(2017) 11 DEL CK 0074

In the Delhi High Court

Case No : MAC. Appeal No. 993 Of 2012, Civil Miscellaneous No. 15727 Of 2012

Bajaj Allianz General Insurance Co. Ltd APPELLANT

Vs

Surender Singh & Ors RESPONDENT

Date of Decision : 30-11-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Order 12 Rule 8
Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2017) 11 DEL CK 0074

Hon'ble Judges : R.K.Gauba, J

Bench : Single Bench

Advocate : Neerja Sachdeva

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. Jagdeep Singh, a bachelor, aged 21 years, was travelling in a Tempo Tata 407 bearing registration no. HR-55-5870, with certain other persons, on

25.08.2008, when due to its negligent driving by the third respondent, they met with an accident, resulting in several persons including Jagdeep Singh,

suffering injuries he dying in the consequence. His parents (the claimants), they being first and second respondent in appeal, instituted accident claim

case MACT No. 833/2010 on 03.01.2009 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 in which, besides the

third respondent (driver), the fourth respondent and the appellant were impleaded as parties, they being the owner and insurer respectively of the

vehicle in question. After inquiry, by impugned order dated 04.07.2012, the tribunal awarded compensation in the sum of Rs. 10,96,000/- and directed

the insurer to pay with interest as 12% per annum, also adding the liability to pay Rs.75,000/- as counsel fee along with Rs. 10,000/- as out of pocket

expenses. The insurer, in its contest, had taken the plea that the deceased was a gratuitous passenger and therefore, it was not a case where it could

be called upon to indemnify. Evidence in this regard was led before the Tribunal. However, the tribunal did not find such plea to be acceptable. It also

repelled the contention that there was no valid driving licence and permit at the relevant point of time.

2. By the appeal at hand, the insurer questions the computation of the award, challenging the grant of Rs. 2,00,000/- towards loss of love and affection,

Rs. 20,000/- towards loss of estate, Rs. 1,00,000 towards loss of care and services and also the rate of interest levied @ 12% p.a., it besides assailing

the directions for payment of counsel fee and out of pocket expenses. It also pleads the case of breach of terms and conditions of the insurance

policy.

3. The third and fourth respondents (i.e. the driver and the owner of the offending vehicle), had been duly served in this appeal and had even appeared

at one stage. Thereafter, they stopped appearing. The appeal was put in the list of 'Regulars' to come up on its turn, as per order dated 23.02.2016.

When the appeal is taken up for hearing, there is no appearance on their behalf.

4. The appeal has been heard with assistance of learned counsel for the appellant and the record perused.

5. It is noted that during inquiry before the tribunal as well, both the said parties (owner and driver), had chosen to suffer the proceeding ex-parte.

6. There is a need for re-calculation of compensation in the case at hand, as the non-pecuniary damages awarded by the tribunal are way beyond the

dispensation given by a Constitution Bench of the Supreme Court rendered on 31.10.2017 in SLP (C) 25590/2014, National Insurance Company Ltd.

Vs. Pranay Sethi and Ors., In this view, in their lieu, Rs. 15,000/- each under the heads of funeral expenses and loss of estate are added. Thus, the

compensation is reduced to Rs. (7,56,000+15,000+15,000) Rs. 7,86,000/- (Seven Lakhs and Eighty Six Thousand only).

7. No special reasons were set out in the impugned judgment as to why the rate of interest was levied at 12% per annum, which is beyond the

ordinary. Following the consistent view taken by this Court, the rate of interest is reduced to 9% per annum, from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.].

8. There being no justification for such inclusion, the directions for payment of counsel fee and out of pocket expenses are set aside.

9. The evidence led by the insurer through Vishesh Thakur (R3W1), Senior Executive of the insurer had proved the policy and the notice under Order

XII Rule 8 CPC, 1908 issued to the owner and driver of the offending vehicle.

10. PW2 had admitted during the course of his cross-examination that the deceased was travelling in the vehicle as a gratuitous passenger. The

vehicle was admittedly a goods carrying vehicle and the goods carried at the time of the accident did not belong either to the deceased or anyone he

represented. In these circumstances, there was a breach of terms and conditions of the insurance policy, the testimony of witness (R3W1) had proved

that it had called upon driver and the owner of the offending vehicle by notice (R3W1/2) under Order XII Rule 8 of the Code of Civil Procedure, 1908

(CPC), sent by post (Ex-R3W1/3, 4) to produce the relevant documents to which there was no response. The driver and the owner did not lead any

evidence to prove that the driver (third respondent) of the vehicle was in possession of a valid driving licence at the relevant point of time. The owner

did not lead evidence to prove that the vehicle was covered by a valid permit.

11. All these facts clearly show that there was a breach of terms and conditions of insurance policy on which the plea of the insurer deserves to be

accepted.

12. In the given facts and circumstances, it is deemed just and proper by the court that the insurer initially bears the burden of payment of

compensation to the claimants and then takes out appropriate execution proceedings for enforcing its recovery rights against the registered owner of

the vehicle and the driver i.e. the third and fourth respondents who are held liable. It is directed accordingly.

13. Thus, the insurance company is directed to deposit the compensation in terms of the award modified as above with accrued interest @ 9% p.a.

thereupon with the tribunal, within 30 days, making it available to be released to the claimants.

14. After satisfying the award, the insurance company may take out appropriate steps before the tribunal for enforcing the recovery rights which are

hereby granted against the third and fourth respondents.

15. The statutory deposit shall be refunded to the appellant after proof is shown of the award having been satisfied.

16. The appeal and the pending application are disposed of in above terms.

