HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 09.02.2023
Pronounced on: 23.02.2023

Mac App No. 57/2021 c/w
Mac App No. 58/2021
Mac App No. 59/2021
Mac App No. 60/2021
Mac App No. 61/2021
Mac App No. 62/2021

IFFCO TOKIO General Insurance Co. Ltd. ...Appellant(s)

Through:- Mr. Vipan Gandotra Advocate

V/s

Om Parkash ...Respondent(s)

Through:- Mr. A.S.Azad, Advocate

Coram: HON'BLE MR. JUSTICE SANJAY DHAR JUDGE

JUDGMENT

1. By this common judgment/order, the afore-titled six connected appeals arising out of a common award dated 24.12.2020 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as the 'Tribunal') are proposed to be disposed of.

2 It appears that deceased Malkiyat Singh, Shanker Singh, Balwant Raj and injured Om Parkash, Anuradha and Sunil Kumar were travelling in a Eco Car bearing No. JK-11-A/4856 from Badkot Uttar Kashi towards Jammu. On 26.02.2015 at about 11 pm, when the vehicle in question reached Hathyari, Uttrakhand, it suffered an accident as a result of which it fell into a deep gorge. Due to the said accident, the deceased as well

as the injured above named, who were travelling in the vehicle in question, suffered grievous injuries which led to the death of the deceased and permanent disablement of the injured. The accident also resulted in death of the owner cum driver of the vehicle in question.

3 The legal heirs/dependents of the deceased as also the injured filed as many as six different claim petitions before the Tribunal claiming compensation from the appellant-Insurance Company and the owner of the offending vehicle. During pendency of the said claim petitions, the name of owner was deleted from the array of parties as he had died in the same accident which was subject matter of the claim petitions.

4 The claim petitions were contested by the appellant-Insurance Company by filing reply thereto. In its reply, it was contended by the appellant-Insurance Company that the driver of the vehicle in question was not holding a valid and effective driving licence at the relevant time and even the documents of the vehicle were not valid. Although the accident was not specifically denied by the appellant-Insurance Company, but it was pleaded that the claimants should be put to strict proof with regard to the alleged occurrence. The appellant-Insurance Company, *inter alia*, sought to take up all defences available to it under the policy of insurance as also those defences that are available to the owner in terms of Section 170 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988'). In fact, an application under Section 170 of the Act was also made by the appellant-Insurance Company before the Tribunal. Having regard to the manner in which the appellant-Insurance Company was allowed to cross-examine the witnesses on the aspect relating to quantum of compensation, it appears that

the appellant-Insurance company was permitted to plead and take up all defences as are available to an owner of the insured vehicle.

5 On the basis of pleadings of the parties, the following issues came to be framed by the Tribunal:

> "(i) Whether an accident took place on 26.02.2015 at Hathyari, Bhadwala, Juddo Road District Dehradoon involving offending vehicle bearing registration No. JK11-A/4856 as a result of which deceased Malkiyat Singh, Shanker Singh and Balwant Raj suffered fatal injuries and petitioners namely Om Parkash, Anuradha and Sunil Kumar received grievous injuries ?OPP
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> (ii) If issue No.1 is proved in affirmative, whether petitioner is entitled to compensation ? If so, to what amount and from whom ?
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> (iii) Whether there was any violation of terms and conditions of insurance policy with respect to the vehicle No. JK11-A/4856 on the date of occurrence, if yes, what is its effect?"

6 The claimants led evidence in support of their case, whereas no evidence was led by the appellant-Insurance Company before the Tribunal.

