(2015) 05 P&H CK 0116

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 3258 of 1996

Dalbir Kaur and Others — APPELLANT

Vs

Narinder Singh and Others — RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 145, 146, 163-A, 166

Citation : (2015) 179 PLR 807

Hon'ble Judges : S.S. Saron, J

Bench : Single Bench

Advocate : Pardeep Mahajan, for the Appellant

Final Decision : Disposed off

Judgement

S.S. Saron, J.—The appellants aggrieved against the inadequate compensation awarded by the learned Motor Accident Claims Tribunal, Amritsar (Tribunal'' - for short) have filed the present appeal seeking more compensation.

2. Tarlok Singh, the husband of Smt. Dalbir Kaur (appellant No. 1) and father of Harpreet Kaur, Akashdeep Singh and Rakshdeep Singh (appellants No. 2 to 4) minor children, met with a motor vehicle accident on 23.6.1991. Later, he died on 6.7.1992 on account of the injuries suffered in the accident. The appellants who are the legal heirs of Tarlok Singh filed a claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988 (''Act'' - for short) claiming compensation for the death of Tarlok Singh.

3. According to the claimants-appellants, the deceased was earning Rs. 3395/- per month as a Head Constable with the Punjab Police. He was 44 years of age and had left the appellants as his legal representatives. On the fateful day of 23.6.1991, Tarlok Singh (deceased) along with his wife Dalbir Kaur (appellant No. 1) and his brother and Smt. Harbhajan Kaur, his brother''s wife and others had started from Patiala after ''shagan'' ceremony of his relative. They were travelling in a Maruti van with registration No.PB 02 A 961. Tarlok Singh

(deceased) was driving the vehicle at a normal speed. A child riding a bicycle suddenly came on the road and tried to cross the road. With a view to save the child, the Maruti vehicle driven by Tarlok Singh was taken to the extreme left side of the road and brakes were applied. According to the claimants-appellants, due to mechanical defect in the brakes, the vehicle went out of control and Tarlok Singh with a view to save child took the vehicle to the un-metalled path of the road. The vehicle over-turned and Tarlok Singh received multiple injuries in the accident. He was admitted in Rajendra Hospital at Patiala. Later he was taken to Amritsar where he continued to get the treatment. He ultimately died on 6.7.1992. The accident had occurred due to mechanical failure of the brakes of the Maruti Van and on this account, the owners of the Van i.e. Narinder Singh and Surinder Singh (respondents No. 1 and 2) respectively were liable as they failed to keep the vehicle in a fit and proper condition.

4. In the reply filed by respondents No. 1 and 2, it was pleaded that they were owners of the vehicle in question. However, they were not liable for the claim as the vehicle was comprehensively insured with the Insurance Company i.e. the New India Insurance Company (respondent No. 3).

5. The Insurance Company (respondent No. 3) pleaded that even if the accident was proved, the claim beyond the scope, not covered by the insurance policy was not maintainable. The learned Tribunal after considering the evidence and material on record held that the accident was not caused due to any mechanical or technical defect in the vehicle.

6. Learned counsel appearing for the appellants quiet fairly concedes that there is no evidence or material on record which could dislodge the said finding of the learned Tribunal with regard to there being any mechanical or technical defect in the vehicle. He, however, submits that the appellants are in any case entitled to a sum of Rs. 50,000/- for liability without fault in terms of Section 140 of the Act. It is submitted that the award of Rs. 20,000/- by the learned Tribunal is grossly inadequate.

7. In response, learned counsel appearing for respondent No. 3 - Insurance Company submits that the vehicle in question is stated to have been borrowed by Tarlok Singh (deceased) who was driving the same and in accordance with the terms of the policy, personal accident cover to driver other than paid driver is limited to Rs. 20,000/- only in case of death. Therefore, the appellants are not entitled for more compensation. Besides, it is submitted that even if compensation for no fault liability is to be granted, the same is not to be more than Rs. 25,000/- as on the date of accident i.e. 23.6.1991 the claim for no fault liability was Rs. 25,000/- only and an amendment was made thereafter, which cannot be applied with retrospective effect in view of the judgment of the Supreme Court in State of Punjab and Others Vs. Balwinder Kaur and Others, (2008) ACJ 2050 .

8. I have given my thoughtful considerations to the contentions of the learned

counsel appearing for the parties and with their assistance, gone through the record.

