HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on 02.03.2023
Pronounced on 10.03.2023

MA No. 235/2012
c/w
MA No. 158/2017

United India Insurance Co. Ltd. .....Appellant(s)/Petitioner(s)
United India Insurance Co. Ltd.

Through: Mr. Vishnu Gupta, Advocate and
Ms. Damini Singh Chouhan, Advocate

vs

Sajjad Hussain and ors. ..... Respondent(s)
Sajjad Hussain and ors.

Through: Mr. Ankush Manhas, Advocate

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

JUDGMENT

1. Through the medium of this common judgment, the afore-titled two appeals are proposed to be decided.

2. Vide MA No. 235/2012, the appellant/insurance company has challenged interim award dated 02.04.2012 passed by the Motor Accident Claims Tribunal, Kishtwar (hereinafter to be referred as the Tribunal), whereby the learned Tribunal has passed the interim award on the basis of "No Fault Liability" under Section 140 of the Motor Vehicles Act, awarded interim compensation of Rs. 25,000/- in favour of the claimant/respondent No. 1. Vide MA No. 158/2017, the appellant/insurance company has challenged final award dated 28.02.2017 passed by Tribunal whereby respondent No. 1/claimant has been awarded a sum of Rs. 2,87,500/- as compensation along with interest at the rate of 7.5% per annum in the same case.

3. It appears that on 14.06.2010 while respondent No. 1/claimant was walking on the road side, on reaching Guriyan Kishtwar, he was hit by a Tipper bearing registration No. JK13-3949, as a result of which, he suffered grievous injuries. The accident is alleged to have been caused due to rash and negligent driving of the offending vehicle by its driver, respondent No. 3 herein. Claimant/respondent No. 1 was a student, aged 13 years at the relevant time and he suffered 40% permanent disability. Accordingly, he filed a claim petition before the Tribunal impleading the owner, driver and insurer of the vehicle as respondents.

4. The claim petition was contested by the respondents by filing their reply to the claim petition. In its reply, appellant/insurance company claimed that the offending vehicle was being driven in violation of the provisions of Motor Vehicles Act and in contravention of the terms and conditions of policy of insurance, as such, it has no liability to indemnify the insured. It was contended that the driver of the offending vehicle was not holding a valid and effective driving license. It was also pleaded by the appellant/ insurance company that there was no contract of insurance between the owner and the insurer as the policy of insurance had been cancelled on 27.07.2009 due to dishonor of cheque of premium. It was claimed that intimation regarding cancellation of policy was properly conveyed to the insured and as such, the appellant/insurance company is not liable to indemnify the owner.

5. Respondent Nos. 2 and 3, the owner and driver of the vehicle also filed their objections to the claim petition. While denying the occurrence, it was

claimed that the vehicle in question was insured with appellant/ insurance company at the time of the accident. Respondent No. 2/owner filed amended objections, in which it was pleaded that the vehicle in question was insured with the insurance company with effect from 19.06.2009 to 18.06.2010. It was further pleaded that amount of premium of Rs. 6200/- was paid by the said respondent to Neeraj Gupta, the agent of the appellant/ insurance company on 01.05.2009. It was claimed by respondent No. 2/owner that the insurance company has never informed him about the bouncing of the cheque and in fact the amount of premium was paid to the agent in cash.

