
(2012) 08 DEL CK 0046

In the Delhi High Court

Case No : FAO 131 of 1998

Harish Chander

APPELLANT

Vs

New India Assurance CO. and Others

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0046

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

Bench : Single Bench

Advocate : Navneet Goyal, for the Appellant; Pankaj Seth, for R-1 and Mr. Arvind Kumar Sharma, for R-4, for the Respondent

Judgement

G.P. Mittal, J.—The Appellant Harish Chander, who was owner of the truck No. DEG-1936 impugns a judgment dated 20.10.1995 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 5,00,000/- was awarded in favour of Respondents No. 4 and 5. The Claims Tribunal held that the New India Assurance Company's liability was limited to Rs. 1,50,000/-. Rest of the compensation was held to be payable by the Appellant Harish Chander, who was owner of the offending vehicle.

2. In the instant Appeal Harish Chander has, inter alia, taken up the plea that the liability of the Insurance Company was unlimited.

3. I have before me the written statement filed by the Appellant before the Claims Tribunal. It was specifically pleaded by the Appellant that the Insurance Company's liability was unlimited because of the comprehensive policy obtained by him.

4. The Trial Court record reveals that on 19.07.1995 one Shri S.B. Gupta Respondents No. 4 and 5's Attorney (Petitioners before the Claims Tribunal) made an admission that the liability of the Insurance Company was limited to Rs. 1,50,000/-. He stated that in case the award is passed against the Insurance Company, the Claimants will not claim more than Rs. 1.5 lacs from it. On the

basis of this statement, the Claims Tribunal did not go into the question of liability of Insurance Company. The discussion on issue No. 3 is extracted hereunder:-

Issue No. 3. In view of the statement of petitioner admitting the liability of Insurance Company to be limited to 11/2 lacs (on 19-7-1995 in this Court). This issue is decided in favour of respondent-Insurance Company.

5. Obviously, the Claimants could not have made any admission against the Appellant's interest. This aspect ought to have been gone into by the Claims Tribunal. Thus, issue No. 3 ought not to have been decided merely on the basis of concession given by Respondents No. 4 and 5 (the Claimants). The question of the liability of the First Respondent Insurance Company has to be decided on merits, particularly, in view of the specific defence taken by the Appellant that the Insurance Company's liability was unlimited.

6. In the circumstances, the impugned judgment cannot be sustained. It is submitted by the learned counsel for the parties that it would be appropriate to grant an opportunity to all the parties to lead evidence before the Claims Tribunal and to give afresh findings on all the issues. It would be appropriate to decide the Claims Petition on the basis of the law applicable as of now.

7. The impugned judgment is accordingly set aside and the case is remanded back to the Claims Tribunal with the direction to decide all the issues afresh.

8. During the pendency of Appeal, a sum of Rs. 2,00,000/- deposited by the Appellant was released in favour of the Claimants, it shall be subject to the final outcome of the Claim Petition to be decided afresh.

9. The amount of interest lying deposited with this Court shall be retained in a fixed deposit for a period of one year and shall be renewed from time to time, if need arises.

10. Since it is a very old case, the parties have undertaken to cooperate in the quick disposal of the case. It is directed that the Claims Tribunal shall endeavor to dispose of the case within a period of six months from the next date of hearing.

11. Parties are directed to appear before the Claims Tribunal on 03.09.2012.

12. Statutory amount of Rs. 25,000/- deposited, if any, shall be refunded to the Appellant. Pending Applications also stand disposed of.