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Court : Kerala

Decided On : Mar-10-2016

Judge : P.N. Ravindran &Amp; K. Ramakrishnan

Appeal No. : MACA.No. 1169 of 2005 ( )

Appellant : Sayed

Respondent : Gopalakrishnan and Others

Judgement :

K. Ramakrishnan, J.

1. The claimant in O.P.(MV) No.327 of 2001 on the file of the Motor Accidents Claims Tribunal, Thodupuzha is the appellant herein. The claim petition was filed by the claimant for compensation for the personal injuries sustained by him in a motor vehicle accident occurred on 21.11.2000. The case of the appellant in the claim petition was that he was travelling in a motor bike with No.KL6-7821. When it reached the place of occurrence, a jeep bearing No.KL6-555 came from the opposite direction, driven by the second respondent, owned by the first respondent and insured by the third respondent hit against his bike and caused severe injuries to him. He was a fish vendor by profession and aged 52 years at the time of accident. He was getting a monthly income of Rs.4,500/-. He suffered permanent disability thereby he could not attend his work. So, he claimed a total compensation of Rs.4,50,000/- on various heads.

2. Respondents 1 and 2 remained ex-parte.

3. The third respondent filed written statement and additional written statement contending that the vehicle was insured with them at the relevant time but they denied negligence on the part of the second respondent. According to them, the accident occurred due to the negligence of the appellant himself. Further, the vehicle was insured in the name of the first respondent but he was not the owner of the vehicle at the time of accident and the second respondent was the owner and this fact was suppressed by the first respondent. So, the policy is ab initio void. The transfer of ownership of the vehicle was not reported to the insurer. So, they are not liable to indemnify the insured. They also contended that the amount claimed is exorbitant. They denied the occupation, income, disability, etc. alleged by the appellant in the claim petition. So, they prayed for dismissal of the claim petition.

4. The Doctor who treated the appellant was examined as PW1 and Exts.A1 to A13 documents were marked on the side of the claimant. No oral or documentary evidence adduced on the side of the respondents. After considering the evidence on record, the Tribunal found that the accident occurred due to the negligence on the part of the second respondent and awarded a total compensation of Rs.1,17,700 on various heads as follows:

Transport to hospital	Rs. 6,000/-
Loss of earnings	Rs. 2,000/-
Medical expenses	Rs. 61,350/-
Damage to clothing	Rs. 250/-
Extra nourishment	Rs. 700/-
Bystander's expenses	Rs. 2700/-

Pain and suffering	Rs. 15,000/-
Disability and loss ofearning power	Rs. 29,700/-
Total	Rs.1,17,700/-

5. Relying on the decision reported in Rikhi Ram and another v. Sukhrania and others (2003 ACJ 534) the Tribunal held that the insurance company is liable to pay the amount but they can recover the amount either from the insured or the transferee of the vehicle. Dissatisfied with the quantum of compensation and also the finding of the Tribunal regarding the liability of the insurance company, the present appeal has been preferred by the appellant/claimant before the Tribunal.
6. Heard Shri John Joseph, learned counsel for the appellant, Shri S. Jiji, learned counsel for the second respondent and Smt. Raji T. Bhaskar, learned counsel for the third respondent.

7. Learned counsel for the appellant submitted that the Tribunal had taken the monthly income of the injured as Rs.2,000/- for the purpose of assessing compensation under the head loss of earning but at the same time took only Rs.1,500/- for the purpose of assessing compensation under the head permanent disability which is unsustainable in law. Further, the Tribunal had not taken into consideration future prospects. The Tribunal had only taken 27 days as period of inpatient treatment whereas he had undergone inpatient treatment for 44 days on two occasions which has not been considered. Further, he was under treatment for more than 8 months but the Tribunal had taken only one month for granting compensation for loss of earning. That also is not proper. No amount was granted under the head loss of amenities in life. Further, under section 157 of the Motor Vehicles Act, 1988 there is a deemed transfer and merely because the insured did not inform the transfer to the insurer, that will not absolve the insurer from the liability to pay compensation unless they were able to prove the defence available under section 149(2) of the Motor Vehicles Act. The dictum laid down by the Tribunal in Rikhi Ram and another v. Sukhrania and others (2003 ACJ 534) is not applicable to the facts of this case, as the accident in that case occurred prior to

the amendment of the Motor Vehicles Act. 8. On the other hand, learned counsel for the insurance company submitted that the Tribunal had considered all the aspects in the right perspective and the compensation awarded is just and proper. Since the transfer has not been intimated to the insurer, the Tribunal was perfectly justified in giving right of recovery to the insurance company.

