cannot but be said that the Tribunal committed any perversity, illegality or irregularity while passing the impugned award. As in law, if an insurance company pleads breach of the terms and conditions of an insurance policy or else, set up a defence that the driver of the offending vehicle was not possessed of a valid and effective driving license and as such, the insured violated the terms and conditions of the insurance policy, the insurance company is bound to prove by credible evidence that there has been violation of the terms and conditions of the insurance policy.

Since record reveals that the insurance company/appellant herein has failed to lead any evidence in this regard, the insurance company/appellant herein cannot be permitted to raise any such plea before this Court in the instant appeal, more so, in view of the law laid down by the Apex Court in case titled as "**Pepsu Road Transport Corporation v National Insurance Company** reported in **AIR 2014 SC 305** and **Rishi Pal Singh v New India Assurance Co. LTD and others** reported in **2022 SCC 2119** wherein at paras (5) and (9) respectively following has been held:-

> 5."In United India Insurance Company Limited vs. Lehru and Others[1], a two-Judge Bench of this Court has taken the view that the insurance company cannot be permitted to avoid its liability only on the ground that the person driving the vehicle at the time of accident was not duly licensed. It was further held that the wilful breach of the conditions of the policy should be established. Still further it was held that it was not expected of the employer to verify the genuineness of a driving license from the issuing authority at the time of employment. The employer needs to only test the capacity of the driver and if after such test, he has been appointed, there cannot be any liability on the employer. The situation would be different when the employer was told that the driving licence of its employee is fake or false and yet the employer not taking appropriate action to get the same duly verified from the issuing authority."
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> "9…....."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."

7. Furthermore, a deeper perusal of the impugned award would reveal that the learned Tribunal has passed the impugned award not only taking into consideration the respective pleadings of the parties, the evidence produced thereof in support of their respective case(s), but has also taken cognizance of the position and principles of law laid down by the Apex Court in this regard in case titled, as **Sarla Verma and others vs Delhi Transport Corporation and another,** reported in **AIR 2009 SC 3104** and has consequently passed a fair and just award, impugned in the instant appeal.

8. Viewed thus, the impugned award does not call for any interference.

9. Resultantly the instant appeal fails and is dismissed.

10. The award amount, if any deposited before this Court by the insurance company/appellant herein, the same is directed to be released in favour of the claimants/respondents 1 to 3 herein along with interest, if any, accrued thereon, subject to their proper identification and verification by their counsel.

(JAVED IQBAL WANI)
JUDGE

Jammu
04.12.2024
Rakesh

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No