9. The accident having occurred is not in dispute. The learned Counsel for the respondent No. 3 - Insurance Company has submitted that compensation of Rs. 20,000/- only is payable to the appellants. The relevant clause of the insurance policy reads as follows:-

IMT-71 Personal Accident Cover to Driver (Other than paid driver)

It is hereby understood and agreed that the company undertakes to pay compensation on the scale provided for bodily injury/death as hereinafter defined sustained by driver (other than paid driver) of the vehicle in direct connection with the use of Motor Vehicles or whilst mounting or dismounting or driving the vehicle and caused by violent accidental external and visible means which independently of any other cause shall within 12 calendar months of the occurrence of such injury result in:

Provided always that -

XXXXXX XXXXXX

10. The above provision of the insurance policy which has been pressed by learned Counsel for respondent No. 3 - Insurance Company, however, cannot supersede the statutory provisions of the Act which provides for liability to pay compensation in certain cases on the principle of no fault. Section 140 of the Act reads as under:-

140. Liability to pay compensation in certain cases on the principle of no fault.--

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

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

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose

death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in subsection (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under Section 163-A.

11. The above provision is a beneficial piece of legislation so as to give a limited amount by way of compensation to victims of an accident on account of use of a motor vehicle on the basis of liability without fault. Besides, Chapter XI of the Act relates to "Insurance of Motor Vehicles Against Third Party Risks". Section 146 falling under Chapter XI of the Act provides for, "necessity for insurance against third party risk". It is envisaged therein that no person shall use, except as a passenger, or cause or allow any person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter XI. Section 145 of the Act provides for definitions under Chapter XI of the Act. Clause (c) of Section 145 defines ''liability'' to mean wherever you in relation to the death of or bodily injury to any person, includes liability in respect thereof under Section 140 of the Act i.e. liability to pay without fault. Therefore, the provisions of Section 140 of the Act would apply in the present case. The insurance policy on which reliance has been placed by learned counsel for respondent No. 3 - Insurance Company would, however, limit the payment of compensation to the extent as provided for therein.

12. Section 140 of the Act is a Statutory provision in pursuance of which in case of death in an accident arising out of the use of a motor vehicle, the legal heirs of the deceased are entitled to Rs. 50,000/- as compensation. A sum of Rs. 50,000/-, which is payable as compensation for liability without fault was earlier to Rs. 25,000/-. It has been made Rs. 50,000/- by Amending Act No. 54 of 1994 with effect from 14.11.1994. The accident in the present case had indeed occurred earlier to 1994 i.e. on 23.6.1991. The Supreme Court in State of Punjab and Bhajan Kaur (Supra) considered whether Section 140 of the Act would have retrospective effect. It was held that a statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. Section 92-A of the Motor Vehicles Act, 1939, it was noticed, created a right and a liability on the owner of the vehicle. It was a statutory liability. Where a right is created by an enactment, in absence of clear provision in the statute, it was held, is not to be applied retrospectively. Therefore, the un-amended provisions of Section 140 of the Act

which provides compensation of Rs. 25,000/- is liable to be granted to the appellants.

13. The appellants have already been paid Rs. 20,000/- as compensation by the respondent No. 3 - Insurance Company. However, the balance amount along with interest at the rate of 9% from the date of filing the appeal till payment of compensation is liable to be awarded and paid. The liability of the Insurance Company (respondent No. 3), however, is limited to Rs. 20,000/-. The liability to pay the remaining amount would be that of the owners of the vehicle. The Insurance Company - respondent No. 3, in any case, is liable to pay the amount to the claimant and thereafter, recover the amount from the insured. In Oriental Insurance Co. Ltd. Vs. Cheruvakkara Nafeessu and Others, (2001) 1 ACC 335 : (2001) ACJ 1 : (2001) 104 CompCas 89 : (2001) 1 JT 341 : (2000) 8 SCALE 412 : (2000) 5 SCR 670 Supp : (2001) 1 UJ 378 : (2000) AIRSCW 4535 : (2000) AIRSCW 1727 : (2000) 8 Supreme 467 , the liability of an Insurance Company under Section 95(1)(b) and 96 of the Motor Vehicles Act 1939 towards third party claim was limited. It was held that the Insurance Company was liable to pay the entire award amount to claimants and upon making such payment, it can recover excess amount from insured by executing the award against insured to extent of such excess as per Section 174 of the Act.

14. Therefore, though the liability of the Insurance Company as per its policy is limited to Rs. 20,000/-, however, it is liable to pay the entire amount and recover the excess amount from the insured.

15. With the modification in the award, by enhancing the amount of compensation payable to Rs. 25,000/- after deducting Rs. 20,000/- that has been paid i.e. Rs. 5,000/- more is payable along with interest of Rs. 9% per annum on the enhanced amount of Rs. 5,000/- from the date of filing the appeal till payment and giving liberty to the respondent No. 3 - Insurance Company to recover the amount from the insured after making payment to the appellants, the appeal is disposed of.