(2011) 04 MP CK 0047

In the Madhya Pradesh High Court

Case No : M.A. No. 2512 of 2006

National Insurance Co. Ltd. APPELLANT

Vs

Sunita and Others RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Limitation Act, 1963 — Section 14
Motor Vehicles Act, 1988 — Section 163A, 165, 166, 168, 173
Penal Code, 1860 (IPC) — Section 304A

Citation : (2012) ACJ 2400

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : Rakesh Jain, for the Appellant; Akshay Sapre, for the Respondent

Final Decision : Allowed

Judgement

U.C. Maheshwari, J.—The appellant insurer has come forward to this court with this appeal u/s 173 of Motor Vehicles Act, 1988 (in short, ''the Act'') being aggrieved by the order dated 27.2.2006 passed by Second Additional Motor Accidents Claims Tribunal, Mandla, whereby the claim of the respondents filed u/s 163A of the Act has been awarded against the appellant insurer for the sum of Rs. 2,77,520 along with interest at the rate of 7 per cent per annum from the date of filing the claim petition, i.e., from 7.7.2003. The facts giving rise to this appeal in short are that the respondents-claimants herein filed their claim petition u/s 163A of the Act contending that the husband of the respondent No. 1 while the father of applicant Nos. 2 and 3, namely, Purushottam Patel, was driving his own tractor on 9.5.2003 having the engine No. B.O. 8061 and chassis No. SLO-301-SA-35951, which collided with a bridge of a canal and met with an accident, resultantly, he sustained the injuries and consequently died. As per further averments, deceased was working as Post Master in the Postal Department of Union of India and being agriculturist, was also having income from agriculture. On receiving information of such accident, a Crime No. 215 of

2003 for the offence u/s 304A of Indian Penal Code was registered at Police Outpost, Anjania, and corpse of the deceased was sent to hospital for post-mortem, the same was carried out. Due to death of said registered owner of the tractor, no charge-sheet was filed in the matter. With these averments without showing any negligence on the part of the deceased, the present claim is preferred on behalf of respondents against the appellant insurer with whom the alleged tractor was insured for the compensation of Rs. 17,00,000 with interest at the rate of 12 per cent per annum.

2. In reply of the appellant, by denying the facts stated in the claim petition regarding alleged accident, in addition, it is stated that such tractor was driven by Purushottam Patel, contrary to the terms of policy without having an effective driving licence. Besides this, the claim is also objected on the ground of tenability before the Tribunal u/s 163A of the Act. It is stated that the deceased being insured and registered owner of the vehicle as per terms of the insurance policy, his legal representatives, the respondents, are not entitled to get any award under the provisions of section 163A of the Act from the Tribunal.

3. After framing the issues, the evidence was recorded by the Tribunal, on appreciation, the claim of the respondent has been awarded against the appellant for the sum as mentioned above. Being dissatisfied with the same, the appellant has come forward to this court with this appeal.

4. Mr. Rakesh Jain, the learned counsel for the appellant, after taking me through pleadings, evidence, exhibited documents and the impugned award of the Tribunal argued that the impugned claim petition was wrongly entertained and allowed by the Tribunal u/s 163A of Motor Vehicles Act. As per terms and conditions of the insurance policy of the offending tractor, the deceased being registered owner and the insured person of such tractor, his legal representatives did not have any authority to file the claim petition u/s 163A of the Act for compensation for death of their predecessor, the said Purushottam Patel, who himself had driven the tractor and met with the alleged accident in which he sustained the injuries and died. In support of his contention, he also referred to the decisions of Apex Court in the matter of Oriental Insurance Co. Ltd. Vs. Rajni Devi and Others, and of Ningamma and Another Vs. United India Insurance Co. Ltd., By referring to the insurance policy, he also said that in any case, the risk of the deceased was not covered under such policy. With these submissions he prayed for setting aside the impugned award and dismissing the claim petition of the respondents by allowing this appeal.

5. On the other hand, responding to the aforesaid arguments, Mr. Akshay Sapre, learned counsel for the respondents, initially argued the case at length and justified the impugned award saying that same is based on proper appreciation of evidence and also in conformity with law. He also placed his reliance on a decision of the Apex Court in the matter of Dhanraj Vs. New India Assurance Co. Ltd. and Another, and of Chhattisgarh High Court in Smt. Sheela Bai and Others Vs. The New India Insurance Co. Ltd., and prayed for dismissal of this appeal.

6. Having heard the counsel, keeping in view their arguments, after perusing the aforesaid cited cases, I am of the considered view that this appeal deserves to be allowed in view of Apex Court decision in the matter of Oriental Insurance Co. Ltd. Vs. Rajni Devi and Others, , in which it was held as under:

(6) It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof.

(7) The Tribunal, in our opinion, therefore, was not correct in taking the view that while determining the amount of compensation, the only factor which would be relevant would be merely the use of the motor vehicle....

xxx xxx xxx

(11) Liability of the insurer company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of any damage to the property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise.