7 The Tribunal vide the impugned award held that the accident had occurred due to rashness and negligence of the deceased driver. So far as the violation of terms of the policy of insurance is concerned, the same was not proved because no evidence was led by the appellant-Insurance Company before the Tribunal. The Tribunal awarded a sum of Rs.8,06,400/- as compensation in favour of claimant Om Parkash who had suffered injuries due to the accident, a sum of Rs.6,56,000/- was awarded as compensation in favour of injured claimant Sunil Kumar, a sum of Rs.25,000/- was awarded as compensation in favour of injured claimant Anuradha, a sum of Rs.33,37,160/- was awarded in favour of dependents of the deceased Balwant Raj, a sum of Rs.23,96,162/- was awarded as compensation in favour of dependents of the deceased Shanker Singh and a

sum of Rs. 8,66,800/- was awarded as compensation in favour of dependents of the deceased Malkiyat Singh.

8 The appellant-Insurance Company has challenged the impugned award on the grounds that the claimants have not impleaded the legal heirs of owner of the offending vehicle as parties to the claim petitions and, as such, the claim petitions are not maintainable. It has also been contended that, in the instant case, no FIR relating to the accident was registered by the concerned Police Station, as such, the accident is not established. Lastly, it has been argued that, in the case of claim petition arising out of death of deceased Balwant Raj, who was working as a Sub Inspector in J&K Police, the Tribunal while assessing compensation has not taken into consideration the fact that as per the Service Rules applicable to the deceased, his widow is entitled to full pension up to a period of 7 years from the date of his death and the same was required to be deducted while assessing the compensation. In this regard, reliance has been placed upon a judgment of this Court in the case of **New India Assurance Co. Ltd vs. Usha Baloria and others** (MA No. 291/2012 and connected matters, decided on 24.07.2020).

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

10 The first ground that has been urged by learned counsel for the appellant-Insurance Company is that, without impleading the legal heirs of the deceased insured, the claim petitions are not maintainable. It has been submitted that owner cum driver of the offending vehicle had died in the same accident and the claimants, after deleting him from array of the parties,

did not take steps to implead his LRs thereby rendering the claim petitions incompetent.

11. In the above context, it would be appropriate to refer to the provisions contained in Section 155 of the Act of 1988 which provides for effect of death on the cause of action. It reads as under:

> "155. **Effect of death on certain causes of action:**
> **N**otwithstanding anything contained in section 306 of the Indian Succession Act, 1925 (39 of 1925), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer".

12 From a bare perusal of the aforesaid provision, it is clear that if death of an insured has occurred after the happening of accident which has given rise to a claim, the same would continue to survive against the estate of the insured or against the insurer. The question that arises for consideration is that whether, in the face of aforesaid provision, the present claim petitions without impleading the LRs of the deceased owner as parties, are maintainable.

13 A Division Bench of the Karnatka High Court in the case of **New India Assurance Co. Ltd vs. H. Siddalinga Naika and others, 1985 ACJ 1989**, has dealt with a similar issue as has been raised in the present case. In the said case, a grievance was projected by the insurance company that owner of the vehicle had died during the pendency of the claim petition before the Tribunal and since his legal heirs were not brought on record, the Tribunal could not have passed the award against the Insurance company. The Division Bench rejected the contention and observed as under:

> "There is no substance in the contention so raised because section 102, Motor Vehicles Act,states:
> "Notwithstanding anything contained in section 306, Succession Act, 1925, the death of person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer."
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> In this case, the claim petition was already filed before the Tribunal and insurance company had issued the policy. That being so, the fact that the owner of the lorry dies, makes no difference. The Tribunal has rightly passed award against the insurer. Hence, there is no substance in this appeal and it is liable to be dismissed. Accordingly it is dismissed. No costs in the appeal"

14 Again in **Natha Singh vs. Gurdial Singh and others, AIR 1982 Punjab and Haryana 38**, a similar issue was raised before Punjab and Haryana High Court. In the said case, an objection was raised by the insurance company that it was not liable to satisfy the claim for compensation because the legal representatives of the insured, who died during the pendency of the proceedings, were not brought on record. The objection was rejected by the Punjab and Haryana High Court with the following observations:

