(2003) 05 AHC CK 0118

In the Allahabad High Court

Case No : F.A.F.O. No. 1343 of 2003

Hari Ram and Others — APPELLANT

Vs

Nagdoo Yadav and Others — RESPONDENT

Date of Decision : 20-05-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149(5), 96(4)
Motor Vehicles Act, 1988 — Section 149, 149(5), 96(4)
Motor Vehicles Act, 1988 — Section 149, 149(5), 96(4)

Citation : (2003) 4 AWC 2770

Hon'ble Judges : S.P. Srivastava, J;K.N. Ojha, J

Bench : Division Bench

Advocate : A.P. Tewari and S.S. Tripathi, for the Appellant; Atul Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

S. P. Srivastava, J.—Heard the learned counsel for the owners-appellants.

2. The owners-appellants feel aggrieved by the award of the Motor Accident Claims Tribunal, determining an amount of Rs. 1,67,000 (Rupees one lac sixty seven thousands only) as just compensation, to which the claimants were found entitled to on account of untimely death of Bijendra Yadav, aged about 18 years in an accident involving the offending motor vehicle-a tractor with trolley insured by the insurer-respondent covering the risk.

3. The Motor Accident Claims Tribunal, on a careful consideration of the evidence and materials brought on record, has come to the conclusion that the deceased had an income of Rs. 15,000 per annum. The annual dependency was determined to be Rs. 10,000. The deceased had left behind his father and mother, the Tribunal utilizing the multiplier of 16 had calculated the amount of compensation.

4. The Tribunal had exonerated the Insurer on the ground that the offending

motor vehicle, at the time of the incident, was being driven in violation of the terms and conditions subject to which the insurance policy covering the risk has been issued. The tractor with trolley could not be used for the purpose for which it was being used at the time of accident. Even the driver of the motor vehicle did not have the valid licence for driving the vehicle and at the relevant time, the offending motor vehicle was being used for carrying (sic).

5. It may be noticed that the provisions contained in Section 96 of the old Act now retained as Section 149 in the new Act are intended to enable the third parties who suffered on account of the user of the motor vehicle to get the damages/ compensation which has not been made dependent on the financial condition of the driver or owner of the offending motor vehicle or the contractual rights and obligations between the insurer and the insured.

6. The statutory liability contemplated u/s 149(5) of the Motor Vehicles Act, (corresponding to Section 96 (4) of the old Act) means and extends only to the making of the payment of the amount of award to the victim/claimant for which ultimate liability has been fastened on the owner. It, in its real meaning, is a statutory measure to give a speedy recovery of the amount of award. In doing so, the insurer does not in any way indemnify the owner''s liability inasmuch as the amount so paid by the insurer is recoverable by it from the insured. The insured does not stand exonerated of its liability to make the payment of award. The payment of the amount by the insured remains only deferred by the intervention of the insurer, in other words, it is a stop-gap arrangement toward payment of the compensation amount fixing a statutory liability on the insurer in the interest of the claimant.

7. So far as the statutory liability sought to be fastened upon him under the Act is concerned, it cannot be more than that of a guarantor and he acts as a security for the third party with respect to its realizing damages for the injuries suffered but a right to get any amount paid in excess refunded to it by the insured stands secured. The ultimate burden always remains cast or fastened on the insured/owner of the motor vehicle.

8. In its decision in the case of New India Assurance Company, Shimla v. Kamla and Ors. 2001 (2) AWC 1405 : AIR 2001 SCW 1340, the Apex Court had indicated, taking into consideration the implications arising under Sub-section (4) and its proviso together with Sub-section (5) of Section 149 of the Motor Vehicles Act, 1988, that they are intended to safeguard the interest of the insurer, who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This, it was clarified means that the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

9. In paragraph No. 22 of the aforesaid decision, the Apex Court summarized the position in law indicating that when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance, the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

10. In paragraph 25 of the aforesaid decision, it was indicated that, the insurer and the insured are bound by the conditions enumerated in the policy and the insurer was not liable to the insured, if there was violation of any policy condition. But the insurer, who was made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid licence.

11. There is yet another aspect of the matter. Where the liability stands cast upon the insurer to pay the third parties the amount due under the award, a statutory liability is also cast upon the insured to pay back to the insurer the amount so paid by the insurer to the third parties in all those cases where in fact, on account of any breach of the conditions, either no amount is required to be paid by the insurer or any amount in excess of the amount secured under the insurance policy had in fact been paid by the insurer to the third parties.

12. The statutory liability indicated hereinabove, therefore, has to be understood to be subject to the aforesaid condition. The statutory liability is, thus, limited to the extent that the insured must have been proved to be under a liability first and the liability cast on him must be covered by the insurance policy. If the insured himself stands exonerated of any liability, the question of forcing the insurer to make payment whether within the limits of the insurance policy or in excess thereof even on the terms and conditions subject to which the policy had been issued in favour of the insured, cannot be said to arise. This is so as the role of the insurer primarily is that of an indemnifler. Further, as observed by the Apex Court in its decision in the case of Bakhshish Singh Brar Vs. Gurmej Kaur and Another, the liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance.

13. In the aforesaid view of the matter, since the primary liability to pay the amount of compensation awarded stands cast on the owner-appellant and the claimants are already proceeding to recover the amount in question by executing the award against the appellant, we are not inclined to interfere specially when the findings returned against the appellant on the question relating to the exoneration of the insurer could not be demonstrated to be vitiated in law.

14. Taking into consideration the totality of the facts and circumstances as

brought on record, the quantum of compensation awarded cannot be taken to be unjust.

15. This appeal is totally devoid of merit, which deserves to be and is hereby dismissed.

16. As prayed, the amount of Rs. 25,000 deposited in this Court by the insurer-appellant u/s 173 of the Motor Vehicles Act be remitted to the Motor Accident Claims Tribunal concerned within one month from the date an application is filed by the appellant for the purpose so that it may be disbursed to the claimant.