7. I would like to mention here that while deciding the aforesaid case by the Apex Court, the earlier case-law of the Apex Court in the matter of Dhanraj Vs. New India Assurance Co. Ltd. and Another, , cited by Mr. Sapre, was also taken into consideration for giving the interpretation to the provisions of sections 163A, 165, 166 and 168 of the Act.

8. Besides the aforesaid, at subsequent stage on the occasion arising, the Apex Court again considered such aspect and answered in the matter of Ningamma and Another Vs. United India Insurance Co. Ltd., in which taking into consideration the aforesaid case of Oriental Insurance Co. Ltd. Vs. Rajni Devi and Others, , it was held as under:

(18)... It was held in Oriental Insurance Co. Ltd. case that section 163A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res Integra. The liability u/s 163A of the MVA is on the owner of the vehicle. So a person cannot be both a claimant as also a recipient with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of section 163A of the MVA....

9. In view of the aforesaid legal position settled by Apex Court in subsequent two decisions, taking into consideration the decision of Dhanraj Vs. New India Assurance Co. Ltd. and Another, the case-law in the case of Smt. Sheela Bai and Others Vs. The New India Insurance Co. Ltd., , decided by Chhattisgarh High Court, is not giving any assistance to the respondents in the present case.

10. In the available facts as stated above and in view of the said legal position, I am of the considered view that even after happening of the unfortunate incident in the family of the respondents in which their predecessor Purushottam Patel, the registered owner and the insured of the present offending tractor, had died, they did not have any authority to file the claim petition in the Motor Accidents Claims Tribunal u/s 163A of the Act. Therefore, in such circumstances, the questions which were raised on behalf of appellant on some merits of the facts, in the lack of jurisdiction, could neither be considered by the Tribunal nor the same could be considered by this court. At this stage, respondents'' counsel Mr. Sapre prayed that on allowing this appeal and setting aside the impugned award then in the available circumstances instead of dismissing the claim petition of the respondents along with their cross-objection filed in this appeal, the same be directed to be returned to them by extending a liberty to approach the appropriate forum under the Consumer Protection Act, 1986 or some other appropriate forum permissible under the law to file their claim on the grounds stated in the claim petition, and the cross-objection also with other available grounds.

11. I would like to mention here that in response to such submission of Mr. Sapre, Mr. Rakesh Jain fairly conceded that the respondents had a right to approach the appropriate forum under the provisions of Consumer Protection Act, 1986.

12. In view of the aforesaid discussions, the impugned award being passed by the Tribunal in the lack of jurisdiction by entertaining the claim petition of the respondents u/s 163A of the Act is held to be perverse and pursuant to that, the same deserves to be set aside by allowing this appeal.

13. Therefore, by allowing this appeal in part, the impugned award passed by the Tribunal in favour of the respondents is hereby set aside. But in the available circumstances in view of aforesaid discussion instead of dismissing the claim of the respondents the same is directed to be returned to the respondents-claimants by extending a liberty to file the same before the appropriate forum under the Consumer Protection Act or some other enactment in which the same is permissible under the law.

14. It is made clear that the respondents shall be at liberty to file along with the returned claim petition the fresh drafted claim petition mentioning the modified and additional facts on filing the same before the appropriate forum. However, it is made clear that after returning the claim petition, if any of the aforesaid proceedings is filed for compensation on behalf of respondents-claimants before the appropriate authority under the Consumer Protection Act or in some other enactment, then, on filing an application u/s 14 of the Limitation Act the respondents-claimants shall be entitled to get the exclusion of the period of limitation which has been spent by them in prosecuting the present appeal as well as the impugned claim petition before the Tribunal. The respondents shall be at liberty to raise all such grounds also in such proceedings stated in their cross-

objection filed under Order 41, rule 22 of the Civil Procedure Code, 1908.

15. It is made clear that in view of any observations or findings made by the Tribunal in the impugned order or by this court in the present order, no party of this litigation shall be deprived to raise any question before the aforesaid forum where the respondents will approach under the aforesaid extended liberties, and such authority shall decide the matter afresh in accordance with law without influencing from any observation made on the factual merits of the matter either by the Tribunal or by this court.

16. At this stage, I am apprised by the appellant''s counsel that in compliance of some earlier direction of this court, he has deposited the entire awarded sum with the Tribunal, therefore, some appropriate direction be given to the Tribunal to return such deposited sum to the appellant. In view of the aforesaid, Tribunal is directed to refund such deposited sum to the appellant along with its accrued interest, if the same is accrued on it.

17. In the available facts and circumstances, there shall be no order as to costs. Appeal is allowed in part and by setting aside the impugned award the claim petition is directed to be returned to the respondents by extending some liberties with some further direction and observations as indicated above.