Beer Pal and Others Vs. Arvind Kumar and Others

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Court : Delhi

Decided On : Sep-18-2012

Judge : G.P. Mittal

Appeal No. : MAC. APP. 963 OF 2011

Appellant : Beer Pal and Others

Respondent : Arvind Kumar and Others

Judgement :

G. P. MITTAL, J.

1. The Appellants impugn a judgment dated 01.08.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs.3,57,500/- was awarded for the death of Haridwari Devi @ Harduri who died in a motor vehicle accident which occurred on 13.10.2008.

2. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence has attained finality between the parties.

3. While computing loss of dependency, the Claims Tribunal held that Smt. Hardwari Devi was working as a housewife; the value of the gratuitous services rendered by her was taken to be Rs.3,000/- per month; deduction of one-fourth was made towards expenses as the number of dependents were seven and thus, a sum of Rs.2,92,500/- was awarded towards loss of gratuitous services to the

Appellants and a compensation of Rs.65,000/- was awarded under non-pecuniary heads.

4. There is twin challenge to the judgment. Firstly, it is urged that the compensation awarded is very low. The Claims Tribunal did not properly assess the value of the gratuitous services rendered by the deceased housewife. Secondly, it is contended that the vehicle was duly insured, yet, the Claims Tribunal exonerated the Insurance Company on the ground that the Insurance Company had successfully established the breach of the terms of the policy. It is urged that the Respondent Insurance Company failed to prove the willful breach of the terms of policy. Hence, it could not avoid its liability.

5. As far as award of compensation in case of death of a housewife is concerned, the question was dealt with in great detail by me in Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh and Ors. MAC. APP. 590/2011, decided on 30.01.2012.

6. In Master Manmeet Singh this Court noticed following judgments of the Supreme Court:-

(i) General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. (1994) 2 SCC 176,

(ii) National Insurance Company Limited v. Deepika and Ors., 2010 (4) ACJ 2221,

(iii) Amar Singh Thukral v. Sandeed Chhatwal, ILR (2004) 2 Del 1,

(iv) Lata Wadhwa and Ors. v. State of Bihar and Ors., (2001) 8 SCC 197,

(v) Gobald Motor Service Ltd. and Anr. v. R.M.K. Veluswami and Ors., AIR 1962 SC 1,

(vi) A. Rajam v. M. Manikya Reddy and Anr., MANU/AP/0303/1988,

(vii) Morris v. Rigby (1966) 110 Sol Jo 834 and

(viii) Regan v. Williamson 1977 ACJ 331 (QBD England),

and laid down the principle for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in Master Manmeet Singh (supra) is extracted hereunder:-

“34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

(i) Minimum salary of a Graduate where she is a Graduate.

(ii) Minimum salary of a Matriculate where she is a Matriculate.

(iii) Minimum salary of a non-Matriculate in other cases.

(iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.

(v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.

(vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband’s re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.

(vii) There shall not be any deduction towards the personal and living expenses.

(viii) As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto Rs. 25,000/- (on present scale of the money value) towards loss of love and affection and Rs. 10,000/- towards loss of consortium, if the husband is alive, may be awarded.

(ix) Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate."

7. In the instant case, there is no evidence with regard to the deceased's educational qualification. Thus, the compensation towards loss of gratuitous services is to be awarded on the basis of Minimum Wages for a non-Matriculate as fixed by the Govt. of NCT of Delhi. Since the deceased was aged 49 years, there would be an addition of 15% and the appropriate multiplier would be 13. The loss of gratuitous services to the Appellants thus comes to Rs.6,95,354/- (3876/- + 15% x 12 x 13).

8. On adding a notional sum of Rs.65,000/- towards non pecuniary heads, as awarded by the Claims Tribunal, the overall compensation thus comes to Rs. 7,60,354/-.

9. With regard to breach of the terms of policy, it is well settled that the onus is on the Insurance Company to prove the breach of the terms of policy.

10. In United India Insurance Company Ltd. v. Lehru and Ors., (2003) 3 SCC 338; in Para 18 of the report, the Supreme Court referred to the decision in Skandia Insurance Company Limited v. Kokilaben Chandravadan, (1987) 2 SCC 654; Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21; and New India Assurance Co., Shimla v. Kamla and Ors., (2001) 4 SCC 342 and held that in order to avoid the liability, there must be willful and conscious breach on the part of Insured as provided under Section 149 (2) (a) (ii) of the Act. It was held that even in those cases the Insurance Company would still be liable to the innocent third party but may recover the compensation paid from the Insured. Paras 18 and 20 of the report are extracted hereunder:-

"18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen, in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia and Sohan Lal Passi cases the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief

is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic “No”. To hold otherwise would be to negate the very purpose of compulsory insurance…….”

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20. …….If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view.”

11. Similar view was taken by the three Judge Bench decision of the Surpeme Court in National Insurance Company Limited v. Swaran Singh and Ors., (2004) 3 SCC 297.