> "Section 96 of the Act provides for the duty of the insures to satisfy judgments against persons insured in respect of third party risks. It also provides that the insurance company or the insurer to whom the notice of the bringing of any such proceedings is given, shall be entitled to be made a party thereto and to defend the action on any of the grounds given therein. Section 102 of the Act provides,-
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> "Notwithstanding anything contained in Section 306 of the Indian Succession Act, 1925 (XXXIX of 1925), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer."
> In view of these provisions of the Act, it cannot be said that the insurance company is not liable to satisfy the claim for

> compensation to be awarded in the claim application simply because the legal representatives of Amrit Lal Gupta insured who died during the pendency of the proceedings, were not brought on the record. It is particularly so because in the insurance policy, Exhibit R-11, it has been provided inter alia vide Cl. (4) of Section II, thereof that the company may, on its own option, undertake the defence of proceedings in any Court of law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under that section. It was because of this term of the policy that the insurance company took a specific plea in paragraph 3 of their additional grounds that it had taken over the defence of the claim petition in the name of the insured to contest the claim, as they had reserved the right under the policy of insurance. As observed earlier, this claim was accepted by the Tribunal and on that account, it was allowed to cross-examine the witnesses, on merits, as well. Under the circumstances, the ratio of the decision in Norati Devi's case, (AIR 1978 Punj. & Har 113) (supra), is most relevant. It has been held therein (at p. 114):-
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> "Section 96 only clarifies that if an award is made, it would be the duty of the insurance company to meet the claim. It nowhere lays down that if the insurance company is allowed to contest the liability in the absence of the insurer, it should not be held liable. Therefore, it cannot be contended that an insurance company can never be held liable so long as the insured is not impleaded as a party to the proceedings, or having been impleaded his name is ordered to be struck off from the array of the respondents on the basis that he enjoys diplomatic immunity from being sued in a Court."
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> In view of the abovesaid decision of this Court, the claim application of Natha Singh, appellant, could not be dismissed on the ground that the legal representatives of Amrit Lal Gupta, deceased, were not brought on the record."

15 A Coordinate Bench of this Court in the case of **Bajaj Allianz General. Insurance. Co. Ltd. vs. Naresh Kumar and another**, (MA No. 18/2016, decided on 25.10.2021), has also observed that Section 155 of the Act of 1988 clearly states that the death of the person, in whose favour a certificate of insurance had been issued, after the happening of the accident, which gave rise to filing of claim petition, is no bar to the proceedings and, therefore, proceedings do not abate.

16 From the foregoing enunciation of law on the subject, it is clear that if death of the insured takes place after the cause of action for filing the claim petition has arisen in favour of the claimant, the claim petition cannot be thrown out merely because the legal heirs of the insured have not been impleaded as parties to the claim petition.

17 Learned counsel for the appellant-Insurance Company has submitted that, in the instant case, the insured has died in the same accident which was the subject matter of the claim petitions, as such, Section 155 of the Act of 1988 would not come to the rescue of claimants. The argument raised by learned counsel for the appellant-Insurance Company is misconceived for the reason that, in section 155 of the Act, the expression used is “if it occurs after the happening of an event which has given rise to a claim” meaning thereby that if death of the insured has taken place after the accident which gives rise to cause of action for filing a claim petition, the petition can survive against the insurer without impleading the legal heirs of the owner.

18 In the instant case, no doubt, death of the insured has taken place in the same accident which has given rise to cause of action in favour of the claimants, but it cannot be stated that death of the owner had taken place prior to the accident. His death certainly took place after the occurrence of the accident and not prior to that, so, at the time of the accident, the certificate of insurance issued by the appellant-Insurance company in favour of the deceased owner was in force. Therefore, provisions of Section 155 of the Act would certainly save the claim petitions filed by the claimants in the instant case. In this regard, I am supported by the judgment of High Court of Karnataka in the case of **Regional Manager**

vs CR lolakshi (Misc. Appeal No. 47, decided on 17.03.2016). In the said case, in a similar situation where death of the insured had taken place in the same accident that had given rise to cause of action in favour of the claimants, the High Court of Karnataka observed that even if insured had expired in the said accident, the claimants are entitled to submit a claim petition against the insurer. Accordingly, the contention raised by the insurer was held to be not acceptable.

