(2005) 01 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No''s. 504 of 2002 and 452 of 2003

National Insurance Co. Ltd. APPELLANT

Vs

Saveri Devi and Others RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2), 170

Citation : (2005) 2 ACC 652 : (2005) ACJ 1789 : (2005) 1 ShimLC 364

Hon'ble Judges : V.K. Gupta, C.J

Bench : Single Bench

Advocate : Devyani Sharma, for the Appellant; K.D. Batish, V. Rathore, Lalit Sharma and Ashwani Sharma, for the Respondent

Judgement

V.K. Gupta, C.J.—By this common judgment F.A.O. No. 504 of 2002 and F.A.O. No. 452 of 2003, treating the same as on day''s list with the consent of learned Counsel for the parties are being disposed of together.

2. In F.A.O. No. 504 of 2002 the appellant National Insurance Co. Ltd. has challenged the award dated 5.8.2002 passed in M.A.C. Petition No. 28-B of 2000 by learned Motor Accidents Claims Tribunal (3), Kangra at Dharamshala on various grounds. In F.A.O. No. 452 of 2003 the claimants have come up in appeal against the aforesaid award only to the extent that the compensation amount awarded is on the lower side and that it deserves to be enhanced appropriately.

3. Insofar as F.A.O. No. 504 of 2002 is concerned, after hearing the learned Counsel for the parties, I find that none of the defences available to an insurer in terms of Section 149 (2) of the Motor Vehicles Act, 1988 arise or come up for consideration or adjudication in this appeal because the impugned award has been assailed by appellant insurer in the appeal and during the course of hearing today also Mrs. Sharma focused her ground of challenge only on the issue relating to the factum of accident, viz., whether the accident occurred because of any rashness or negligence on the part of the driver of truck No. HP 39-3152 and on the issue whether the Tribunal has erred in granting higher or excessive

amount of compensation. It is well settled law by now that these grounds of challenge in an appeal are not available to an insurer as these are not available to an insurer by way of defence also in the Claims Tribunal. On this being pointed out, Mrs. Sharma drew my attention to the application filed by the appellant insurer in the Tribunal u/s 170 of Motor Vehicles Act, 1988 seeking Tribunal''s permission to defend the claim petition on all grounds available to the owner and driver, in addition to the defences available to the insurer u/s 149 (2) of the Act. Mrs. Sharma submits that the Tribunal did not pass any order on this application. I have seen the file of the Tribunal as also the order-sheet maintained by the Claims Tribunal and do agree with Mrs. Sharma''s submission that indeed the Tribunal did not pass any order disposing of the aforesaid application of the appellant insurer. It is expected that whenever an application is filed by a party, interlocutory in nature or otherwise, during the pendency of the proceedings in a matter, the Tribunal/court must ensure that such an application is disposed of. My attention has been drawn to interlocutory order dated 23.8.2001 passed by learned Tribunal in which he held the application as premature as at that stage and deferred the passing of the order thereupon until after the conclusion of the evidence. I am at a total loss to appreciate as to how could the application be considered or held as premature in view of the clear stand taken in the application that the owner and driver had colluded with claimants and/or they had failed to contest the claim petition. Whether the aforesaid allegation of the appellant insurer in the aforesaid application was correct or it was not correct alone was a matter which warranted a decision by the trial court. If, based on the Claims Tribunal''s record and whatever material it had before itself the Tribunal came to the conclusion that there was no collusion between the claimants and owner and driver and that owner and driver had not failed to contest the claim petition, the application filed u/s 170 of the Act straightaway deserved dismissal. There was no question of the application ever being held or found to be premature and similarly there was no question of such an application having been kept pending with a view to defer decision thereupon at a later stage. Even if initially the learned Tribunal would find that there was no collusion between petitioner-claimants and owner and driver or that owner and driver were in fact contesting the claim petition, a situation could arise in future, at another point of time when the circumstances might dramatically alter and the altered circumstance might point out that owner and driver had at a subsequent stage of the proceedings colluded with claimants or they had stopped contesting the claim petition. Such an altered situation always entitled the insurer to file a second/ subsequent application which had to be entertained, considered and disposed of on the basis of situation/circumstance as would be prevalent at such a subsequent stage. Holding the application thus to be premature or deferring its decision to a future date, were both uncalled for since under the scheme of Section 170 of the Act such a contingency was not catered for by the legislature and the Tribunal should not have taken such a stand. The application thus remained undisposed of which it should not have. The Tribunal committed a material irregularity in not disposing of the application.