9. Learned counsel for the second respondent submitted that in view of section 157 of the Motor Vehicles Act, 1988 there is a deemed transfer and there is no case for the insurance company that the vehicle was transferred even prior to the accident. No evidence was adduced on that aspect. As per the registration certificate, the vehicle was transferred after the insurance was taken and as such there is no possibility for the transferor informing the transfer at the time of taking the policy arises. The Tribunal was not justified in exonerating the insurance company from the liability and giving a right of recovery to them from respondents 1 and 2.

10. Since the Tribunal found that the accident occurred due to the negligence of the second respondent and no appeal has been preferred either by the owner or by the insurance company on that aspect, we are not going into that aspect in this appeal.

11. The Tribunal has found that the insurance company is entitled to recover the amount from the insured or the transferee, relying on the decision in Rikhi Ram's case (supra). Section 103-A of the Motor Vehicles Act, 1939 reads as follows:

103A. Transfer of certificate of insurance

(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter proposes to transfer to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, he may apply in the prescribed form to the insurer for the transfer of the certificate of insurance and the policy described in the certificate in favour of the person to whom the motor vehicle is proposed to be transferred, and if within fifteen days of the receipt of such application by the insurer, the insurer has not intimated the insured and such

other person his refusal to transfer the certificate and the policy to the other person, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of I s transfer.

(2) The insurer to whom any application has been made under sub-section (1) may refuse to transfer to the other person the certificate of insurance and the policy described in that certificate if he considers it necessary so to do, having regard to--

(a) the previous conduct of the other person,--

(i) as a driver of motor vehicles; or

(ii) as a holder of the policy of insurance in respect of any motor vehicle; or

(b) any conditions which may have been imposed in relation to any such policy held by the applicant; or

the rejection of any proposal made by such other person for the issue of a policy of insurance in respect of any motor vehicle owned or possessed by him.

(3) Where the insurer has refused to transfer, in favour of the person to whom the motor vehicle has been transferred, the certificate of insurance and the policy described in that certificate, he shall refund to such transferee the amount, if any, which, under the terms of the policy, he would have had to refund to the insured for the unexpired term of such policy.

It may be mentioned here that that was a case where the accident occurred in the year 1984, at the time when the old Motor Vehicles Act, 1939 was in force and there is a duty cast on the insured to inform the transfer under section 103A of the Act of 1939 and there is an option given to the insurance company to accept or not accept the transfer and transfer the policy in the name of the transferee and inform the same to the transferor and the transferee within 15 days and if it is not done by the insurance company, it will be deemed to have been transferred in favour of the transferee. Further, under subsection (2) of section 103-A, the grounds on which

the insurance company is entitled to reject the transfer were also enumerated. If the transfer is not intimated, then, even the amount is paid by the insurance company to the party, they will be getting a right of recovery under section 9 (4) of the old Act. It was taking into account the above fact that the Supreme Court has held that that willnot affect the right of the third parties and at the most the insurance company can claim reimbursement of the amount either from the insured or from the transferee.

12. But the new Act 59/1988 has come into force with effect from 1.7.1988 and section 157 stands incorporated which reads as follows:

157. Transfer of certificate of insurance.-- (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfer to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

Explanation.-- For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

It is clear from the above section, that there is deemed transfer of policy in the name of the transferee. There is no option given to the insured to inform the insurer about the transfer and no option given to the insurer either to accept the transfer or not. There is no consequences as mentioned in section 103-A of the Motor Vehicles Act, 1939 in the case of non intimation of transfer to the insurer by the insured or the transferee. has been incorporated in the present section.

