



For Appellant(s) : Mr. Vishal Singhal
For Respondent(s) : Mr. Rakesh Aroa with Mr. Manish
Rajpurohit

HON'BLE MS. JUSTICE REKHA BORANA
Judgment

01/02/2023

The present appeals preferred by Shriram General Insurance Company Limited (for short 'the Insurance Comapny') and the cross-objections preferred by the owner of the vehicle arise out of the award dated 27.01.2012 passed by the Motor Accident Claims Tribunal, Balotra (hereinafter referred to as 'the learned Tribunal'), whereby claims of Rs.4,33,000/- and Rs.52,600/- along with interest @ 9% have been awarded in favour of the claimants respectively.

The learned Tribunal has proceeded on to decide issue no.3 partly in favour of the Insurance Company and decided that the Insurance Company would although be liable to pay the compensation to the claimants but would further be entitled to recover the same from the owner. Meaning thereby, the Insurance Company was directed to 'pay and recover'. Against the said finding, the present appeals have been filed by the Insurance Company. The cross-objections have been preferred by the owner on the ground that the Insurance Company was only liable to pay the compensation amount and the learned Tribunal has wrongly applied the principle of 'pay and recover' in the present matters. The case of the owner is that the vehicle in question being insured, the Insurance Company would be solely responsible to pay the compensation amount.



Issue No.3 has been partly allowed in favour of the Insurance Company by the learned Tribunal on the ground that the driver was driving a 'Transport Vehicle' whereas he was having a Driving Licence of a 'Light Motor Vehicle (LMV)'. The same was in breach of the conditions of the Insurance Policy and therefore, the Insurance Company cannot be held liable to pay the compensation.

So far as the issue whether 'Light Motor Vehicle' would include a 'transport vehicle' is concerned, the same is no more *res integra* in view of the Apex Court judgment in the case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited; (2017) 14 SCC 663.***

In the said judgment, the Hon'ble Apex Court held as under :

"(i) **"Light motor vehicle" as defined in Section 2(21) of the Act would include a transport vehicle** as per the weight prescribed in Section 2(21) read with Section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54 of 1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a roadroller, "unladen weight" of which does not exceed 7500 kg and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form."



In view of the ratio as laid down by the Hon'ble Apex Court, the finding of the learned Tribunal on issue no.3 deserves to be and is hereby quashed. It is held that the appellant-Insurance Company would be liable to pay the compensation in terms of the award to the claimants.

So far as the quantum of compensation is concerned, in the matter of **Manohar Kanwar & Ors.**, the learned Tribunal held the income of the deceased to be Rs.3,000/- per month and after the appropriate deduction, fixed it as Rs.2,000/- per month. After applying the multiplier of 17, the total compensation qua the loss of income has been computed to be Rs.4,08,000/-. After adding the compensation amount qua the loss of consortium and the funeral expenses, the final award has been computed to be Rs.4,33,000/-. In the case of **Ganpat Singh & Ors.**, keeping into consideration the medical bills and the documents pertaining to the treatment (Annexures-46 to 67) placed on record by the claimants, the learned Tribunal awarded an amount of Rs.17,600/- towards the medical expenses and Rs.35,000/- towards other expenses. The total compensation of Rs.52,600/- has been awarded in favour of the claimants.

In the specific opinion of this Court, in absence of any evidence to the contrary, the above computation of the compensation cannot, by any stretch of imagination, be held to be exorbitant.

As no cross-objections on behalf of the claimants are before this Court, this Court is not inclined to interfere with the quantum of the computation in the award dated 27.01.2012.



Consequently, the present appeals S.B. Civil Misc. Appeals Nos.793/12 & 794/12 are **dismissed**. Cross-objections Nos.24/12 & 25/12 preferred by the owner are **allowed**. The impugned award dated 27.01.2012 is modified to the extent that the Insurance Company would not be entitled to recover the amount of compensation from the owner after paying the same to the claimants in terms of the award.

As the award amount has been deposited by the Insurance Company with the Tribunal in pursuance to the interim order dated 07.05.2012 and after disbursal of 50% of the said amount, 50% of the amount has been kept in the Fixed Deposit Renewable (FDR) on yearly basis, it is directed that the said FDR be no more renewed and the amount qua the said FDR be disbursed/released to the claimants on its maturity.

(REKHA BORANA),J

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