6. On the basis of the pleadings of the parties, the learned Tribunal framed the following issues:

> 1) Whether petitioner Sajjad Hussain S/o. Mohd. Abbas R/o. Balwana Teh.& Distt. Doda, at present Kishtwar, was hit by a Tipper bearing registration No. JK13-3949 on 14.06.2010 at Guriyan, when he was pedestrian, and was going from Kistwar towards Guriyan, and the said accident was caused due to rash and negligent driving of offending Tipper by its driver (respondent No. 3), with the result, petitioner suffered multiple injuries, including compound fractures and became permanently disabled? OPP
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> 2) If issue No. 1 is proved in affirmative, to what amount of compensation the petitioner is entitled, and from whom? OPP
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> 3) Whether the offending vehicle bearing registration No. JK 13-3949 was being plied by its driver in violation of terms and conditions of Insurance Policy and route permit, if so, what is its effect on the claim petition? OPR-1
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> 4) Whether the driver of the offending vehicle was not holding a valid, proper and effective Driving License at the time of accident? OPR-1
>
> 5) Whether there is no insurable contract between the owner and the Insurance Company as the Policy of Insurance has been cancelled on 27.07.2009 due to dishonoring of cheque issued by the owner of the vehicle, if so what is its effect on the claim petition? OPR-1

6) Relief……..O. P. Parties.

7. After recording the evidence of the parties, the learned Tribunal decided all the issues in favour of the claimant/respondent No. 1. Regarding issue No. 5, learned Tribunal observed that once the premium was paid by the owner to the agent of the insurance company, even if he has not deposited the same with the company, the insurance company cannot wriggle out of its liability to indemnify the insured. Accordingly, a sum of Rs. 2,87,500/- was awarded as compensation in favour of respondent No. 1/claimant and the liability to pay the awarded sum was fastened on the appellant/ insurance company.

8. Appellant/insurance company has challenged the interim award as well as the final award passed by the learned Tribunal on the ground that the cheque relating to the premium of the offending vehicle was dishonored on account of insufficiency of funds, as a result of which, the policy of insurance issued in favour of respondent No. 2, owner of the offending vehicle was cancelled by the appellant/insurance company in terms of its communication dated 22.07.2009 which is well before the date of alleged occurrence. It is contended that intimation regarding cancellation of the policy was conveyed to the owner/respondent No. 2 through registered post and therefore, once the policy of insurance has been cancelled, the learned Tribunal was not justified in saddling the appellant/insurance company with liability to satisfy the interim as well as final award. The appellant/ insurance company has placed on record the original cheque, the original dishonor memo as well as a copy of the letter dated 22.07.2009, whereby

intimation is stated to have been sent to the insured regarding cancelation of the policy. Challenge has also been thrown to the impugned final award on the ground that the learned Tribunal has erred in assessing the compensation by taking the disability of respondent No. 1/claimant as 40%, as the percentage of disability assessed by the doctor was pertaining to a particular limb and not of the whole body. It has also been contended that the learned Tribunal could not have applied the multiplier of 20 while calculating the loss of future income as the same is not in accordance with the judgment rendered by the Supreme Court in **Sarla Verma and Ors v Delhi Transport Corp. and another, (2009) 6 SCC 121.**

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

10. The first contention raised by the learned counsel appearing for the appellant is that once the policy of insurance was cancelled by the appellant/insurance company due to dishonor of the cheque relating to premium, the appellant/insurance company could not have been fastened liability to indemnify the insured because there was no relationship of insurer and insured between the appellant and respondent No. 2 on the date of the accident.

11. If we have a look at the legal position governing the cases relating to dishonor of cheque of premium, it has been the consistent view of this Court and of the Supreme Court, that if the policy of insurance is issued by an authorized insurer on receipt of cheque of premium and such cheque is returned dishonored, the liability of the authorized insurer to indemnify

third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reasons of provisions of section 147(5) and 149(1) of the Motor Vehicles Act, unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured prior to the accident. A number of judgments have been cited by the learned counsel for the appellant/ insurance company to canvass the aforesaid proposition of law. There is no dispute as regards the position of law on the subject, therefore, it may not be necessary for this Court to burden this judgment with the precedents cited by the learned counsel appearing for the appellant/insurance company.

12. The question to be determined in the face of the legal position indicated hereinbefore is as to whether intimation of cancellation of the policy of insurance was given by the appellant/insurance company to respondent No. 2, the owner. In this regard, learned counsel for the appellant/insurance company has heavily relied upon the documents produced along with the memo of appeals, which includes the original cheque, the original dishonor memo and the original letter of intimation of cancellation of policy of insurance along with original dispatch receipt of the post office.

