(2012) 08 DEL CK 0374

In the Delhi High Court

Case No : Mac App.: 149 of 2012

IFFCO Tokio General Insurance Co. Ltd. — APPELLANT

Vs

Babita and Others — RESPONDENT

Date of Decision : 14-08-2012

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

Citation : (2012) 6 ILR Delhi 206

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

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; Pramod Gupta, For R-4 and Mr. Pankaj Seth, For R-5, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant IFFCO Tokio General Insurance Company Limited impugns a judgment dated 14.11.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 8,32,452/- was awarded in favour of the Respondents No. 1 to 3 for the death of Surender. It is not in dispute that the accident occurred on 19.10.2007 at about 9:20 P.M. while TSR No. DL-1RC-7527 was being driven by deceased Surender. The other vehicle involved in the accident is Maruti car No. DL-4C-AA-2751, which was owned by Vikrant Kapoor, Respondent No. 4 herein (the First Respondent before the Claims Tribunal).

2. Since the deceased was driving the TSR, his legal representatives filed a Petition u/s 163-A of the Act claiming compensation from the owner/insurer of the Maruti Car as well as the TSR.

3. The TSR was insured with the Appellant IFFCO Tokio General Insurance Company Ltd. (IFFCO Tokio), whereas the Maruti car was insured with National Insurance Company Ltd. (Respondent No. 5 herein).

4. It is urged by the learned counsel for the Appellant that since the deceased

was himself driving the TSR, his legal representatives could not have claimed compensation from themselves and from the owner (being vicariously liable). Thus, the Appellant being insurer of the TSR had no liability.

5. Section 163-A of the Motor Vehicles Act, 1988 (the Act) enables the Claimant to claim compensation without proving any negligence by the owner of the vehicle involved in the accident. There is no indication in the provision as to from which owner/insurer the Claimants would claim compensation, if more than one vehicle is involved in the accident.

6. Section 163-A of the Act talks about liability of payment of compensation by the owner of the motor vehicle or the authorized Insurer. Section 163-A is extracted hereunder:-

Section 163-A. Special provisions as to payment of compensation on structured formula basis.

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.-For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen''s Compensation Act, 1923 (8 of 1923).

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

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

7. The use of the term ''motor vehicle'' or ''vehicles'' in Section 140 as against the use of the terms ''motor vehicle'' in Section 163-A of the Act is not of much import. Obviously, if there are more than one vehicle involved in an accident, the Claimant would be entitled to claim compensation from either or both the vehicles. I am supported in this view by a Division Bench Judgment of Kerala High Court in United India Insurance Company Ltd. Vs. Ratheesh,

8. There may be other situations where more than one vehicle is involved in the accident. There may be a pedestrian, a cyclist, a scooterist or a person driving any vehicle. Two or more vehicles may cause an accident resulting in death or injury with permanent disability to the pedestrian, cyclist, scooterist or the driver of the vehicle. These persons can claim compensation from the owner/authorized

insurer of either or both the vehicles, who are involved in the accident. There may be situation where a victim may be travelling as an occupant in one vehicle and the said vehicle may be involved in the accident with another vehicle. Here also, the occupant of one of the vehicles would be entitled to claim compensation from the owner/owners and authorized insurer/insurers of one or both the vehicles. Another situation would be where driver of a vehicle whether a two wheeler, a TSR or any other motor vehicle meets with an accident involving another vehicle. If the accident is caused on account of his own negligence, he would not be entitled to any compensation. I am supported in this view by a three Judge Bench decision of the Supreme Court in National Insurance Company Ltd. Vs. Sinitha and Others, If the accident did not occur on account of the driver/ owner''s own negligence, he would be entitled to claim compensation from the owner/insurer of the other vehicle irrespective of the fact whether there was any default or negligence on the part of the driver of the other vehicle or not.

9. In the instant case, no defence was taken by Respondent No. 4, the driver and owner of Maruti Car or its Insurer National Insurance Company Ltd. that the accident was caused on account of Surender''s own negligence.

10. Turning to the facts of the instant case, the Claims Tribunal opined that since both the vehicles were involved in the accident, there would be equal liability on the insurer of both the vehicles, which to my mind, is not the correct interpretation of Section 163-A of the Act.

11. As stated above, the circumstances will differ in each case as to whether the owner/Insurer of one or both the vehicles would be liable to pay the compensation, which in the instant case is payable only by the owner and Insurer of Maruti Car.

12. It is urged by the learned counsel for the Appellant that apart from Appellant''s liability the Claims Tribunal erred in awarding compensation u/s 166 of the Act although the Petition was preferred u/s 163-A of the Act. It is urged that the Claims Tribunal ought to have confined the payment of compensation as per the Second Schedule to the Act.

13. I find sufficient force in the contention raised.

14. This Court in New India Assurance Co. Ltd. v. Pitamber & Ors., MAC APP. 304/2009; Pitamber & Ors. v. Nirdosh Kumar & Anr., MAC. APP. 345/2009 both decided on 23.01.2012 and Jagdish & Anr. v. Madhav Raj Mishra and Anr. MAC APP. 190/2011 decided on 19.04.2011; while relying on Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, and The Oriental Insurance Company Limited Vs. Meena Variyal and Others, held that in a Claim Petition u/s 163-A of the M.V. Act, the compensation has to be awarded on the basis of the structured formula.

15. The Respondents No. 1 to 3 claimed the deceased''s income to be Rs. 3300/-. The compensation on the basis of structured formula comes to Rs.

4,75,200/- (3300/- x 12 x 2/3 x 18).

16. In addition, the Respondents No. 1 to 3 would be entitled to a compensation of Rs. 9,500/- i.e. (Rs. 2,500/- towards loss to estate, Rs. 5,000/- towards loss of consortium and Rs. 2,000/- towards funeral expenses). The overall compensation comes to Rs. 4,84,700/-.

17. The compensation stands reduced from Rs. 8,32,452/- to Rs. 4,84,700/-.

18. By order dated 08.02.2012 execution of the award was stayed, subject to deposit of 50% of the award amount along with proportionate interest. Since, I have held above that the Appellant is not liable at all to pay the compensation, the compensation deposited by the Appellant shall be released to it along with interest accrued, if any, during the pendency of the Appeal.

19. It is stated by Mr. Pankaj Seth, Advocate that 50% of the award amount i.e. Rs. 4,16,226/- along with proportionate interest has already been deposited. Since the compensation awarded stands reduced, the balance amount of Rs. 68,474/- along with interest @ 7.5% per annum from the date of filing of the Petition till its payment shall be deposited with the UCO Bank, Delhi High Court Branch, New Delhi which shall be released to the First Respondent on deposit.

20. The Appeal is allowed in above terms.

21. The statutory deposit of Rs. 25,000/-, if any, shall be refunded to the Appellant Insurance Company. Pending Applications stand disposed of.