(2002) 12 AHC CK 0145

In the Allahabad High Court

National Insurance Company Ltd. APPELLANT

Vs

Ram Bahadur Sharma RESPONDENT

Date of Decision : 02-12-2002

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2003) 1 ACC 609

Hon'ble Judges : S.P. Srivastava, J;M.P. Singh, J

Bench : Division Bench

Judgement

S.P. Srivastava, J.

Heard the learned Counsel for the insurer/appellant.

1. The insurer-appellant feels aggrieved by the award of an amount of Rs. 1,34,150/- as compensation together with simple interest at the rate of 9% per annum to the claimant on account of the injuries received by the claimant Ram Bahadur Sharma, who was aged about 38 years at the time of accident, causing permanent disability to the extent of 40% in the accident involving the offending motor vehicle, a Gas Tanker insured by the appellant.

2. The claimant had come up with the case that he met with an accident by the offending vehicle, which was coming from Auraiya side when he was standing on the Kachchi Patari of Auraiya Road causing fracture in his right leg and in spite of long treatment and expending huge amount in his treatment still he could not be recovered. He used to do the work of driving from which he was earning a sum of Rs. 3,000/- per month.

3. The learned Counsel for the appellant has tried to assail the findings of the Tribunal returned against the appellant but has not been able to demonstrate that the findings can be taken to be suffering from any such legal infirmity which may justify an interference therein.

4. It has next been contended by the learned Counsel for the appellant that there

was a breach of terms and conditions subject to which the insurance policy had been issued covering the risk.

5. In this connection the Tribunal has relied upon the principles laid down in number of cases and it appears to have been of the view that the insurer could not discharge the onus of proof which lay on it in this regard.

6. Be what it may, so far as the statutory liability of the insurer appellant contemplated under the provisions of the Motor Vehicles Act in the matter relating to the payment of just compensation determined by the Motor Accident Claims Tribunal is concerned, the mere fact that there was violation of the terms and conditions subject to which the insurance policy had been issued cannot have the effect of exonerating the insurer of his statutory liability cast upon him in this regard to pay the amount to the third party.

7. In such a situation, it is always open to the insurer to get the amount, paid in excess, refunded to it from the owner/insured in an appropriate proceedings initiated before the Motor Accident Claims Tribunal in which proceedings such a dispute can be decided between the insurer and the insured after affording an opportunity of hearing to the insured in accordance with law.

8. It will, therefore, be open to the insurer-appellant to initiate an appropriate proceeding for the refund of the amount paid by it to the claimants and establish the breach of the terms and conditions subject to which the insurance policy had been issued.

9. The dismissal of this appeal will not come in the way of the insurer-appellant initiating such proceedings.

10. The learned Counsel for the insurer-appellant has urged that taking into consideration the age of the deceased, the amount of compensation awarded by the Tribunal is excessive.

11. In this connection, it may be noticed that while computing the total amount of compensation the Tribunal had awarded an amount of Rs. 1,30,560/-towards the 40% permanent disability and the remaining amount towards the mental agony and expenses incurred in getting the medical treatment etc. Thus, taking into consideration the nature of the injuries received by the injured Ram Bahadur Sharma, the amount of compensation at a figure of Rs. 1,34,150/- cannot be said to be excessive and the impugned award does not suffer from any legal infirmity.

12. Taking into consideration the facts and circumstances, as brought on record, no justifiable ground has been made out for any interference in the impugned award.

13. Taking into consideration the totality of the circumstances as brought on record, this appeal is totally devoid of merits, which deserves to be and is hereby dismissed in limine.

14. As prayed, the amount of Rs. 25,000/- deposited in this Court by the insurer-appellant u/s 173 of the Motor Vehicles Act be remitted to the Motor Accident Claims Tribunal concerned so that it may be disbursed to the claimant.