(2013) 03 AHC CK 0053

In the Allahabad High Court

Case No : F.A.F.O. No. 634 of 2013

National Insurance Co. Ltd. — APPELLANT

Vs

Smt. Chaman Sultan and Others — RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Motor Vehicles Act, 1988 — Section 147(1)(a)

Citation : (2013) 97 ALR 880 : (2013) 3 AWC 3042

Hon'ble Judges : Rakesh Tiwari, J;Anil Kumar Sharma, J

Bench : Division Bench

Advocate : Pankaj Rai, for the Appellant; Pradeep Chandra and Pratik Chandra, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar Sharma, J.—Challenge in this appeal is to the award dated 15.12.2012 passed by M.A.C.T./Additional District Judge. Court No. 7, Saharanpur in M.A.C.P. No. 213 of 2011, whereby compensation of Rs. 4,01,500 together with simple interest @ 6% per annum had been awarded to the claimant-respondents No. 1 to 3 on account of death of Mohd. Nazar Khan in the instant accident. We have heard Sri Pankaj Rai, counsel for the appellant, and Sri Pradeep Chandra, appearing for claimant-respondents, perused the record as also papers filed alongwith memo of appeal.

2. Learned counsel for the appellant has assailed the award on three points. Firstly, he has contended that age of the deceased was about 61 years, but the Tribunal ignoring the Second Schedule of Motor Vehicles Act where multiplier of "5" has been prescribed, has applied multiplier of "7". We are not-convinced with this argument. The learned Tribunal has followed the principle laid down by the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and has taken multiplier of "7" instead of "5". We do not find any illegality in the findings.

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3. Secondly, counsel for the appellant has vehemently argued that the deceased was gratuitous passenger in the offending truck so the insurance company is not liable to indemnify the award on account of alleged death in the motor accident. This contention too has no substance. The appellant has taken ground number (iii) stating that the deceased was travelling in the truck at the time of accident with his goods for whom no risk has been covered in the policy and no extra premium has been paid by owner and as such insurance company is not liable to pay any compensation to the claimants nor they are entitled to receive any compensation from the appellant. In a number of cases, the Apex Court has held that even in the goods vehicle owner of goods can travel. Sections 147(1)(a) and (b) of Motor Vehicles Act makes position clear, which reads as under:

147. Requirements of policies and limits of liability.--(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)--

(i) against any liability which may be incurred by him in respect of the death of or bodily (injury to any person, including owner of the goods or his authorised representative carried in the vehicle) or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

4. Thus, the owner of the goods travelling in goods carriage is a ''third party'' for which compulsory insurance of motor vehicle is required. The insurance policy of offending vehicle is titled as Certificate of Insurance of Goods Carrying (other than three wheeler) - Public Carriers and the insurer has paid Rs. 10,260 for third party-basic and Rs. 175 for W.C. employee-7. In these circumstances, the appellant cannot escape from its liability to indemnify the award.

5. Lastly learned counsel for the appellant has argued that the Tribunal has erred in calculating the income of the deceased and has awarded excessive amount of compensation to the claimants without any basis.

6. On perusal of award, we find that before the Tribunal the claimants have alleged that the deceased was engaged in business as Proprietor in the name and style of M/s. Chaman Trading Company, Lohamandi, Saharanpur and his alleged annual income was Rs. 1,08,000. Before the Tribunal, claimants have filed documents pertaining to his trading business, for example - registration certificate for Central Trade Tax, Income Tax Return for the year 2006-07 and the documents pertaining to deposit of monthly and quarterly tax in Trade Tax Department for the year 2010-11. The Tribunal did not believe the contention of claimants that the deceased was earning Rs. 1,08,000 per annum. However, on the basis of Form-24, it has been observed that his turnover in the year 2010-11

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was Rs. 11,64,201. The Tribunal has taken 8% on this amount as profit of the deceased amounting to Rs. 93,136 per annum, i.e., Rs. 7,761 per month. This amount has further been lowered by the Tribunal and monthly income of deceased for the purpose of calculating amount of compensation has been taken at Rs. 7,000. No contra evidence was led by any of the opposite parties before the Tribunal. The deceased was engaged in trading of scrap metals etc. It was also contended before the Tribunal that the deceased was also representative of M/s. P.K. Enterprises, Muzaffarnagar and photocopy of undated authority letter issued by M/s. P.K. Enterprises has been filed by the appellant alongwith memo of appeal (page No. 74 of paper book), which also confirms that the deceased was representative of M/s. P.K. Enterprises, Muzaffarnagar. This document was filed by the appellant to show that the deceased was not carrying any goods in the truck in question on the date of accident, but it is clear from perusal of impugned award that this document was not filed on behalf of the appellant before the Tribunal because on page ''4'' of the award, the Tribunal has observed that the Insurance company has filed only certified copy of insurance policy as paper No. ''74C''. Undated authority letter referred above could not have been filed by the appellant in this appeal without any application under Order XLI, Rule 27, C.P.C. However, this Letter corroborates the case of the claimants that the deceased was also a representative of M/s. P.K. Enterprises.

7. In the circumstances, we uphold the findings of the learned Tribunal regarding computation of his monthly income for assessing just and reasonable compensation payable to the claimants.

8. In view of forgoing discussions, we find that the appeal sans merit which is accordingly dismissed. The statutory amount of money deposited by the appellant in this Court be remitted to the concerned Tribunal within three weeks for adjustment.

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