
(2006) 01 GAU CK 0069
In the Gauhati High Court
Case No : MAC App. No. 55 of 2001

National Insurance Co. Ltd.

APPELLANT

Vs

Sikha Das and Others

RESPONDENT

Date of Decision : 04-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360
Motor Vehicles Act, 1988 — Section 149(1), 149(2)
Penal Code, 1860 (IPC) — Section 279, 304A, 427

Citation : (2006) 3 GLR 65 : (2006) GLT 227 Supp

Hon'ble Judges : Iqbal Ahmed Ansari, J; A.B. Pal, J

Bench : Division Bench

Advocate : A.L. Saha, for the Appellant; S.M. Ali, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Pal, J.—The judgment and award dated 11.6.2001 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala in T.S.(MAC) 125 of 1997 stand impugned in the present appeal filed by National Insurance Co. Ltd. (for short "the insurer").

2. The relevant facts giving rise to the claim proceeding originated from a motor accident, which had occurred on 21.12.1996 at 6.30 A.M. On the fateful day and time, the deceased Niranjana Das, who was a Kickshaw puller was standing with his rickshaw parked on the left side of the road just behind a vehicle bearing No. TRS-709 when the offending vehicle bearing No. TRS-261 running at a high speed dashed against the vehicle TRS-709 and the rickshaw standing behind. The unfortunate and poor rickshaw puller died on the spot instantaneously and the vehicle TRS-709 sustained substantial damages. A police case was registered under Sections 279 and 304A of the Indian Penal Code, which eventually ended into a charge sheet against the driver of the offending vehicle following which a full dressed trial had commenced. The dependent legal heirs of the deceased Niranjana Das filed claim for compensation to the tune of Rs. 11,25,000 before

the learned Tribunal claiming that the deceased was earning Rs. 3,000 to 4,000 per month and at the time of his death he was aged only 40 years. The claim was contested by the owner and the insurer of the offending vehicle by submitting separate written statement. They admitted the factum of the accident and death of the deceased on the spot as a result thereof, but disputed the claim on the ground that it is exorbitant and not, admissible under the relevant provisions of the Motor Vehicles Act. The owner of the other vehicle TRS-709 having been impleaded filed a separate written statement admitting the accident. The learned Tribunal after recording evidence adduced by the parties awarded an amount of Rs. 3,61,000 making the insurer, the appellant herein, liable to make the payment. Further direction of the learned Tribunal is to pay interest at the rate of 9% per annum w.e.f. 4.3.1997, the date of filing the claim petition if payment is made within two months and in default, to pay interest at the rate of 12% per annum after expiry of two months till payment is made.

3. The owner of the offending vehicle or the claimants have not preferred any appeal from the impugned judgment and award and, therefore, our considerations in this appeal shall remain confined to the questions raised by the insurer after examining them on the touchstone of the provisions of Section 149(2) of the Motor Vehicles Act, 1988 (for short "the Act").

4. We have heard Mr. A.L. Saha, learned Counsel for the appellant and Mr. S.M, Ali, learned Counsel for the respondents.

5. A plain reading of the memorandum of appeal will go to show that the appellant-insurer has sought to challenge the impugned judgment and award on the following three grounds:

(i) The driver of the offending vehicle TRS-261 faced a trial in a criminal proceeding (GR 1050 of 1996) in connection with the said accident on a charge of committing offences punishable under Sections 279, 427 and 304A of the Indian Penal Code. The learned Judicial Magistrate 1st Class, Agartala convicted the driver, but at the time of hearing on sentence, the said driver made a submission for leniency on the ground that he was once physically tortured by the extremists due to which he suffered disability in his left hand. After considering his submission, the learned trial court allowed him the benefit of release on probation u/s 360 of the Cr.PC. This being the position, it becomes evident that as per the terms of the insurance policy, the driver being under disability was not a competent person to drive the offending vehicle and consequently, the insurer could not be held liable to pay the amount awarded by the learned Tribunal.

(ii) The learned Tribunal committed error by holding that the deceased was earning Rs. 3,000 per month though there was no materials on record to support such an amount as claimed.

(iii) As the earning of the deceased could not be proved by reliable evidence, it was incumbent upon the learned Tribunal to calculate the amount of

compensation on the basis of annual notional income of Rs. 15,000 in accordance with the provisions laid down in the Second Schedule of the Act.

6. We have carefully examined the records including the impugned judgment and award. It has been observed by the learned Tribunal that the driver of the offending vehicle Arun Kr. Dutta had a valid driving licence at the time of the accident and that from the copy of the judgment rendered by the Judicial Magistrate 1st Class in connection with GR 1050 of 1996, the fact of accident due to negligence on the part of the said driver came to be established. Nowhere did the learned Tribunal mention that the said driver was physically disabled at the time he was driving the offending vehicle on the fateful day. Therefore, the ground taken by the insurer appellant that at the time of accident the driver of the offending vehicle was disabled does not appear to have any basis. As regards the monthly income of the deceased, it would appear from the impugned judgment that though the claimants put forward a claim that the deceased was earning Rs. 3,000 to 4,000 per month, the learned Tribunal accepted the lesser amount and proceeded to determine the amount of compensation accordingly. We are, however, not inclined to examine the correctness or otherwise of this part relating to determination of the amount of compensation by the learned Tribunal as such question cannot be raised by an insurer in view of the provisions of Section 149(2) of the Act. The limited grounds which are available to an insurer for assailing a judgment or award as provided in that Sub-section do not permit the question like correctness of the calculation in determining the amount of compensation by a Tribunal. The said Section provides as follows:

149(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the court or, as the case may be, the claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle -

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle ; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification ; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion ; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

7. For the same reason, we also refrain ourselves from examining the third question raised by the insurer that in the absence of any materials on record regarding monthly income of the deceased, the learned Tribunal should have proceeded to determine the amount of compensation on the basis of notional annual income of Rs. 15,000 as provided in the Second Schedule of the Act.

8. For the discussions and the reasons noted above, we are of the considered view that this appeal is devoid of any merit and, therefore, the same is liable to be dismissed, which we hereby do leaving the parties to bear their own cost.