19 Even otherwise, in the instant case, as already noted, the appellant-Insurance company has taken up all the defences before the Tribunal that are available to an owner/insured which is clear from the pleadings of the appellant-Insurance Company as also from the manner in which it has been allowed to cross-examine the witnesses of the claimants. Thus, non-impleadment of legal heirs of the deceased owner has not made any adverse impact on the merits of the case. Therefore, the insurer cannot escape its liability to pay compensation to the claimants on the ground that the legal heirs of the deceased owner were not made parties to the claim petitions.

20 The next argument raised by learned counsel for the appellant-Insurance Company is that the claimants have not placed on record the FIR relating to the accident so as to prove the occurrence. The argument is without any merit for that the reason that no FIR in the instant case has been registered by the police and instead the police has conducted the inquest proceedings under Section 174 of Cr.P.C and concluded that the cause of death of the deceased and injuries to the injured has arisen out of use of motor vehicle and the person responsible for the accident has also died. Even otherwise, three injured, namely Sunil Kumar, Anuradha and Om

Parkash, who were travelling in the vehicle in question, have clearly stated that, due to mechanical defect, the driver of the vehicle could not control the same and it fell into a deep gorge. They have further stated that the accident was caused due to the carelessness and negligence of driver of the offending driver. In this view of the matter, merely because FIR was not registered, but only inquest proceedings were conducted by the police, it cannot be stated that the occurrence has not been proved . The contention of learned counsel for the appellant-insurance company is without any merit.

21 Lastly, it has been argued that, while calculating the compensation in the claim petition arising out of death of deceased Balwant Raj, the Tribunal has not deducted the amount of full pension that his widow/claimant Anuradha would have got in terms of the Service Rules. As already noted, reliance in this regard has been placed on a judgment of this Court in the case of Usha Baloria (supra) wherein this Court has held that the actual amount of family pension equivalent to the salary of the deceased employee for a period of seven years or till the date of superannuation, as the case may be, if received by the family of the deceased, will be deductible from the amount of compensation assessed. The said ratio has been laid down by this Court on the basis of Rule 20(ii)(aaa) of Jammu and Kashmir Family Pension-cum-Gratuity Rules, 1964 according to which if a Government servant dies while in service after having rendered not less than 7 years continuous service, the rate of family pension admissible to the beneficiary of the deceased shall be equal to the pay last drawn by the deceased officer before his death.

22 In the instant case, there is nothing on record to show that the claimant Anuradha, the widow of the deceased Balwant Raj, has, at any

stage, received full pension in terms of the aforesaid Rule. Not even a suggestion has been made to her by the counsel for the insurer during her cross-examination before the Tribunal. Even otherwise, the aforesaid Rule, which is the basis of ratio laid down by this Court in **Usha Baloria's** case (supra) has been amended vide SRO 94 dated 15.04.2009 and now a widow of an employee, who dies in harness is entitled to family pension only @ 50% of the past pay drawn. The death of the deceased Balwant Raj has taken place on 26.02.2015 when the said Rule had been amended. Obviously, there was no occasion for the widow of deceased Balwant Raj to receive the full pension for a period of seven years in terms of the aforesaid Rule. Thus, ratio laid down in **Usha Baloria's** case (supra) is otherwise not applicable to the instant case. The argument advanced by learned is, therefore, without any merit.

23 For the foregoing reasons I do not find any merit in any of the aforesaid appeals. The same are, accordingly, dismissed and the impugned award passed by the Tribunal is upheld. Registrar Judicial is directed to release the amount deposited by the appellant-insurance company, if any, in favour of the claimants as per the terms of the impugned award.

(**Sanjay Dhar)**
Judge

JAMMU
23.02.2023
Karam Chand

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