

(2011) 09 DEL CK 0118
In the Delhi High Court
Case No : FAO 689 of 2007

Baljinder Kaur and Others

APPELLANT

Vs

Sanjiv Saini and Another

RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8
Criminal Procedure Code, 1973 (CrPC) — Section 174
Motor Vehicles Act, 1988 — Section 140, 149(2), 162, 163A, 166
Workmens Compensation Act, 1923 — Section 8

Citation : (2011) ACJ 2608 : (2011) 10 AD 656 : (2011) 183 DLT 327 : (2012) 2 TAC 602

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : O.P. Mannie, for the Appellant; Ashok Popli, for the Respondent No. 1 and Ram N. Sharma, for the Respondent No. 2, for the Respondent

Judgement

Reva Khetrapal, J.—The short question which arises for consideration in the present appeal is whether the Insurance Company can repudiate a claim made by the legal representatives of a deceased person in respect of a vehicle which is duly insured with the Company solely on the ground that the driver of the vehicle did not hold a valid licence even though the vehicle was stationary at the time of the accident and the driver of the vehicle had nothing to do with the accident?

2. Concisely, the facts are that on 28.06.2005 at about 6:30 p.m. one Gurcharan Singh (hereinafter referred to as "the deceased") met with an accident while welding a stationary truck bearing Registration No. HR-38-G-5351, at Transport Nagar, Samaipur Badli, Delhi, and died due to electrocution. A DD entry bearing No. 19-A dated 28.06.2005 was recorded u/s 174 Code of Criminal Procedure with regard to the aforesaid accident by the Police of Police Station, Samaipur Badli, Delhi. A claim petition was filed by the Appellant No. 1, who is the widow, the Appellants No. 2, 3 and 4, who are the minor children and the Appellants No. 5 and 6, who are the parents of the deceased u/s 163A of the Motor Vehicles Act,

1988 claiming compensation in the sum of Rs. 10,00,000/- for the untimely demise of their sole bread-earner. The Respondent No. 1 is the registered owner of the offending truck No. HR-38-G-5351, which was admittedly insured with the Respondent No. 2, M/s. Oriental Insurance Company Limited for all such risks vide policy No. 215400/2005/863 valid from 12.07.2004 to 11.07.2005 (Exhibit R2W1/E).

3. The learned Tribunal by its judgment dated 06.08.2007 awarded a sum of Rs. 5,18,750/- with interest at the rate of 7.5% per annum to be calculated from the date of the institution of the petition till the date of actual deposit. On the question as to upon whom the liability to pay could be fastened, relying upon the judgment of the Hon"ble Supreme Court in the case of The Oriental Insurance Company Limited Vs. Meena Variyal and Others, the Tribunal held that the owner of the vehicle who gets the vehicle insured is duty-bound to engage a driver who has a valid and effective driving licence and is competent to drive. It further held that it was the duty of the insured to produce the driving licence of the driver and prove the same in accordance with law, but in the present case despite service of notice under Order XII Rule 8 CPC the insured had chosen not to come up with the driving licence of his driver. It held that in such circumstances, the Court had no option but to draw adverse inference against the Respondent No. 1 that his driver never possessed any driving licence. The Tribunal accordingly held that no liability could be fastened upon the Respondent No. 2/Insurance Company and, accordingly, the Respondent No. 1, the owner of the vehicle, was liable to pay the award amount to the Appellants.

4. Aggrieved by the aforesaid findings rendered by the learned Tribunal, the present appeal has been preferred by the Appellants for modification of the judgment to the extent of making the Insurance Company (the Respondent No. 2) liable to pay the compensation along with the up-to-date interest to the Appellants. Relying upon the judgment rendered by the Hon"ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , Mr. O.P. Mannie, the learned Counsel for the Appellants, contended that the Claims Tribunal erred in exonerating the Insurance Company on the ground that the licence of the driver was not produced by the insured-owner. The learned Counsel pointed out that even otherwise, the findings of the Tribunal were self-contradictory, inasmuch as on the one hand the Tribunal while deciding Issue No. 2 relating to the impleadment of the driver as a party Respondent, had ruled that the driver was not a necessary party to the claim petition, but, on the other hand, it held that the Insurance Company deserved to be exonerated from its liability to pay compensation on the ground that the driving licence of the driver had not been produced by the insured.

5. Mr. Ashok Popli, the learned Counsel for the Respondent No. 1-insured, sought to support the aforesaid contentions of Mr. Mannie.

6. Mr. Ram N. Sharma, the learned Counsel for the Respondent No. 2-Insurance Company, on the other hand, contended that the offending vehicle was

admittedly not in use at the time of the accident and was stationary. The deceased was electrocuted while he was doing a welding job on the vehicle and was not hit by the vehicle. No. First Information Report had been registered nor any challan was filed by the Police and, as such, the learned Tribunal had rightly refused to fasten any liability on the Insurance Company.