13. Although, the appellant had in its objections before the learned Tribunal specifically pleaded that the cheque relating to premium had been dishonored, yet none of the aforesaid documents were placed before the Tribunal. Respondent No. 2/insured had in its reply before the learned Tribunal specifically pleaded that he did not receive the intimation

regarding cancellation of policy of insurance from the insurer, but still then the document relating to intimation of cancellation of policy along with dispatch receipt of Post Office was not placed before the learned Tribunal.

14. The burden to prove that intimation regarding cancellation of the policy had reached the insured prior to the date of the accident was upon the insurance company, but in the absence of the relevant documents before the learned Tribunal, the appellant/insurance company failed to discharge its said burden. It is for the first time in this appeal that appellant/insurance company has placed these documents on record along with memo of appeal and no reason has been assigned as to why these documents were not placed before the learned Tribunal, in spite of pleading the same before the Tribunal. Since in the present appeal, this Court is testing the legality and validity of the impugned award on the basis of the documents and evidence that was available before the Tribunal, as such, in the absence of aforementioned documents, it cannot be stated that there is any illegality in the finding of the Tribunal that appellant/insurance company had not given the intimation of dishonor of cheque to the insured.

15. The matter does not rest here. Insured/respondent No. 2-owner in his reply to the claim petition has claimed that the cheque of premium was not issued by him but he had paid the said amount in cash to the agent of the appellant/insurance company through Mr. Sanjay Kumar Shan. Sanjay Kumar Shan has appeared as a witness on behalf of the respondent No. 2 before the learned Tribunal. He has stated that he was power of attorney holder of respondent No. 2 in respect of the vehicle in question and he

would look after the affairs relating to the vehicle on behalf of the respondent No. 2. He has stated before the Tribunal that on 01.05.2009 he paid an amount of Rs. 6200/- in cash to Mr. Neeraj Gupta, the agent of the appellant/insurance company. He has further stated that Mr. Neeraj Gupta in his capacity as agent of the insurance company would collect premium on behalf of the company. He has stated that upon receipt of the premium, Mr. Neeraj Gupta delivered policy of insurance valid with effect from 19.06.2009 to 18.06.2010 to him. He has also stated that he came to know that after receiving the payment in cash, Neeraj Gupta had issued cheque for the premium in his own name, which has been dishonored. He has stated that intimation of cancellation of policy was never received by him or by respondent No. 2.

16. Witness of appellant/Insurance company, Mr. Bharat Bhushan Raina has, in his cross examination, admitted that Neeraj Gupta was the agent of the insurance company. He has stated that premium in respect of the insurance of the vehicle in question has been paid by cheque by the agent Neeraj Gupta. He has further stated that agent is empowered receive premium on behalf of the company. Another witness Ranjeet Kumar Parihar, Deputy Manager, State Bank of India has stated that the cheque in question had been issued from the account of Neeraj Gupta and that the said cheque was issued in favour of the appellant/insurance company.

17. From the foregoing evidence on record, it is clear that the amount of premium was collected by Neeraj Gupta, who admittedly was agent of the appellant/Insurance company and instead of depositing the cash amount

with the company, he issued a cheque from his own account in the name of the company, in respect of the premium relating to the vehicle belonging to respondent No. 2, whereafter, a policy of insurance was issued. The cheque in question was later on dishonored due to insufficiency of funds.

18. Section 226 of the Contract Act provides that contracts entered into through an agent may be enforced in the same manner and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person. In the instant case, admittedly, the premium was collected by the agent of the appellant/Insurance company from the attorney holder of the owner, whereafter the policy of insurance came to be issued. Therefore, it would be deemed as if the amount of the premium had been collected by the insurance company, even though the agent may have instead of depositing the premium with the company, issued a cheque from his own account which ultimately got dishonored.