12. Turning to the facts of the instant case.

13. A perusal of the written statement filed by Respondent No.3 Insurance Company would reveal that a general defence was taken that if the driver of the offending vehicle was found to be not holding a valid and effective driving licence, the Insurance Company shall not be liable to pay the compensation. This written statement was filed on 6th April, 2009. Respondent No.2 Hardesh Kumar (the owner of the offending vehicle) as also Respondent No.1 Arvind Kumar (driver of the vehicle) were throughout contesting the proceedings before the Claims Tribunal. They were not informed that the driving licence of the driver was fake. It was for the first time that a notice dated 16.04.2010 (Ex.R3W1/1) was allegedly sent to the Respondents No.1 and 2 by postal receipt Ex.R3W1/2. By virtue of this notice, the driver and owner were required to produce the driving licence to drive a heavy motor vehicle (HMV). The case of Respondents No.1 and 2 throughout had been that vehicle No.HR-38-H-3393 was not involved in the accident. Affidavit Ex.RW1/A in this regard was also filed by Respondent No.2 by way of his

evidence. He also entered the witness box for cross-examination. In cross-examination, Respondent No.2 stated that he had seen the driving licence of the driver (Respondent No.1) at the time of employment. He admitted that he did not verify the driving licence from the Licensing Authority, Patna. He added that he made local inquiries from other persons to satisfy himself about the genuineness of the driving licence. He denied the suggestion that the driver did not have appropriate skills in driving or that the driving licence was fake. It is very curious that a notice dated 16.04.2010 must have been received by Respondent No.2 just after a couple of days, but Respondent No.2 was not confronted with the notice by which Respondents No.1 and 2 were required to produce the driving licence.

14. Manohar Lal, Assistant of the Respondent Insurance Company appeared as R3W1 and proved the notice Ex.R3W1/1. A suggestion was given to him on behalf of Respondent No.2 that the notice was never received by him (Respondent No.2). R3W1 was silent whether the registered envelope was properly addressed nor the address was confronted to Respondent No.2. In any case, even if service of the notice is assumed, a willful and conscious breach of the terms of policy on the part of Respondent No.2 is not established. Respondent No.2 himself entered the witness box and said that he saw the driving licence of the driver before employing him and he also made local inquiries. As stated above, he denied a suggestion that he was not satisfied about the driving skills of the driver or that the driving licence was fake. R3W2 tried to prove the report Ex.R3W1/8, purported to be signed by the District Transport Officer (DTO), Patna according to which driving licence No.5875/98 „appeared to be fake'. R3W1 nowhere stated that he obtained the report Ex.R3W1/8 from District Transport Officer, Patna or that he was conversant with the signatures of the DTO, Patna or that the report was signed by him. He simply stated that the report was obtained by the investigator from DTO, Patna.

15. Section 67 of the Indian Evidence Act, 1872 (the Evidence Act) lays down the mode of proof of a document, which is extracted hereunder:-

"67. Proof of signature and handwriting of person alleged to have signed or written document produced -

If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his hand writing."

16. Thus, any document including public document has to be proved as provide under Section 67 of the Evidence Act.

17. The question of proof of a Sanction Order signed by the Sanctioning Authority i.e. Secretary (Medical) Delhi Administration came up before a learned Single Judge of this Court in State (Delhi Administration) v. Brij Mohan, 27 (1985) DLT 322 where it was held as under:-

"(8) Section 61 of the Evidence Act lays down that the contents of a document may be proved either by primary or by secondary evidence. Section 62 thereof defines primary evidence as meaning the document itself produced for the inspection of the court. In other words, the primary documentary evidence of a transaction (evidenced by writing) is the document itself which should be produced in original to prove the terms of the contract/ transaction, if it exists and is obtainable. Since the original sanction was admittedly placed on record by the prosecution, the requirements of this provision stood satisfied and the question of any secondary evidence for proving the contents of the sanction as such did not arise. Primary evidence in the context of oral evidence, however, means an oral account of the original evidence i.e. of a person who saw what happened and gives an account of it recorded by the court. That question does not appear to have arisen in the instant case because the matter was still at the stage of proof of the consent accorded by the Secretary (Medical). Since Sections 61 to 66 of the Evidence Act deal with the mode of proving the contents of the documents, either by primary evidence or by secondary evidence, I need not dwell upon the same in view of the original document having been placed on the record.

