(2012) 02 DEL CK 0285

In the Delhi High Court

Case No : MAC. App. 676 of 2007 and MAC. APP. 98 of 2012

National Insurance Company Ltd. APPELLANT

Vs

Ram Rati Devi and Others
 Ram Rati Devi and Others Vs National Insurance Company Ltd. RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Motor Vehicles Act, 1988 — Section 149(2), 166, 181, 3

Citation : (2013) ACJ 583 : (2012) 4 ILR Delhi 627

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Manoj Ranjan Sinha, Mr. Vivekanana Rana, for MAC. app. 676/2007 and Mr. A.K. Chaudhary, for R-1 and R-2 for MAC. app. 98/2012, for the Appellant; A.K. Chaudhary, Advocate for R-1 and R-2 for MAC. App. 676/2007, Mr. Manoj Ranjan Sinha Advocate and Mr. Vivekanana Rana, Advocate for MAC. App. 98/2012, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—These are two Cross Appeals filed by the National Insurance Company Limited claiming recovery rights against the owner of the offending vehicle i.e. Maruti Car No.DL-2CL-8035.

2. Cross Objections registered as MAC APP. 98/2012 are filed by the Claimants to seek enhancement of compensation of Rs. 1,85,000/- for the death of Awadh Kumar, who was aged about 28 years on the date of the accident which took place on 24.06.2004.

3. For the sake of convenience, National Insurance Company which is Appellant in MAC APP. 676/2007 shall be referred to as the Appellant. First and Second Respondents who are the deceased''s parents shall be referred to as the Claimants. Third and Fourth Respondents who are owner and driver of the offending vehicle shall be referred to as owner and driver respectively.

4. Since the owner and the driver did not assail the judgment dated 16.10.2007 impugned herein and the Insurance Company does not challenge the finding on negligence, I am not required to go into the question of proving negligence.

5. The contention raised on behalf of the Appellant is that it was established during inquiry before the Claims Tribunal that the driver did not possess a valid driving licence on the date of the accident. The Appellant was entitled to avoid liability u/s 149(2)(a)(ii) of the Motor Vehicles Act. The Appellant was at least entitled to be granted the recovery rights.

6. It is urged on behalf of the Claimants that the Insurance Company failed to establish the breach of the policy condition and thus, the Claims Tribunal rightly held that the Appellant could not avoid its liability to pay the compensation. It is submitted that the deceased was aged about 50 years on the date of the accident; the Claims Tribunal erred in taking the deceased''s age to be 68 years on the basis of Voter Identity Card issued by the Election Commission of India when there was other evidence on record to show that the deceased was aged only 50 years.

7. First of all, I would deal with the issue of liability of the Insurance Company. Driver of the offending vehicle entered the witness box as RW2. It is true that he denied that the accident was caused by him. As stated earlier, I am not to go into this finding as the owner and the driver have not appealed on the factum of accident caused by the driver due to his negligence. The driver Mohd. Zameer testified that he was taken to the Police Station on 27.04.2004 by the owner of the vehicle. His driving licence was seized by the IO. He made a complaint Ex.RW2/1 regarding his implication to the Vigilance Department. In cross-examination, the witness deposed that the receipt regarding the seizure of the driving licence is not traceable. He testified that he had brought his renewed driving licence. Copy of the said driving licence is proved as Ex.RW2/1. The licence was valid for the period 05.07.2004 to 04.07.2004. The date of issue of this licence was 18.10.2000. No effort was made by the Appellant (the Insurer) to summon the record from the RTO with regard to this licence to show that this driving licence was not valid on the date of the accident. It was argued on behalf of the Appellant that the driving licence issued on 18.10.2000 must have been valid for three years. But, this would only be a speculation as Appellant had an opportunity to summon the record from the RTO and to prove that the driving licence was not valid on the date of the accident.

8. My attention was drawn to the report u/s 173 Cr.P.C. filed against the driver and owner who were prosecuted u/s 3 and 5 read with Section 181 of the Motor Vehicles Act. The Appellant did not produce the IO of the case to rebut the driver''s contention that he had a valid driving licence on the date of the accident which was seized by the IO. Mere filing of the charge sheet u/s 3 of the Act is not sufficient to hold that the driver did not possess a valid driving licence at the time of the accident. Thus, merely on filing of the charge sheet, it would be difficult to show that the driver did not possess a valid driving licence on the date

of the accident.