13. Further, this position has been considered by this court in Narayanan Nanu v. Manuel Thomas (2000 (2) KLT 550) and held that merely because the transfer has not been intimated by the insured to the insurer, that will not absolve the insurance company from payment of compensation to the victim or the legal heirs of the victim.

14. In the decision reported in Govindan v. New India Assurance Co. Ltd. (1999 (2) KLT SN 31 (C. No.37), the Apex Court has held while considering section 103A of the old Act, that compensation to the victim or third party cannot be denied on the ground that the policy was not transferred. In the decision reported in National Insurance Co. Ltd. v. Sindhu (2011 (3) KLT 590) a Division Bench of this court while considering the scope of sections 157 and 147 of the Motor Vehicles Act and while considering the liability under the Workmen's Compensation Act, held that policy of insurance will stand transferred to name of the transferee with effect from date of transfer and such transfer will take within its sweep all compulsory insurable risks, covered under policy of insurance.

15. In the decision reported in Complete Insulations (P) Ltd. v. New India Assurance Co. Ltd. {(1996) 1 SCC 221}, a three Judge Bench of the Apex Court held that by virtue of section 157 of the new Act, there is deemed transfer of policy in the name of the transferee and on such transfer it will cover the risk of third party only but not other contractual obligations between the earlier insured and the insurance company vis-a-vis the transferee. That was a case where the property damage of the insured will be covered in favour of the transferee owner on such deemed transfer under a comprehensive policy on transfer was considered and the Apex Court held that it will not cover such liability but only cover the third party risk.

16. So, as per the New Act, once the vehicle is transferred, there is a deemed transfer of policy of insurance in the name of the transferee and the insurance company is liable to indemnify the insured or even the transferee by virtue of the deeming provision. They can be exonerated from liability only if they are able to establish the violation of policy conditions or defences as provided under section 149(2) of the Motor Vehicles Act,1988 and not otherwise.

17. Here, there is no case for the insurance company that any of the conditions of the policy have been violated. Further, it will be seen from the discussion in the award itself in paragraph 7 that the vehicle was transferred in the name of the second respondent only on 31.8.2000, the policy was taken on 14.1.2000 and that the accident occurred on 21.11.2000. So, there was no possibility for the insured informing the transfer to the insurance company at the time when the policy was taken as there was no transfer effected or proved at that time. If the transfer has taken place prior to the issuance of the policy and the factum of transfer was not intimated, probably they may take a contention that the material facts have been suppressed and the policy has been obtained in the name of a person who was not the real owner at that time. But that was not the case on hand. So, under the circumstances, by virtue of section 157 of the Motor Vehicles Act, 1988 the third respondent is not entitled to contend that because of the fact that the transfer has not been intimated, they are not liable to indemnify the insured or the transferee. So, the finding of the Tribunal giving right to recover the amount of compensation from the first or the second respondent, is unsustainable in law and the same is hereby set aside, as any of the defence available under section 149(2) of the Motor Vehicles Act, 1988 has not been established by the insurance company. So, the insurance company is liable to pay the amount and they are not entitled to get the right of recovery of the amount from respondents 1 and 2 as found by the Tribunal.

18. According to the claimant, he was aged 52 years and a fish vendor by profession and getting a monthly income of Rs.4,500/-. But he had not produced any document to prove his income as such. He did not go to the witness box also to prove this fact. However, considering the fact that the accident was occurred in the year 2000, the Tribunal was justified in taking the monthly income of the injured as Rs.2,000/- which cannot be said to be excessive or cannot be saidto be on the lower side as well. But at the same time, the Tribunalhad erred in reducing the monthly income to Rs.1,500/- for the purpose of assessing compensation under the head permanent disability. Having taken the monthly income at Rs.2,000/-, the Tribunal ought to have taken the same amount for the purpose of assessing compensation under the head permanent disability and loss of earning capacity as well.

