(2012) 03 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 3222 of 2007

Bherulal APPELLANT

Vs

Orient Insurance Company RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 165(1), 166, 168, 169

Citation : (2012) 3 MPLJ 593

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Advocate : J. Vaishnav, for the Appellant; S.V. Dandwate for Insurance Company, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Seth, J.—Claimant is in appeal against the Award dated 29-9-2007. By the impugned Award his claim petition has been dismissed. He filed the claim petition claiming total compensation of Rs. 8,00,000/- on allegation that on 21-2-2006 he and his wife were coming to Indore on their Motor-Cycle when an unknown Jeep dashed against their Motor-Cycle causing severe injuries to claimant and his wife. Accident was reported in the Police Station Depalpur but the Police could not trace either the owner or the driver of the offending vehicle. At the time of the accident appellant''s Motor-Cycle was insured with the respondent. Since the offending vehicle was unknown, therefore, claimant preferred claim petitions u/s 163-A against the respondent the insurance company of his own Motor Cycle.

2. Insurance Company denied its liability to pay any amount of compensation in view of statutory provisions. It claimed that in terms of policy, it was required to indemnify the appellant only against the third party claims. Since appellant as owner of the Motor-Cycle himself was driving the Motor-Cycle therefore his risk was not covered by the Act Policy.

3. Learned Claims Tribunal found that appellant met with an accident caused by

unknown vehicle but dismissed the claim petition holding that appellant was not entitled to receive any compensation from the respondent-Insurance Company of his Motor-Cycle.

4. The only question that arises for our consideration is whether Claims Tribunal committed illegality in dismissing the claim of the appellant.

5. The Claim petition was filed u/s 163-A of the Motor Vehicles Act, 1988. Section 166 of the Act, 1988 provides that an application for compensation arising out of an accident of the nature specified in section 165(1) may be made, inter alia, by the person who has sustained injury or by all or any of the legal representatives of the deceased where death has resulted from the accident. Section 169 makes a provision that the Claims Tribunal shall follow the summary procedure subject to any rules that may be made in this behalf. The Code of Civil Procedure, 1908 is not applicable to the proceedings before the Claims Tribunal except to the extent provided in sub-section (2) of section 169 and the rules. The whole object of summary procedure is to ensure that claim application is heard and decided by the Claims Tribunal expeditiously. The inquiry u/s 168 and the summary procedure that the Claims Tribunal has to follow do not contemplate the controversy arising out of claim application being decided in piecemeal. The Claims Tribunal is required to dispose of all issues one way or the other in one proceeding while deciding the claim application. Section 163-A has an overriding effect and it provides for payment of compensation on structured-formula basis. The scheme envisaged u/s 163-A, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. Sub-section (1) of section 163-A contains non-obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer (emphasis is added) is liable to pay in the case of death or permanent disablement of a third party due to accident arising out of the use of motor vehicle, compensation, on structured formula. The Act nowhere envisage that under the Act Policy, the Insurer shall indemnify the owner of the vehicle for his own injuries or death. Thus it is clear that an owner cannot maintain a claim petition for compensation against Insurance Company of his vehicle. In view of the legal provision, I am afraid that the appellant could not maintain the claim petition against the Insurance Company of his Motor Cycle. The Tribunal rightly dismissed the claim petition. There is no merit and substance in this appeal therefore, the appeal fails and is hereby dismissed. No order as to costs.