(2010) 07 DEL CK 0207

In the Delhi High Court

Case No : MAC. App. No. 190 of 2005

National Insurance Co. Ltd. — APPELLANT

Vs

Kanwaljeet Kaur and Others — RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2010) 07 DEL CK 0207

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Sonia Sharma and Mr. Aslam Mirza, for the Appellant; B.K. Bharti, for R-1 to R-3, for the Respondent

Final Decision : Allowed

Judgement

J.R. Midha

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs. 14,00,961/- has been awarded to claimants.

2. The accident dated 20th April, 2000 resulted in death of Harminder Singh. The deceased was survived by his widow, two sons and parents who filed the claim petition before the Claims Tribunal.

3. The deceased was aged 33 years at the time of the accident and was self employed carrying on the business of cable operator earning Rs. 10,000/- per month. The Claims Tribunal took the income of the deceased as Rs. 66,280/- according to the Income Tax return, Ex.PW-2/1 for the assessment year 1999-2000, added 50% towards the future prospects, deducted 1/3rd towards personal expenses and applied the multiplier of 17 to compute the loss of dependency at Rs. 11,26,760/- . Rs. 2,39,201/- has been awarded towards cost of medical treatment, Rs. 10,000/- towards funeral expenses and Rs. 25,000/- towards loss of consortium. Total compensation awarded is Rs. 14,00,961/- .

4. The only ground urged by the appellant at the time of hearing is that the Claims Tribunal erred in not allowing the appellant''s application u/s 170 of the Motor Vehicles Act, 1988 to contest the claim petition on merits. The learned counsel for the appellant submits that appellant filed an application u/s 170 of the Motor Vehicles Act on 6th October, 2003 which was dismissed by the Claims Tribunal on 15th December, 2003.

5. The learned counsel for the claimants submit that the driver and the owner of the offending vehicle contested the claim petition before the Claims Tribunal and, therefore, the Claims Tribunal rightly dismissed the appellant''s application u/s 170 of the Motor Vehicle Act. The learned counsel for the appellant submits that the driver and owner did not properly contest the claim petition and they appear to have colluded with the claimants.

6. The appellant did not challenge the order dated 15th December, 2003 passed by the learned Claims Tribunal whereby the appellant''s application u/s 170 of the Motor Vehicles Act was dismissed. It is well settled that in the absence of permission u/s 170 of the Motor Vehicles Act, the Insurance company cannot challenge the impugned award before this Court on merits. Admittedly, there is no challenge to the valid insurance of the offending vehicle by the appellant in the present case.

7. The Claims Tribunal has dismissed the appellant''s application u/s 170 of the Motor Vehicle Act by a detailed order dated 15th December, 2003 in which the Claims Tribunal observed that there was no collusion between the owner, driver and claimants and, therefore, no case for grant of permission u/s 170 of the Motor Vehicles Act was made out. The appellant has not challenged the order dated 15th December, 2003. In that view of the matter, the appeal is not maintainable.

8. The deceased was travelling in Maruti Car No. DL-2CC-1037 which was hit by truck bearing No. PB-03D-7068 driven rashly and negligently by its driver. The accident was proved by FIR-Ex.P-26, site plan-Ex.P-27, Mechanical Inspection Report of the offending truck-Ex.P-28 and P-29 and Postmortem report-Ex.P-30 and the Claims Tribunal held that the accident occurred due to the rash and negligent driving of the driver. There is no infirmity in the finding of the Claims Tribunal in this regard.

9. The learned counsel for the appellant further submits that the amount awarded to the claimants is on a higher side and amount should be reduced. In this regard, it is noticed that the deceased was aged 33 years at the time of the accident and was survived by five legal representatives namely his widow, two minor children and parents, who filed the claim petition before the Claims Tribunal. The appropriate deduction towards personal expenses of the deceased as per judgment of Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, is 1/4th whereas the Claims Tribunal has deducted 1/3rd towards the personal expenses of the deceased. The Claims

Tribunal has also not awarded any compensation towards loss of love and affection and loss of estate to which the claimants are entitled according to the judgment of Sarla Verma (Supra). In that view of the matter, the amount awarded by the Claims Tribunal is on a lower side. However, since there are no cross-objections filed by the claimants, the enhancement is not warranted.

10. The appellant has deposited the entire award amount the Claims Tribunal out of which three FDRs as per detail given herein are lying with the Claims Tribunal:-

Kanwaljeet Kaur

:

Rs. 13,18,789/-

Ramandeep

:

Rs. 2,19,798/-

Simrandeep

:

Rs. 2,19,798/-

11. The Claims Tribunal is directed to release the FDRs of Ramandeep and Simrandeep to them through their mother and natural guardian, Kanwaljeet Kaur with an endorsement that the said FDRs shall not be encashed till Ramandeep and Simrandeep attain majority. With respect to FDR of Rs. 13,18,789/- , the Claims Tribunal is directed handover the said FDR to UCO Bank with direction to discharge the said FDR and release a sum of Rs. 1,18,789/- to Kanwaljeet Kaur and the remaining amount of Rs. 12 lakhs be kept in fixed deposits in the following manner:-

(i) Fixed deposit for Rs. 1,00,000/- for a period of one year.

(ii) Fixed deposit for Rs. 1,00,000/- for a period of two years.

(iii) Fixed deposit for Rs. 1,00,000/- for a period of three years.

(iv) Fixed deposit for Rs. 1,00,000/- for a period of four years.

(v) Fixed deposit for Rs. 1,00,000/- for a period of five years.

(vi) Fixed deposit for Rs. 1,00,000/- for a period of six years.

(vii) Fixed deposit for Rs. 1,00,000/- for a period of seven years.

(viii) Fixed deposit for Rs. 1,00,000/- for a period of eight years.

(ix) Fixed deposit for Rs. 2,00,000/- for a period of nine years.

(x) Fixed deposit for Rs. 2,00,000/- for a period of ten years.

12. The interest on all the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of respondent No. 1.

13. No cheque book be issued to respondent No. 1 without the permission of this Court.

14. The original Fixed Deposit Receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to respondent No. 1 along with the photocopy of the FDRs.

15. The original Fixed Deposit Receipts shall be handed over to respondent No. 1 at the expiry of the fixed deposit.

16. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

17. Half yearly statement of account be filed by the Bank in this Court.

18. On the request of respondent No. 1, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of respondents No. 1.

19. Respondents No. 1 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

20. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

21. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.