4. In the aforesaid background, I have no hesitation in allowing Mrs. Sharma''s prayer that in this appeal I should take up the aforesaid application myself for its consideration and disposal on its merits.

5. I have perused the entire record of Tribunal very carefully and find that in answer to the claim petition filed by the claimants both the sets of the respondents, namely, owner and driver of the jeep as well as owner and driver of the truck had filed their respective written statements. Both the sets of defendants had also all along been contesting the claim petition on merits. At no stage of the proceedings in the claim petition before the Tribunal does one find any remote suggestion that these defendants either did not contest the claim petition or that there was any collusion between them or one of them and the claimants. The allegations in the application, therefore, are not at all borne out from the record of the Tribunal nor Mrs. Sharma could point out any fact or circumstance which could support the appellant''s contention that either there was a collusion or any failure or neglect on the part of the respondents to contest the claim petition.

6. The permission to contest the claim petition on all or any of the grounds which are available to the person against whom the claim has been made in terms of Section 170 of the Act can be granted only if either there is a collusion between the persons making the claim and the person against whom the claim is made, or the person against whom the claim is made has failed to contest the claim. Since none of the aforesaid is present or has been made out in this case, I have no hesitation in holding that the appellant''s application filed u/s 170 of the Act was totally devoid of any merit. It is accordingly dismissed. The consequence and the result is that the appellant is relegated to the position where it could defend the claim petition or it could assail the award in this appeal only on the ground mentioned in Sub-section (2) of Section 149 of the Act. Admittedly, neither any such ground finds mention in this appeal nor any such ground has been urged today in the course of hearing of this appeal, the appeal of the appellant insurer is totally devoid of any merit and accordingly deserves to be dismissed.

7. Coming to the appeal filed by the claimants for enhancement, I find that the Tribunal assessed the monthly income of deceased at Rs. 1,500. As per the Claims Tribunal, out of this amount of Rs. 1,500 the deceased was contributing Rs. 500 every month for his family. The deceased was unmarried and was aged 23 years at the time of accident. The Claims Tribunal has applied the multiplier of 9 to the multiplicand. In my considered opinion, the multiplicand as well as the multiplier both deserve to be suitably enhanced/modified.

8. Since the deceased was a bachelor, the Claims Tribunal has wrongly held that he should have been contributing 1/3rd of his income towards the maintenance of his parents. Normally it is 2/3rd, but taking a conservative view, it will be safe if this contribution is limited to 1/2 of the income of the deceased. Thus, holding that the deceased was contributing Rs. 750 per month to maintain his parents, the annual loss of dependency is worked out at Rs. 9,000. Keeping in view the

age of the deceased (23 years) and the ages of his parents, in the facts and circumstances of this case the multiplier of 14 should be more appropriate. Applying the multiplier of 14 to the aforesaid multiplicand of Rs. 9,000, the compensation amount is capitalised at Rs. 1,26,000, instead of Rs. 54,000 as has been done by the Tribunal. The amount of Rs. 1,26,162 awarded in para 13 of the judgment/award shall remain unaltered. Total amount of compensation shall stand enhanced/increased accordingly, taking in account the enhancement from Rs. 54,000 to Rs. 1,26,000 as was awarded in para 12 of the judgment/award.

9. The award accordingly stands modified to the aforesaid extent. Both appeals are disposed of. Whatever amount is lying deposited in this Court shall be disbursed to the claimants-applicants with interest accrued till date.

C.M.P. No. 908 of 2004 in F.A.O. No. 504 of 2002:

10. In view of the disposal of the main petition, this application is also disposed of.