(2011) 02 P&H CK 0185

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 2979 of 2010

Bajaj Allianz General Insurance Company Ltd. APPELLANT

Vs

Pradeep Kumar RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 3
Motor Vehicles Act, 1988 — Section 140

Citation : (2011) 02 P&H CK 0185

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—In a fire accident at the Record Section of Civil Revision/FAO Branch of this Court on 30.1.2011, several files were burnt.

2. The Registry has reported that the file is not available and it is likely that the papers connected with the case have been consumed in fire. Learned Counsel for the Appellant has furnished copy of all the relevant papers connected with the case. The papers submitted shall substitute the papers that are unavailable and shall constitute for all practical purposes as the records of the Court. Papers are duly reconstructed in the above fashion.

3. The point urged in appeal by the insurer in this case is that the insured was himself driving the vehicle and had come by injuries resulting in certain physical disablement. The doctor had examined him and had found that the disability was assessed at 5% on account of reduced range of motion of right knee with some attendant complications. The Tribunal had awarded Rs. 50,000/- under the following heads:

Compensation on account of permanent disability Rs. 10,000/- Compensation on account of Pain and sufferings Rs. 5,000/- Compensation on account of medical expenses Rs. 20,000/- Compensation on account of loss of amenities and loss of future income Rs. 10,000/- Compensation on account of special diet, attendant etc. Rs. 2,500/- Compensation on account of transportation Rs. 2,500/- Total Rs. 50,000/-

4. Learned Counsel appearing for the Insurance Company would point out that there was a personal accident cover for the terms of the policy which set out the scale of compensation payable for the respective nature of injuries. They are as follows:

1. Death 100; 2. Loss of two limbs or sight of two 100% eyes or one limb and sight of one eye 3. Loss of one limb or sight of one eye 50; 4. Permanent total disablement 100% from injuries other than named above

The tabulation sets out proviso that reads as under:

the compensation shall be payable under only one of the items (i) to (iv) above in respect of the owner-driver arising out of any one occurrence and the total liability of the insurer shall not in the aggregate exceed the sum of Rs. 1 lakh during any one period of insurance.

2. no compensation shall be payable in respect of death or bodily injury directly or indirectly wholly or in partarising or resulting from or traceable to (a) intentional self injury suicide or attempted suicide physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

3. Such compensation shall be payable directly to the insured or to his/her legal representatives whose receipt shall be the full discharge in respect of the injury to the insured.

This cover is subject to

(a) the owner-driver is the registered owner of the vehicle insured herein;

1. the owner-driver is the insured named in this policy.

2. the owner-driver holds an effective driving license, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules,1989, at the time of the accident.

5. In this case unless the injury had resulted in permanent total disablement or there were privation of organs or loss of sight which were described as necessary contingencies arising under the contract of insurance the question of claim of compensation will not arise. Admittedly, the disability was not total and the injuries did not result in the loss of limb or sight. The enforcement of a claim against the insurer is not possible and the assessment made in the manner done by the Tribunal could not be accepted. I uphold the contention of the insurer and hold that the Tribunal was not justified in assessing 50,000/-as compensation under various heads.

6. However, in terms of Eshwarappa @ Maheshwarappa and Anr. v. C.S.

Gurushanthappa and Anr. reported in 2010 (8) Scale 263 the Insurance Company will be still liable under no fault basis u/s 140 of the Motor Vehicles Act. In a case of permanent disability the claimant should be entitled to Rs. 25,000/-which I will accord to the claimant and the same be paid with interest as mentioned in the award. The award is modified and the appeal is allowed to the above extent.

