

(2012) 09 DEL CK 0211
In the Delhi High Court
Case No : MAC. APP. 291 of 2011

Bharti Axa Geneal Insurance Company Ltd.	APPELLANT
Vs	
Smt. Kamlesh and Others	RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2012) 09 DEL CK 0211

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Mohd. Mustafa, for the Appellant; O.P. Mannie, for R-6 and R-7., for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant Bharti Axa General Insurance Company Limited impugns a judgment dated 23.12.2010 passed by the

Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 8,25,500/-was awarded in favour of Respondents No. 1 to

5 and the Appellant's plea of exoneration was rejected. The finding on negligence is not challenged by the Appellant Insurance Company, the same therefore has attained finality.

2. The following contentions are raised on behalf of the Appellant Insurance Company:-

(i) There was no evidence with regard to the deceased's future prospects, the Claims Tribunal therefore, fell into error in making addition of 50%

in the deceased's income to award loss of dependency.

(ii) The deceased was travelling in a goods vehicle. The sitting capacity including the driver was two as per the terms of policy. Thus, the Appellant

had no liability to indemnify the insured and to pay compensation to the legal representatives of the deceased.

3. On the other hand, Learned Counsel for the Claimants states that even in the absence of any evidence with regard to the future prospects, the

Claimants were entitled to an addition of 30% towards inflation. With regard to the deceased being a gratuitous passenger, it is contended that the

policy of Insurance was not proved by the Appellant Insurance Company to prove the terms of policy, hence it cannot avoid its liability.

QUANTUM

4. During inquiry before the Claims Tribunal it was claimed that the deceased was working as a vegetable seller by running his shop at Subzi

Mandi, Lal Bagh, Ghaziabad. This part of PW-1's testimony could not stand the test of cross-examination. PW-1 admitted that he did not have

any proof that the deceased Girish Kumar was having any shop or he used to sell vegetables. In the circumstances, the Claims Tribunal was

justified in computing the loss of dependency on the minimum wages of an unskilled worker as fixed by the Govt. of NCT of Delhi on the date of

the accident. Admittedly, the Claimants did not lead any evidence with regard to the deceased's future prospects. Thus, on the basis of the

Supreme Court judgment in Santosh Devi Vs. National Insurance Company Ltd. and Others, , followed by this Court in Rakhi v. Satish Kumar &

Ors. (MAC. APP. 390/2011) decided on 16.07.2012, the Claimants are entitled to addition of 30% in the deceased's income to compute the

loss of dependency.

5. The loss of dependency thus comes to Rs. 6,93,751/- (3953/- + 30% x 3/4 12 x 15)

LIABILITY

6. As far as Appellant's liability to pay compensation is concerned, it was fairly conceded by the Learned Counsel for the Appellant that the

contract of insurance was not proved by the Appellant Insurance Company. As per Section 147 of the Motor Vehicles Act, 1988 (the Act), the

Insurance Company is under obligation to cover the risk of the owner of the goods or his authorized representative travelling in a goods vehicle.

The Registration Certificate (RC) of the vehicle has not been proved.

7. Since the contract of insurance depends on mutual terms, an insured can

cover higher risk than provided u/s 147 of the Act. Thus, apart from the fact that the Insurance Company failed to prove that the deceased was not the owner of the goods and was being carried in the goods vehicle

as a gratuitous passenger, it failed to establish that the sitting capacity was only 1+1 (that is one person in addition to the driver).

8. In Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V. and Others, , the Supreme Court laid down that an owner of a vehicle can cover himself

for risks other than the statutory liability u/s 147 of the Act. Para 13 of the report is extracted hereunder:-""13. In terms of Section 147 of the Act

only in regard to reimbursement of the claim to a third party, a contract of insurance must be taken by the owners of the vehicle. It is imperative in

nature. When, however, an owner of a vehicle intends to cover himself from other risks; it is permissible to enter into a contract of insurance in

which event the insurer would be bound to reimburse the owner of the vehicle strictly in terms thereof.

9. In view of the above discussion, it cannot be said that the Insurance Company is not liable to pay the compensation awarded.

10. In view of the foregoing discussion, the compensation stands reduced from Rs. 8,25,500/- to Rs. 7,18,767/- which shall carry interest @

7.5% per annum as granted by the Claims Tribunal.

11. The excess amount of Rs. 1,06,733/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall

be refunded to the Appellant Insurance Company.

12. The amount awarded by this Court shall be disbursed in favour of the Claimants in terms of the order passed by the Claims Tribunal.

13. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company.

14. The Appeal is allowed in above terms. Pending Applications also stand disposed of.