(9) Then comes the most important question viz. the genuineness of a document produced in evidence i.e. is a document what it purports to be and this is dealt with in Sections 67 to 73 of the Evidence Act. Section 67 refers to documents other than documents required by law to be attested. It simply requires that the

signature of the person alleged to have signed a document (i.e. the executant) must be proved by evidence that the signature purporting to that of the executant is in his handwriting. Further it requires that if the body of the document purports to be in the hand-writing of someone, it must be proved to be in the hand-writing of that person. However, Section 67 does not in terms prescribe any particular mode of proof and any recognised mode of proof which satisfies the Judge will do. Thus, the execution/ authorship of a document may be proved by direct evidence i e. by the writer or a person who saw the document written and signed or by circumstantial evidence which may be of various kinds, for example, by an expert or by the opinion of a non-expert who is acquainted with the hand-writing in any of the ways mentioned in Explanation to Section 47 or even by comparison etc. (See Sections 45, 47, 73 and 90 of the Evidence Act)……"

18. The question of proof of a public document came up before Bombay High Court in C.H. Shah v. S.S. Malpathak and Ors., AIR 1973 Bom. 14, where it was held as under:-

"4……. In all cases of secondary evidence under Section 65 read with Section 63 of the Evidence Act when a copy or an oral account of a document is admitted as secondary evidence, the execution of the original is not required to be proved but if the original itself is sought to be tendered it must be duly proved and there is no reason for applying a different rule to public documents. Secondly, in the case of a certified copy, before a presumption of its genuineness can be raised under Section 79, as laid down by the Supreme Court in Bhinka's case already referred to above it must be shown that the certified copy was executed substantially in the form and in the manner provided by law. There would, therefore, be a check or safeguard in so far as the officer certifying it in the manner required by law would have to satisfy himself in regard to the authenticity of the original and in regard to the accuracy of the copy which he certifies to be a true copy thereof. On the other hand if the original of a public document is to be admitted in evidence without proof of its genuineness, there would be no check whatever either by way of scrutiny or examination of that document by an officer or by the Court. The third and perhaps the most important reason, for not accepting Mr.Shah's argument on the point which I am now considering is that neither Section 67 nor Section 68 of

the Evidence Act which lay down that the signature and the handwriting on a document must be duly proved do not make any exception in the case of public documents. In view of the provisions of the said section all documents whatever be their nature must be therefore be proved in the manner provided by Section 45, 47 or 73 of the Evidence Act……..

5. The only question which remains for consideration is whether a presumption of the genuineness of the original of a public document should be drawn by reason of Illustration (e) to Section 114 of the Evidence Act to the effect that official acts have been regularly performed. It is no doubt true that it has been held by a Division Bench of this Court in the case of East India Trading Co. v. Badat and Co., AIR 1959 Bom. 414 that Section 114 of the Evidence Act is wide enough to permit the Court to raise a presumption not only with regard to oral evidence, but also with regard to documentary evidence. It may be mentioned that the decision of the Division Bench in the said case was reversed on appeal by the Supreme Court by a majority AIR 1964 SC 538, but in the judgment of the majority the Supreme Court has not referred to the point mentioned above. Apart from the undesirability of taking a view which would let in any and every document tendered by Government in suits to which it is a party without proof of genuineness, in my opinion, no presumption under Section 114 can be drawn in view of the mandatory and unqualified term of Sections 67 and 68 of the Evidence Act. Section 114 which to put it in popular language, merely empowers the Court to use its commonsense, cannot be used to contravene an express provision of the Act itself. I, therefore, hold that if the original of a public document is sought to be tendered in evidence, it must be proved in the manner required by law…..”

19. Thus, the certificate purported to be issued by a Transport Authority could not be admitted into evidence unless signatures thereon were proved by examining a witness.

20. It is true that there are some difficulties in summoning the witnesses from the registering authorities. This aspect was taken into consideration while framing the Delhi Motor Accidents Claims Tribunal Rules, 2008. Under Rule 7 it has been provided that the submission of report as per Form “D” (provided in the Rules) by

the registering authority would be made admissible without any formal proof. Rule 7 is extracted as under:

“7. **Presumption about reports-** The contents of reports submitted to the Claims Tribunal in Form “A” and Form “D” by investigating police officer and concerned registering authority respectively, and confirmation under clause (b) of rule 5 by the insurance company shall be presumed to be correct, and shall be read in evidence without formal proof, till proved to the contrary.”

21. Since the report of the Transport Authority was not proved in accordance with law, the same is not admissible in evidence. Once the report Ex.R3W1/8 is excluded from the evidence there is no material on record to show that the driving licence No.5875/98 available on record was a fake driving licence. The Insurance Company, therefore, was not entitled to avoid the liability.

22. In view of the foregoing discussion, the compensation is thus enhanced from Rs. 3,57,500/- to Rs. 7,60,354/-.

23. The enhanced compensation of Rs.4,03,354/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment. It shall be the liability of the Respondent No.3 Insurance Company to satisfy the judgment being authorized insurer.

24. Respondent No.3 the New India Assurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.

25. The enhanced compensation of Rs.4,03,354/- along with interest shall be equally apportioned amongst the Appellants No.1 to 7. The compensation awarded to the Appellants No.2 to 7 shall be held in fixed deposit till they attain the age of 21 years.

26. The Appellants shall be entitled to approach the Claims Tribunal for premature withdrawal of the compensation if it is needed for their higher education or for any other purpose which, the Claims Tribunal is entitled to decide on its own merits.

27. The Appeal stands disposed of in above terms.

28. Pending Applications stand disposed of.