9. The Claims Tribunal dealt with the contention raised on behalf of the Appellant Insurance Company as under:-

9..... The facts in the present case to an extent are different from the facts in the case being relied upon by R3/Insurance Company in as much as that copy of the driving license has been placed on record by R2, which is Ex.RW2/1, though R2 also appeared as a witness and testified that his driving license was seized by the police and Ex.RW2/1 is the copy of the renewed driving license. In answer to a suggestion on behalf of R3/Insurance Company, R2 has denied that driving license, Ex.RW2/1 was not a renewed license but only a fresh license. In his evidence, R2 has also proved the copy of the complaint made to the Vigilance Department, which is also Ex.RW2/1 and in the complaint to Vigilance Department, R2 has claimed that his driving license was seized by the IO of the case and was not returned when he had gone to recollect the driving license after 3-4 days. Though, it is a fact that R2, the driver of the offending vehicle has failed to produce the receipt given by the IO of the case when his driving license as alleged was seized but after copy of the driving license was placed on record by R2, R3/Insurance Company had the opportunity to summon a witness form Licensing Authority by whom the driving license, Ex.RW2/1 was issued to prove the fact whether driving license was a renewed license or not and whether R2 was having a driving license at the time of accident, but no evidence to that effect has been produced. R3/Insurance Company has failed to discharge the onus to prove that offending vehicle was being driven in violation of terms and condition of the insurance policy at the time of accident and as such, R3/ Insurance Company cannot avoid its liability to indemnify R1, the owner of the offending vehicle for any liability he may incur because of the death caused due to rash and negligent driving of his vehicle.

10. The findings of the Claims Tribunal that the Insurance Company failed to discharge the onus to prove the breach of the policy condition cannot be faulted. The Appellant was thus not entitled to avoid the liability.

11. MAC APP. 676/2007 filed by the Appellant Insurance Company is devoid of any merit; the same is accordingly dismissed. No costs.

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12. Now coming to the Cross Appeal for enhancement of compensation. It would be relevant to refer to the Affidavit of Ram Rati Devi (the Claimant). She gave her age to be 50 years and deposed that her son was earning Rs. 6,000/- per month and sent her Rs. 5,000/- per month. The Claims Tribunal''s finding of taking the deceased''s income to be Rs. 5,000/- per month has not been challenged. The Claimant produced on record her Identity Card issued by the Mukhia of Gram Champaran, Dumria, which showed the age of the First Respondent (the Claimant) to be 50 years on 11.09.2004. There is another document i.e. Voter Identity Card issued on 24.09.2005 which shows her age to

be 68 years as on 01.01.2005. Since the Claimant''s testimony that she was 50 years was not challenged in cross-examination. In view of the contradictory documentary evidence, the age favourable to the Claimants has to be considered for grant of compensation as the provision of Section 166 is a piece of social legislation.

13. The loss of dependency taking the multiplier of ''13'' would come to Rs. 3,90,000/- (Rs. 5,000/- - 50% x 12 x 13). On further addition of sums of Rs. 25,000/- towards loss of love and affection, Rs. 10,000/- towards funeral expenses and Rs. 10,000/- towards loss to estate, the overall compensation comes of Rs. 4,35,000/-.

14. Thus, the compensation awarded stands enhanced from Rs. 1,85,000/- to Rs. 4,35,000/-. The Claims Tribunal granted interest @ 9% per annum from the date of the filing of the petition till the date of award. Considering that the accident took place in the year 2007, I would reduce the interest on the amount awarded by the Claims Tribunal to 7.5% per annum. The enhanced amount of Rs. 2,50,000/- shall also carry interest @ 7.5% per annum from the date of petition till the date of payment.

15. The Appellant National Insurance Company is directed to deposit the enhanced amount along with the upto date interest within 30 days with UCO Bank, Delhi High Court Branch, New Delhi.

16. On deposit of the amount, 25% of the enhanced amount along with the proportionate interest shall be released immediately to the First Respondent Smt. Ram Rati Devi, the mother of the deceased. Rest 75% shall be held in three equal fixed deposits for a period of one year, two years, and three years respectively in the name of the First Respondent in UCO Bank, Delhi High Court Branch, New Delhi.

17. MAC APP. 98/2012 is allowed in above terms.

18. No costs.

19. Pending applications also stand disposed of.