(1992) 10 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 637 of 1983

B.B. Bhagwat APPELLANT

Vs

Oriental Fire and General Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 22-10-1992

Acts Referred:
Evidence Act, 1872 — Section 107

Citation : (1993) 1 ACC 405 : (1994) ACJ 301 : (1994) 80 CompCas 679 : (1993) 104 PLR 96

Hon'ble Judges : M.S. Liberhan, J;G.C. Garg, J

Bench : Division Bench

Advocate : G.S. Punia, for the Appellant; S.K. Sharma, for Respondent No. 1, M.K. Mehta, Senior Advocate, K.K. Mehta, M.S. Kohli and Gurnam Kaur for Respondent Nos. 2 to 10, for the Respondent

Judgement

G.C. Garg, J.—This order will dispose of Letters Patent Appeals Nos. 637 and 671 of 1983 having arisen from the same accident.

2. Shorn of details, the undisputed facts are that one Joginder Singh riding a cycle was hit by motor cycle No. MHI 174 on September 24, 1974, at about 1.00 p.m. in the city of Patiala. As a result of the accident, Joginder Singh, the cyclist, died.

3. He left behind a widow, four minor sons and three minor daughters--the claimants as his heirs. The motor cycle stood registered in the name of Fit. Lt. S.B. Bhagwat on the date of the accident, who was reported missing during the Indo-Pak conflict of 1965 and had not been heard of ever since then. The belongings of Fit. Lt. S.B. Bhagwat were handed over to his parents by the authorities in the year 1969 including the motor cycle. Registration of the motor cycle thus continued in the name of Lt. S.B. Bhagwat though possession and user thereof was with B.B. Bhagwat, his brother, ever since 1969. The policy of insurance also continued in the name of Lt. S. B. Bhagwat, the registered owner, but the premium was being paid by his brother, B. B. Bhagwat, in the name of

Fit. Lt. S.B. Bhagwat. On the date of accident, the policy of insurance was subsisting.

4. The Motor Accident Claims Tribunal concluded that the accident took place due to rash and negligent driving of the driver of the motor cycle, which at the relevant time was being driven by Madan Lal, a mechanic. A sum of Rs. 20,000 was thus awarded as compensation to the claimants. The Tribunal further concluded that the insurance policy in the name of the deceased was valid and being a property was heritable. It was thus held that the benefit of the insurance policy covered the liability of the heirs of the deceased. The insurance company was consequently held liable to pay damages and interest to the claimants.

5. The insurance company filed an appeal calling in question the findings of the Tribunal holding it liable to pay compensation to the claimants. The claimants filed cross-objections seeking enhancement of the quantum of compensation awarded.

6. The learned single judge on a consideration of the matter came to the conclusion that the policy of insurance could not be held to be a property, which on the death of the insured, passed on to his heirs, thereby entitling them to its benefit. The insurance company was thus discharged of the liability under the policy. The quantum of compensation, as determined by the Tribunal, was upheld by concluding that the claimants are not entitled to a higher compensation.

7. Aggrieved by the findings recorded by the learned single judge, two appeals have been preferred. Letters Patent Appeal No. 637 of 1983 has been filed by B.B. Bhagwat contending that the insurance company was liable to pay the compensation to the claimants. Letters Patent Appeal No. 671 of 1983 is at the instance of the claimants seeking enhancement of the amount of compensation determined and payable to them.

8. Mr. I.K. Mehta, senior advocate, learned counsel for the claimants, could not refer to any piece of evidence on the record or any other fact entitling the claimants to a higher amount of compensation. The learned single judge affirmed the order of the Tribunal awarding Rs. 20,000 by way of compensation after appraisal of the evidence led in the case. No illegality could be pointed out in the conclusion arrived at. No ground to enhance the amount of compensation already awarded has been made out. The appeal filed by the claimants thus deserves to be dismissed.

9. Mr. G.S. Punia, advocate, appearing for B.B. Bhagwat in LPA No. 637 of 1983, submitted that the liability of paying compensation to the claimants could not be fastened solely on him or the heirs of Fit. Lt. S.B. Bhagwat by exonerating the insurance company for the amount awarded. Learned counsel submitted that no exception could be taken to the view of the learned single judge if it had been found as a fact that the insured had died before the date of the accident, viz., September 24, 1974. According to learned counsel, it was assumed, while returning a finding that the insurance company was not liable for the payment of

the amount of compensation awarded, that the insured had died long before the accident took place which assumption was without basis and not supported by any evidence on the record, Fit. Lt. S.B. Bhagwat was reported missing and had not been heard of till the filing of the claim petition. In such a situation, he could be presumed to have died, in view of the provisions of Section 108 of the Indian Evidence Act (for short "the Act"), but as to the date of death he could be considered to have died on the date of presentation of the claim petition in the court, i.e., November 1, 1974, a date obviously much after the date of the accident in which Joginder Singh died. Once that is so, the insurance company could not be absolved of its liability under the policy which was valid and subsisting on the date of accident.

10. After hearing learned counsel for the parties, we find force in the contention of Mr. Punia. While exonerating the insurance company of its liability to pay compensation, the learned single judge after observing that there was no escape from the view that on the death of the insured the liability of the insurer under the contract of insurance must come to an end, it was concluded as under :

"It would be straining the language of the statute to hold that such cause of action would survive even in the case of an accident arising after the death of the insured. In other words, the insurer cannot be held liable under a policy of insurance in respect of an accident which takes place after the death of the insured.

