(2014) 09 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1931 of 2002

National Insurance Company Ltd. APPELLANT

Vs

Ram Niwas and Others RESPONDENT

Date of Decision : 06-09-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 163-A, 166

Citation : (2015) 177 PLR 123

Hon'ble Judges : Bharat Bhushan Parsoon, J

Bench : Single Bench

Advocate : Tarun Singla for Ashok Aggarwal, Senior Advocate, Advocates for the Appellant; Anupam Singla for Harsh Aggarwal, Advocates for the Respondent

Judgement

Dr. Bharat Bhushan Parsoon, J.—By way of this appeal against Award dated 8.12.2001, the appellant Insurance Company has sought discharge from its liability claiming that the Tribunal has misread and misconstrued the oral as well as documentary evidence. It is, inter alia, pleaded that the offending vehicle at the time of accident was being driven in contravention of the terms and conditions of the policy of insurance and that the accident had occurred due to the sole negligence and carelessness on the part of the respondent-driver of the offending vehicle i.e. double decker truck bearing No. HR38/2295. It is elaborated that the truck had been parked under the hanging electric wires and because of such wrong parking of the truck there was electrocution of the deceased. It is claimed that had the driver been vigilant and had he exercised due care and precaution, the accident could have been avoided. In this regard reference has been made to the testimony of PW 1 Ram Niwas father of the deceased and police report Ex. P1 and Ex. P2. It is then canvassed that neither driving licence nor other relevant documents of the respondent-driver were available on record and thus adjudication by the Tribunal against it, was not sustainable. It is then claimed that even when owner/insured had not been held liable the Insurance Company exclusively had been held liable. Claiming approach of the Tribunal to be wrong and untenable in law, acceptance of the appeal has been sought. Naresh Kumar in the capacity of a helper was travelling in the offending truck. He was sitting besides the driver. When the truck was being driven in the area of village Katahore, Police Station Sarsa Ganju, District Ferozabad (U.P.) around 6:30 A.M. on 18.8.1998, the same came into contact with live electric wires running on the road side resulting into the death of said Naresh Kumar. The vehicle in question was meant for carrying Maruti cars, manufactured by M/s. Maruti Udyog Ltd. Gurgaon (Haryana) respondent No. 5 herein and the same was engaged in this job even at the relevant time. On the relevant day, the offending vehicle was coming from Lucknow (U.P.) to Delhi, after unloading the Maruti cars at the desired destinations.

2. Parents of the deceased Naresh Kumar claimed age of deceased to be 20 years and his earning to be Rs. 3,000/- per month. After considering the evidence on record vide impugned Award, the claimants-respondents had been awarded compensation of Rs. 1,17,000/- with costs and interest @ 9% per annum from the date of filing of the petition till payment thereof, while claim of the appellant Insurance Company is that despite resistance offered by it, the compensation was awarded albeit wrongly by the Tribunal.

3. Appellant Insurance Company has sought discharge from its liability under the policy, where as the contesting respondents have asserted validity and legality of the impugned Award.

4. Originally, the petition was filed under Section 166 of the Motor Vehicle Act, 1988 (hereinafter referred to as ''the Act''). The Tribunal holding that there was no evidence to sustain the plea of negligence of the driver of the offending vehicle as per statement of PW 1 Ram Niwas, father of deceased, read with contents of police report Ex. P1, had taken a suo motu decision to convert the petition from Section 166 of the Act to Section 163-A of the Act and then had proceeded to adjudicate the claim accordingly.

5. At this stage reproduction of Section 163-A of the Act, is made as under:-

163 - A. Special provisions as to payment of compensation on structured formula basis.- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be

Explanation.- For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen''s Compensation Act, 1923. (8 of 1923)

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect

or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

6. From perusal of aforesaid provision, it transpires that under this provision there is no requirement of proof of negligence in driving of the offending vehicle. Compensation under this provision is solely based on the factum of user of the offending vehicle at the time of the accident.

7. In the present case converting the petition under Section 163-A, the Tribunal taking the income of the deceased to be Rs. 15,000/- per annum and his age as 20 years had calculated the compensation as Rs. 1,17,000/-. Finding of the Tribunal in this context is reproduced as below:-

"Deceased son of petitioner was of the age of 20 years at the time of accident and, therefore, after 2/3 years, he would have been married of and thus after his marriage he would have spent about 50% of his earning for the maintenance of himself and his wife and remaining 50% for the well-being of his parents. Therefore, taking his annual income as Rs. 15,000/- per annum, said Naresh Kumar must be contributing to his parents 50% thereof i.e. Rs. 7,500/-. Applying the multiplier of fifteen, the compensation comes to Rs. 1,12,500/- and I accordingly award the same."

8. Without going into the aspect as to whether suo-motu conversion of the petition from the one under Section 166 of the Act into a petition under Section 163-A of the Act and as to whether the Award having been announced without complying with calculations of compensation awardable as given in the Second Schedule appended to Section 163-A of the Act was valid or not, as there is no challenge made to the Award on such counts, sufficient it is to mention that question of the negligence of the offending vehicle, is alien to the provisions of Section 163A of the Act and thus plea of the appellant/Insurance Company on this count is legally not tenable. Even otherwise, stand of the Appellant Company that the offending vehicle had been parked wrongly by its driver is no where borne out of evidence or material on record. Rather, there is overwhelming evidence that the truck was being plied at the time of accident and was not stationary as is claimed by the appellant.

9. Non-production of driving licence, registration certificate route permit and fitness certificate of the offending vehicle is not attributable either to the deceased or to the respondent-claimants. If the Insurance Company wanted to get absolved of its liability under the policy alleging default in any of the conditions of the policy, it was then for the company to prove such circumstances whereby its liability in terms of the policy, could be discharged or whittled down.

10. There is, however, merit in the claim of the Appellant/Insurance Company to ''hat extent that the Tribunal has held only the company to be responsible for

payment of compensation to the claimants, whereas the Award was to be made against all the respondents parties to the Award making them jointly and severally liable though ordering Appellant/Insurance company to make payment being the main stake holder, insurance cover of the offending vehicle having been given by it. It is correct that, there was absolutely no reason with the Tribunal for not having made driver and owner of the offending vehicle jointly and severally liable along with the Insurance Company though making the insurer to pay the compensation amount. Modifying the impugned Award, it is so held now.

11. However, since the offending vehicle had been insured by the Insurance Company and no violation of its terms and conditions is specifically alleged or proved, the appellant Insurance Company would discharge the liability ordered in the Award in favour of the respondent/claimants if the same has not been done. Except the above, other terms and conditions of the Award remain the same. With the above modification in the impugned award, partly accepting the appeal, rest of the Award is affirmed.