19. The Principal is bound by the acts of his agent and as such, the appellant/Insurance company cannot wriggle out of its liability by stating that it is the agent who had committed fraud with the company. Whatever contracts the insurance company has entered into with the third parties through the agent are enforceable against the company as if these contracts have been entered into by the insurance company itself.

20. It has been contended by learned counsel for the appellant/Insurance company that as per evidence, a sum of Rs. 6200/- has been paid by the insured to the agent of the appellant/Insurance company but the premium was Rs. 6710/- as such, it cannot be stated that whole of the premium had

been paid by the insured. The fact that there is a difference a few hundred rupees between the premium paid by the insured to the agent of the insurance company and the actual premium does not absolve the appellant/Insurance company of its liability for the act of its agent who issued the policy of insurance upon receipt of cash payment from the insured. Therefore, in these peculiar facts and circumstances of the case, even if it is assumed that intimation regarding cancellation of the policy has been given to the insured still then the appellant/Insurance company cannot wriggle out of its liability when its agent has, as per evidence on record, received the amount of premium and issued the policy of insurance. The argument of learned counsel for the appellant in this regard is, therefore, without any merit.

21. Coming to the contention of the appellant/Insurance company with regard to the quantum of compensation, it is to be noted that respondent No. 1/injured, as a result of the accident, suffered type three compound fracture dislocation of his right ankle, as a result of which, movements of his right ankle became limited and restricted and he suffered osteomyelitis of right tibia with shortening.

22. Although the percentage of disability assessed by the doctor is relating to right lower limb yet having regard to the nature of disability suffered by injured, coupled with the fact that the shortening of the right lower limb to the young boy would drastically reduce his earning capacity as he would not be able to undertake any such job in future which requires strenuous physical efforts, as such, it can safely be stated that loss of earning capacity

to the respondent No. 1/claimant would be around 40%. Thus, the learned Tribunal has rightly taken the percentage of disability of the injured as 40% while calculating his future loss of income. The same does not call for any interference from this Court.

23. Coming to the multiplier applied by the learned Tribunal, it is to be noted that the multiplier of 20% has been applied by the Tribunal while calculating the loss of future income to the injured. In this regard, the learned Tribunal has fallen into error because as per the guidelines laid down by the Supreme Court in **Sarla Verma's case**, the multiplier applicable to the age group of respondent No. 1 would be 18 and not 20 as has been applied by the learned Tribunal. Therefore, loss of future income to the respondent No. 1/injured would come to Rs. 1,80,000/- instead of Rs. 2,40,000/- as has been calculated by the learned Tribunal, but at the same time, it is to be noted that under the heads "pain and suffering" and "loss of amenities of life", the injured has been granted compensation which is definitely on a lower side. As per medical record, the injured has remained admitted in the hospital for about 50 days and he has been subjected to surgery. The injured is a young boy and because of disability which he has suffered, there is a shortening of his right lower limb. He will have to live with this disability for rest of his life and it will have adverse effect not only on his future prospects but also in his marriage prospects. Therefore, the compensation of Rs. 10,000/- on account of "pain and sufferings" and compensation of Rs. 15,000/- on account of "loss of amenities of life" appears to be on a lower side. Thus, while reducing the amount of

compensation under the head loss of future income, the amount of compensation under the head "pain and suffering" and "loss of amenities of life" are required to be increased. When these factors are balanced, this Court is of the considered opinion that the total amount of compensation awarded by the learned Tribunal in favour of respondent No. 1 injured represents to the "just compensation" which does not require any interference from this Court.

24. For the foregoing reasons, both the appeals are dismissed. The amount of award, if deposited with this Court, be released in favour of respondent No. 1/claimant in accordance with the terms of the award passed by the learned Tribunal.

(SANJAY DHAR)
JUDGE

Jammu
10.03.2023
Rakesh

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