The settled position, therefore, is that a policy of insurance cannot be held to be property, which on the death of the insured, passes to his heirs, who thereby become entitled to the benefits thereof. The liability of the insurance company under the policy of insurance must be held to come to an end upon the death of the insured except in the cases covered by Section 102 of the Motor Vehicles Act.

Coming back now to the present case, as the accident here had taken place after the insured Fit. Lt. S.B. Bhagwat had been presumed dead, the insurance company was clearly not liable for payment of the amount awarded."

11. It would thus be seen that the insurer was exonerated of the liability under the policy only on the ground that the insured was not alive on the date of the accident, the policy not being property, did not pass on to his heirs and the insurer could not be held liable under the policy of insurance in respect of an accident which took place after the death of the insured.

12. As already observed, no evidence was led regarding the actual date of death of the insured, Fit. Lt. S.B. Bhagwat. Section 107 of the Act reads thus:

"107. Burden of proving death of person known to have been alive within thirty years.--When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it."

13. In the present case, it is the insurance company which had alleged that the

insured was dead on the date of the accident and thus, it was not liable to pay compensation under the policy of insurance. It is an admitted case that the insured was alive in the year 1965 when he was reported missing during the Indo-Pak conflict of 1965. It was on this basis that he was presumed dead prior to September 24, 1974, the date of the accident. Since the insurance company had alleged that Fit. Lt S.B. Bhagwat was dead on September 24, 1974, the burden of proving this fact was on it in terms of the provisions of Section 107 of the Act. The insurance company only pleaded that the insurance policy was taken in the name of a dead person and as such the contract of policy was void. No evidence has been led by the insurance company to prove or to show that the insured was dead on the date of the accident or on any other date prior thereto. It is true that he was not heard of till then, but it could not be presumed that he died on a date earlier to the accident, in the absence of evidence to that effect. In the situation in hand, the presumption u/s 108 of the Act about the death of Fit. Lt. S.B. Bhagwat even if raised, would be to the date of filing of the claim petition, i.e., November 1, 1974, or to the date of filing the written statement by the insurance company, i.e., October 22, 1975. The presumption as to the death could not relate back to the date anterior to the date of the accident. Fit. Lt. S.B. Bhagwat could at the most be presumed to be dead on the date of filing of the claim petition. No presumption in law could be raised that he died on a date prior to the date of the accident. There is no presumption as to when he died, the only presumption being that he was not alive on the date of institution of the petition or in other words, he was dead on that date, but it could not relate back to a date prior to the accident on presumption, in the absence of any evidence. In Huseinny J. Bhagat and Another Vs. Life Insurance Corporation of India, Madras, , it was held that the only presumption u/s 108 of the Indian Evidence Act was to the effect that the person was dead on the date when the question arose i.e., the date of plaint. In Lal Chand Marwari v. Mahant Ramrup Gir AIR 1926 PC 9, it was held that if a person has not been heard of for seven years, there is a presumption in law that he is dead but at what time during that period he died is not a matter of presumption but of evidence. In Appula Vadhyar Narayana Vadhyar Vs. Venkateswara Vadhyar and Others, , it was concluded as under (headnote):

"No presumption can be drawn under 107 and 108 as to whether a person was dead or alive on any particular date before the date of suit in which the question is raised. The date of death has therefore to be proved as any other fact by the person on whom the burden lies to establish the said death. There is nothing in the language of Section 108 for the view that if the date of death is not proved by any of the parties the earliest date on which the death could be presumed is the date on which the suit was filed."

14. The matter happened to be considered by this court in Har Nand Vs. The Commissioner, Ambala Cantt and Others, , wherein it was observed as under (p. 15) :

"Although there is no presumption under the provisions of Section 108 of the Indian Evidence Act that a person not heard of for a period of more than 7 years died on a particular date, the proposition that if he is shown not to have been so heard of prior to the commencement of a proceeding in which the question of his being alive or dead is in issue he may be presumed to have died at the latest on the commencement of that proceeding, is not disputed before me. It being admitted on all hands that Hari Dass is missing since 1947, it must be presumed that he was no longer alive when the application u/s 7 of the Second Act was filed by the Panchayat."

15. The above being the position, it could not be presumed that Fit. Lt. S.B. Bhagwat was dead on the date of the accident or the policy of insurance had been taken in the name of a dead person. Once it is so, it has to be held that there existed a valid policy of insurance on the date of the accident and the insurance company is liable to pay the compensation determined and payable to the claimants, the heirs of the deceased.

16. In the context of the facts of this case, the question, whether the policy of insurance is property and it passes on to the legal representatives of the deceased, who thereby became entitled to the benefits thereof, really does not arise in this case as no presumption could be raised that the insured had died on any date anterior to the date of the accident, in the absence of evidence.

17. In the result, the appeal filed by the claimants, being LPA No. 671 of 1983, is dismissed but the appeal filed by B.B. Bhagwat, being LPA No. 637 of 1983, is accepted, the judgment of the learned single judge whereby the insurance company was exonerated of its liability to pay compensation under the policy of insurance is set aside and it is held that the insurance company is liable to pay the amount of compensation to the claimants under the policy of insurance. The claimants are thus held entitled to recover the amount of compensation along with interest at the rate of 12 per cent. per annum from the date of petition u/s 110A of the Motor Vehicles Act to the date of payment, from the insurance company and the other respondents in the claim petition, their liability being joint and several. In the circumstances of the case, there will be no order as to costs.