7. I am not inclined to agree with the aforesaid contention of the learned Counsel for the Insurance Company in the instant case for the reason that the petition was filed u/s 163A of the Motor Vehicles Act, 1988, which reads as under:

163A. Special provisions as to payment of compensation on structured formula basis. - (1) Not with standing anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.- For the purposes of this Sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923)

(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

8. A bare perusal of the Section 163A makes it abundantly clear that it is only the owner of the motor vehicle or the authorised insurer which shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule to the legal heirs or the victim, as the case may be. Clearly, Section 163A is a special provision with regard to the payment of compensation on no-fault basis and the driver, therefore, is not a necessary party to a petition u/s 163A. Thus, in my view, the reliance placed by the learned Tribunal upon the decision of the Supreme Court rendered in the case of Meena Variyal (supra) is entirely misplaced. The judgment in the said case was rendered in a proceeding u/s 166 of the Motor Vehicles Act. Section 166 of the said Act, it may be mentioned, falls in Chapter XII of the Act and is governed by the provisions of Section 168 of the Act. Sub-section (1) of Section 168 of the Act reads as under:

On receipt of an application for compensation made u/s 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into

the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation u/s 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

9. It needs to be emphasised that in view of the provisions of sub-

Section (1) of Section 168, reproduced hereinabove, in a case where the accident is caused by the rash and negligent driving of the driver and a claim petition is preferred for compensation u/s 166 of the Act, in the form prescribed there under, the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them as the case may be. The necessary corollary is that it is incumbent upon the claimant to implead the driver of the vehicle involved in the accident as a party Respondent to a claim petition u/s 166 of the Act. The rationale, quite obviously, is that primarily, it is the driver, who is liable for the accident caused through his rashness and negligence, while the owner is vicariously liable for the act of his employee and the insurer is liable on account of having issued the policy of insurance in favour of the insured-owner. It is not so in the case of a claim petition filed u/s 163A, where the impleadment of the driver is irrelevant for the reason that it is only the involvement of the vehicle which is relevant for the purpose of determining the compensation payable by the owner of the motor vehicle or the authorized insurer, and not any act of omission or commission committed by the driver of the vehicle in question.

10. In view of the aforesaid, it must be held that the driver, in the instant case, was not a necessary party to the proceedings and it was irrelevant whether he had a valid driving licence or held No. licence at all. I am fortified in coming to the aforesaid conclusion from the judgment of the Hon"ble Supreme Court rendered in the case of Jitendra Kumar Vs. Oriental Insurance Co. Ltd. and Another, . In the said case, the vehicle in question was damaged due to a mechanical fault and for No. fault of the driver. It caught fire and was burnt beyond repair. The Insurance Company repudiated the claim of the Appellant solely on the ground that the driver did not have a valid driving licence at the time of the accident in question. The question arose as to whether the holding of a valid driving licence was a condition precedent to claim any damage from the Insurance Company even when the accident in question had occurred due to No. fault/act of the driver. The Supreme Court held as follows:

So far as the facts of this case are concerned, there is hardly any dispute, therefore we can safely proceed on the basis that the vehicle in question was damaged due to a mechanical fault and No. fault of the driver. For the purpose of argument, we may also proceed on the basis that the driver of the car did not have a valid driving licence. Question then is: can the Insurance Company repudiate a claim made by the owner of the vehicle which is duly insured with the Company, solely on the ground the driver of the vehicle who had nothing to do with the accident did not hold a valid licence? Answer to this question, in our opinion, should be in the negative. Section 149 of the Motor Vehicles Act, 1988 on which reliance was placed by the State Commission, in our opinion, does not come to the aid of the Insurance Company in repudiating a claim where driver of the vehicle had not contributed in any manner to the accident. Section 149 (2) (a)(ii) of the Motor Vehicles Act empowers the Insurance Company to repudiate a claim wherein the vehicle in question is damaged due to an accident to which driver of the vehicle who does not hold a valid driving licence is responsible in any manner. It does not empower the Insurance Company to repudiate a claim for damages which has occurred due to acts to which the driver has not, in any manner, contributed, i.e., damages incurred due to reasons other than the act of the driver.

11. In the present case it is not in dispute that the deceased died due to electrocution, which occurred while he was engaged in a welding job on the vehicle, and not due to any fault or act or omission of the driver. The Insurance Company could not, therefore, in my opinion, have repudiated the claim of the Appellants, and the learned Tribunal erred in holding that the liability to pay the compensation could not be fastened upon the Respondent No. 2-Insurance Company. The judgment of the learned Tribunal to this extent is accordingly set aside and it is held that the Respondent No. 2 is liable to pay the award amount to the Appellants.

12. The appeal is accordingly allowed with a direction to the Respondent No. 2 to deposit the award amount with the Registrar General of this Court not later than 30 days from the date of the passing of this order.

13. Records of the Tribunal shall be sent back to the concerned Tribunal. There shall be No. order as to costs.