19. The appellant suffered comminuted fracture both bones of right leg with bone loss and fracture base II metatarsal right and heel flap avulsion right. There was loss of skin as well. He was treated as inpatient from 22.11.2000 to 18.12.2000 and from 27.3.2001 to 11.4.2001 at Medical Trust Hospital, Ernakulam. It is seen from Ext.A11 discharge summary that he had underwent two surgeries. Earlier he was treated with wound debridement and interlocking nailing done on 22.11.2000. Thereafter when he was re-admitted in the same hospital on 27.3.2001, interlocking nail readjustment was done and bone grafting was done on 30.3.2001 and discharged on 11.4.2001. Further, it is seen from Ext.A11 that he was advised to have 30% weight bearing, on 19.6.2001. So, it is clear from this that during this period, he could not have worked and the Tribunal was not justified in taking only 27 days inpatient treatment for the purpose of awarding compensation under the head loss of earning. So, we take the period of treatment as nine months for the purpose of assessing compensation under the head loss of earning during the period of treatment and thereby the appellant is entitled to a sum of Rs.18,000/- instead of Rs.2,000/- awarded by the Tribunal, thereby, he will be entitled to get an additional amount of Rs.16,000/- under the head loss of earning during the period of treatment.

20. On account of the injury sustained, he might have suffered severe pain. Considering his age, the tolerance of pain will be less and he will be experiencing pain more. So, considering the circumstances, the amount of Rs.15,000/- awarded by the Tribunal under the head pain and suffering is on the lower side and we enhance the same to Rs.25,000/- thereby the appellant will be entitled to get an additional amount of Rs.10,000/-.

21. In the decision reported in Rajesh v. Rajbir Singh (2013 (3) KLT 89 - SC), the Supreme Court has held that in the case of death, even for persons having no permanent income, future prospects will have to be taken into consideration for the purpose of assessing compensation under the head loss of dependency and between the age group of 40 and 60, 15% of the gross income taken has to be added for future prospects. The same principle has been extended in the case of personal injuries as well for assessing compensation under the head loss of earning capacity by the Apex Court, in the decision reported in Syed Sadiq and

others v. Divisional Manager, United India Insurance Company Ltd. {(2014) 2 SCC 735}. Applying this principle, if a recalculation is made, the appellant will be entitled to get an amount of Rs.45,540/- (2000 x 115/100 = 2300 x 12 x 11 x 15/100) under the head compensation for permanent disability and loss of earning capacity, instead of Rs.29,700/- awarded by theTribunal, thereby he will be entitled to get an additional amount of Rs.15,840/- under that head.

22. No amount was awarded under the head loss of amenities in life. The disability will not only in some cases result in loss of earning capacity but also it may have some impact on the personal life of the injured causing inconvenience as well as discomfort to the victim and he will be entitled to get some reasonable amount as compensation under the head compensation for loss of amenities and inconvenience in life apart from compensation under the head loss of earning capacity. In this case, considering the nature of injuries sustained and also the nature of disability mentioned in the disability certificate Ext.A1 and on the basis of the evidence of PW1, it may have some impact on the personal life causing inconvenience as well as discomfort for the remaining period of his life. So, we award an amount of Rs.20,000/- under the head loss of amenities in life. The Tribunal had taken only 27 days as inpatient treatment for the purpose of awarding compensation under the head bystander's expenses. However, considering the fact that he was treated as inpatient for 44 days, we feel that an additional amount of Rs.3,200/- can be awarded under that head. We are not inclined to enhance any amount under other heads. Thus, the appellant will be entitled an additional compensation of Rs.65,040/- in all which we round off to Rs.65,000/- over and above the compensation awarded by the Tribunal which the third respondent insurance company is liable to pay with 9% interest per annum.

23. This court has by order dated 13.7.2015 observed that the appellant will not be entitled to get interest from the date of filing of the appeal till today, viz. the date on which the application for condonation of delay is allowed, but he will be entitled to get interest from the date of petition till the appeal is filed, viz. 8.4.2005 and thereafter from today till the date of deposit at the rate of 9% per annum on the enhanced compensation which the insurance company is liable to pay on the enhanced amount. Three months time is granted to the insurances company to

deposit the amount. If the amount is deposited, the appellant is permitted to withdraw the amount. With the above modification of the award impugned, the appeal is allowed in part and disposed of accordingly.