(2011) 07 AHC CK 0173

In the Allahabad High Court

Case No : Amalgamation OrderNo.102 of 2009

Bhagwati Rawat and Others APPELLANT

Vs

National Insurance Co.Ltd. RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 168, 173

Citation : (2011) 07 AHC CK 0173

Hon'ble Judges : B.S.Verma, J

Final Decision : Disposed Of

Judgement

B. S. Verma, J.—Heard learned counsel for the parties.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short the ''Act'') for enhancement of compensation is directed against the impugned award dated 8. 7. 2008, passed in Motor Accident Claim Case No. 42 of 2007. Smt. Bhagwati Rawat v. National Insurance Company Limited, whereby the learned Motor Accident Claims Tribunal, Chamoli (for short the Tribunal) has awarded a compensation of Rs. 2,00,000 to the claimantappellants alongwith interest @ 5% per annum as mentioned in the award.

3. Briefly stated the facts giving rise to the present appeal are that the husband of the appellant No. 1, Ramesh Chandra Singh (deceased) lost his life in the motor vehicle accident, who was owner of the Alto Car No. U. A. 07P6377. On 22.12.2006 at about 77.30 a.m., the deceased Ramesh Chandra Singh was driving his car and was going from Gwaldam to Gopeshwar. When the deceased reached at Paduli within the limits of Police Station Karnprayag, the car met with an accident and fell into the river Pindar due to technical failure of the vehicle.

4. In the claim petition, the claimantappellants alleged that the age of the deceased at the time of accident was 39 years and that he was running a medical and general store at Gwaldam and was earning Rs. 10,000 per month. Besides, the deceased used to earn Rs. 1,000 per month from the orchard.

5. After the death of the deceased, the appellantsclaimants filed claim petition under Section 166 of the Act claiming compensation of Rs. 11,60,000 against the insurer of the carNational Insurance Company Limited. The insurance company contested the claim petition by filing its written statement. It was asserted in the written statement that the deceased was not having a valid driving licence, permit, registration and fitness certificates at the time of accident and that at the time of accident, the deceased, who was owner of the illfated car, Jiimself was driving the vehicle, therefore, as per terms of the policy, the insurerO. P. was not liable to pay any compensation.

6. On the pleadings of the parties, the learned Tribunal framed following issues:

ISSUES

1. Whether the deceased Ramesh Chandra Singh died in a motor accident caused by rash and negligent driving of vehicle No. UA. 07P6377 by its driver on 22.12.06 at about 77.30 a.m. at Paduli, situated within the boundary of P. S. Karanprayag? If so, its effect?

2. Whether the vehicle in question was not being driven in accordance with the terms and conditions of insurance contract, as alleged by O. P. No. 1 in its W. S.? If so, its effect?

3. Whether the claimants are entitled to get any relief or compensation? If so, from whom and to what amount?

7. The appellantclaimants are aggrieved only by the findings recorded by the learned Tribunal on issue No. 3 regarding amount of compensation.

8. The learned Tribunal after perusal of the evidence adduced before it by the parties came to the conclusion that the owner was the insured with the insurance company for his personal accident and he has paid compulsory personal accident cover premium of Rs. 10000 besides additional personal accident cover premium of Rs. 250. The learned Tribunal also found that in columnA of the cover note, limited liability is for personal accident cover premium to the owner and driver and the risk for owner and driver is Rs. 2,00,000. This fact is not disputed that the vehicle was being driven on the fateful day by the ownerinsured himself at the time of the motor vehicle accident. So far as third party risk is concerned, the liability of the insurance company is unlimited under Section 147 of the Act.

9. Undisputedly in case of ownercumdriver. it is a contractual liability between the insurer and the insured. As per insurance cover note, the learned Tribunal has given a categorical finding that the risk was covered upto the amount of Rs. 2,00,000.

10. Learned counsel for the appellant has argued that the car was also insured for five passengers for which premium was also paid. So far as the risk towards passengers is concerned, the liability of the insurance company to pay the compensation is upto Rs. 1,00,000 only.

11. The learned Tribunal has elaborately dealt with the matter in issue in the impugned award and in my view, the learned Tribunal has rightly come to the conclusion that since the insured owner himself was driving the vehicle at the time of accident, the claimants are entitled to compensation of Rs. 2. 00,000 on account of death of the owner, which is payable by the insurance company.

12. For the reasons and discussion above. I find that the compensation awarded to the claimantappellants by the learned Tribunal on account of accidental death of the ownercumdriver, who was insured with the insurance company, to the tune of Rs. 2,00,000 is just and adequate since the liability of the insurer was limited. The impugned award does not call for any interference in appeal on the point of quantum of compensation. The appeal being devoid of merit is liable to be dismissed outright at threshold.

13. The appeal is dismissed summarily. The impugned award dated 8.7.2008 is upheld. No order as to costs.

14. All pending applications stand disposed of.

