(2014) 11 DEL CK 0120

In the Delhi High Court

Case No : MACA 719, 722/2005, 846/2013, CM 12163 and 12224/2005

Joginder Kaur — APPELLANT

Vs

New India Assurance Co. Ltd.
 New India Assurance Co. Ltd. Vs Joginder Kaur — RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Citation : (2014) 11 DEL CK 0120

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Pankaj Seth and Manpreet Kaur, Advocate for the Appellant; Manpreet Kaur and Pankaj Seth, Advocate for the Respondent

Judgement

Jayant Nath, J.

MACA 719/2005 & CM 12163/2005

MACA 722/2005 & CM 12224/2005

1. These two appeals are filed by the appellant insurance company seeking to impugn the Award passed by the tribunal dated 21.05.2005.

2. The basic facts are that on 07.12.1979, Sardar Balwant Singh along with his wife Joginder Kaur had boarded three wheeler scooter at Nizamuddin, Delhi. They were going to Dr. Behl''s clinic at Greater Kailash- I. The driver of the said scooter was said to be driving rashly and negligently. When the scooter approached the ''verge gap'' in front of the Mool Chand Hospital gate, the driver is said to have, because of excessive speed, lost control of the vehicle. It struck on the stone edge of the ''verge gap'' located in the centre of the road, as a result of which the vehicle turned turtle. In the meantime, a speeding bus came from the opposite direction and struck the portion of the scooter projecting towards the road resulting in fatal injuries to Sardar Balwant Singh who died on the spot. His wife Smt. Joginder Kaur suffered grievous injuries which ultimately

resulted in her death on 22.07.1981.

3. Based on the evidence on record, the tribunal gave an Award of Rs. 30,000/- as compensation for death of Sardar Balwant Singh and Rs.79,800/- against the death of Smt. Joginder Kaur.

4. On apportionment, the tribunal held that appellant namely the insurance company as insurer of the three wheeler scooter can share 30% of the award amount and that the insurer of the bus would be liable and directed to pay 70% of the award amount.

5. Learned counsel appearing for the appellant has submitted that under Section 95 read with Section 96 of the Motor Vehicles Act, 1939 the liability of the Insurance Company would be limited to a sum of Rs. 5,000/-. He relies upon Sections 95 and 96 of the said Act and also the terms and conditions of the Insurance Policy.

6. This court in the judgment dated 01.09.2014 in FAO No. 177/1994 titled "Sudesh Kohli & Ors. vs. Ram Gopal & Ors." relying upon the judgment of the Supreme Court in the case of New India Insurance Co. Ltd. vs. Vimla Devi & Ors., 2010 ACJ 2878 and judgment of this court in the case of Gurcharan Kaur and Another Vs. Raja Ram and Another, held as follows:-

"8. The aforesaid clauses had directly come up for consideration before the Supreme Court in New India Insurance Company Ltd. vs. Vimal Devi and Ors. (supra) . This Court after reproducing the aforesaid clauses of the avoidance policy clause, the Supreme Court in paragraph 7 held as follows:-

7. The Avoidance Clause in the policy in this case makes all the difference and the direction of the High Court to the Appellant, insurance company to make payment of the full amount of compensation to the claimants and to recover its dues from the owner of the vehicle is directly in accordance with that Clause. In our view, the submission of Mr. Calla is well founded. The Appellant in this case can derive no benefit from the decision in New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, "

9. Similarly, this Court in the case of Gurcharan Kaur & Anr. vs. Raja Ram (supra) in paragraphs para 50 and 51 held as follows:-

49. On a conspectus of the law laid down by the Supreme Court and on perusal of the Schedule to the insurance policy (Mark "A") and the Standard terms of the India Motor Tariff relied upon by both the parties, I am of the view that the only available conclusion in the present case is that even though the liability of the Insurance Company is limited qua the insured as claimed by it, the liability of the Insurance Company qua "any person" or a third party such as the appellants is not limited. The necessary corollary is that in accordance with the terms of the insurance policy, the appellants are entitled to recover from the Insurance Company the entire amount awarded by the Claims Tribunal as enhanced by this Court.

50. To conclude, the appellants are held entitled to an enhanced amount of compensation of Rs. 1,02,000/- with interest as awarded by the Tribunal. The Insurance Company is directed to pay the entire amount to the appellants after deducting the amount, if any, already paid. The Insurance Company shall be entitled to recover the amount paid by it in excess of its liability from the owner and driver of the vehicle in accordance with law. The appeal is allowed in the above terms. There shall be no order as to costs.

10. Hence, the clauses which are subject matter of the insurance policy of respondent No. 3 Insurance Company have already been duly interpreted by the Supreme Court. A perusal of the said clause and the judgment of the Supreme Court would clearly show that in the facts of the present case the Insurance Company Respondent No. 3 would be liable to pay the award amount and would also thereafter get recovery rights from the owner and driver of the offending vehicle."

7. A perusal of the Insurance Policy here also shows that the Insurance Policy is somewhat identical to the one that was subject matter of the judgment passed by this court in FAO 177/1994. Hence, the judgment already passed would apply to the facts and circumstances of the present case.

8. Accordingly I hold that after compliance of the award the appellant shall be entitled to recovery rights against the owner and the driver of the offending TSR, namely, respondents No. 9, 10 and 11 respectively.

9. With the above observations, the present two appeals stand disposed of.

10. As per the interim order dated 30.08.2005 read with order dated 20.01.2010, the entire award amount has been deposited in this court and put in a fixed deposit in UCO Bank, Delhi High Court. The award amount with up to date accumulated interest be released to the claimants proportionately in the same manner as directed by the Tribunal.

11. Statutory amount, if any, be refunded to the appellant.

12. Pending applications for stay also stand disposed of.

MACA 846/2013

13. This claim petition was filed by the dependents of Smt.Joginder Kaur seeking enhancement of the compensation amount. Only contention here is that the deceased suffered heavily after the accident and the Tribunal has awarded for pain and sufferings only a sum of Rs.7,000/-.

14. Reference may be had to some of the relevant evidence. PW-1 Dr. A.K.Banerjee , Professor Department of Neuro-Surgery, All Indian Institute of Medical Sciences, New Delhi in the course of his evidence has deposed that Smt. Raj Kaur was admitted in AIIMS on 07.12.1979 and discharged on 29.01.1980. He further submitted that she was treated for (a) head injury (b) fracture of both bones of the left forearm (c) fracture of ribs and fracture of left scapula (d) brain

injury. She was treated by both the Neuro-Surgery Department as well as by the Orthopaedics Department. He deposed that the most important injury sustained by the deceased was brain injury as brain had been severely injured.

15. PW-2, Sh.Harminder Pal Singh who is the son of the deceased testified that her mother Joginder Kaur had sustained injuries on her head causing fracture of the skull. As per him she suffered left brain ''Odoma''. He also testified that she virtually remained unconscious for 20 days in AIIMS. She remained hospitalised till 29.01.1980. She used to be fed in the hospital with the help of a tube and in the house she was taking only liquid food and because of the injuries she died on 22.07.1981. Keeping in view the pain suffered by the deceased for a period nearly 20 months, I enhance the award for pain and sufferings from Rs. 7,000/- to Rs. 25,000/-.

16. The total compensation would now work out as follows:

17. The additional amount shall be deposited by the Insurance Company along with interest @ 6% per annum from the date of the institution of the suit i.e 22.05.1980 till deposit before the Registrar General of this court. On deposit of the amount, the same shall be released to the claimants proportionately as directed by the Tribunal.

18. The appeal stands disposed of.