(2010) 06 DEL CK 0026

In the Delhi High Court

Case No : MAC. App. 350 of 2007

National Insurance Company Ltd. APPELLANT

Vs

Raj Kumari and Others RESPONDENT

Date of Decision : 04-06-2010

Acts Referred:

Citation : (2010) 06 DEL CK 0026

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

Bench : Single Bench

Advocate : Manjusha Wadhwa, for the Appellant; Hemangi Saikia and Mr. Deepak Aggaral, Proxy Counsel for R-7, for the Respondent

Judgement

J.R. Midha

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs. 4,30,000/- has been awarded to the claimants/respondents No. 1 to 5.

2. The accident dated 25th/26th September, 2003 resulted in the death of Daksh Kumar. The deceased was travelling in Truck bearing No. HR-55A-9393 which met with an accident with another truck bearing No. HR-38D-6701. The deceased was survived by his widow, three daughters and one son, who filed the claim petition before the learned Tribunal.

3. The deceased was aged 35 years at the time of the accident and was working as a motor mechanic earning Rs. 4,500/- per month. In the absence of proof of income, the learned Tribunal took the minimum wages of Rs. 3,000/- per month, deducted 1/3 towards personal expenses of the deceased and applied the multiplier of 16 to compute the loss of dependency at Rs. 3,85,000/- . Rs. 5,000/- have been awarded towards medical expenses, Rs. 10,000/- towards pain and suffering, Rs. 20,000/- towards loss of love and affection, Rs. 5,000/- towards funeral expenses and Rs. 5,000/- towards loss of estate. The total compensation awarded is Rs. 4,30,000/- .

4. The learned counsel for the appellants has urged the following grounds at the time of hearing of this appeal:-

(i) The driver of the offending vehicle was holding a fake driving licence at the time of the accident.

(ii) The deceased was a gratuitous passenger in the offending vehicle and, therefore, the appellant is not liable.

5. With respect to the driving licence, respondent No. 2 examined the its Director as R2W1 who deposed that the driving licence No. 1/410/MTR/98 was initially issued on 22nd December, 1998 for motorcycle plus light motor vehicles and was thereafter endorsed for heavy transport vehicle on 6th April, 2010 in the name of Son Pal. The driving licence was valid upto 5th April, 2007. The verification report was exhibited as Ex.R2W2/1.

6. The appellant examined Licencing Clerk, DTO, Gurgaon as RW-3 who deposed that driving licence No. 1023/G/02 in the name of Rajbir Singh was not issued by their office. The photocopy of the driving licence was marked as R3W1/1. The appellant also examined its Assistant as RW-3 who proved the investigation report as Ex.R3W2/2.

7. The Claims Tribunal considered the evidence of the appellant as well as the respondent No. 7 and held that the driver of the offending vehicle was holding a valid driving licence to drive the HTV issued by Mathura Authority and there is no ground for avoiding the liability by the appellant. The appellant did not led any evidence with respect to driving licence No. 1/410/MTR/98 proved by R2W1 and, therefore, the finding of the Claims Tribunal holding that the driver was holding a valid driving licence is correct and is upheld.

8. The second ground raised by the appellant is that the deceased was a gratuitous passenger in the offending vehicle. The appellant has also not led any evidence to prove the same and, therefore, the plea of the appellant is rejected.

9. The deceased was a labourer and is survived by the claimants who are widow, three daughters and one son. The claimants were examined by this Court on 26th February, 2010. Respondent No. 1 is a daily wager and respondents No. 2 to 5 are minor children. The respondents are staying in a rented accommodation on a monthly rent of Rs. 1,000/- and their condition has been found to be very pathetic. This case relates to the accident dated 25th/26th September, 2003 in respect of which the claim petition was filed on 12th February, 2004 and the claimants are without compensation despite lapse of more than six years after the accident.

10. For all the aforesaid reasons, the appeal is dismissed.

11. The appellant has deposited the entire award amount with UCO Bank in terms of order dated 28th January, 2010 and the said amount is lying in fixed deposit.

12. UCO Bank is directed to release 10% of the amount to respondent No. 1 by transferring the same to her savings bank account. The remaining amount be kept in the fixed deposit in the following manner:-

(i) Fixed deposit in respect of 10% of the amount in the name of respondent No. 1 for a period of one year.

(ii) Fixed deposit in respect of 10% of the amount in the name of respondent No. 1 for a period of two years.

(iii) Fixed deposit in respect of 10% of the amount in the name of respondent No. 1 for a period of three years.

(iv) Fixed deposit in respect of 10% of the amount in the name of respondent No. 1 for a period of four years.

(v) Fixed deposit in respect of 10% of the amount in the name of respondent No. 1 for a period of five years.

(vi) Fixed deposit in respect of 10% of the amount in the name of respondent No. 2 for a period of six years.

(vii) Fixed deposit in respect of 10% of the amount in the name of respondent No. 3 for a period of seven years.

(viii) Fixed deposit in respect of 10% of the amount in the name of respondent No. 4 for a period of eight years.

(ix) Fixed deposit in respect of 10% of the amount in the name of respondent No. 5 for a period of nine years.

13. The interest on the aforesaid fixed deposits of appellants shall be paid monthly by automatic credit of interest in the Savings Account of appellant No. 1.

14. Withdrawal from the aforesaid account of appellant No. 1 shall be permitted after due verification and the Bank shall issue photo Identity Card to appellants No. 1 to facilitate identity.

15. No cheque book be issued to appellant No. 1 without the permission of this Court.

16. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the appellants and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

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

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

19. On the request of appellants, the Bank shall transfer the Savings Account to any other branch according to the convenience of appellants.

20. The appellants 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.

21. The appellant is directed to disclose on affidavit within four weeks whether the statutory amount of Rs. 25,000/- has been adjusted while depositing the award amount. If the statutory amount has been so adjusted, the same be transferred to UCO Bank and the UCO Bank is directed to release the said amount to respondent No. 1. On the other hand, if the statutory amount has not been adjusted, it may be refunded to the appellant through counsel. If the appellant fails to file the affidavit within four weeks, the Registry shall put up the matter before Court on 5th July, 2010 for directions along with the calculation by the Accounts Department.

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

23. 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.

