(2009) 11 AHC CK 0326

In the Allahabad High Court

Case No : F.A.F.O. No. 3359 of 2009

New India Assurance Co. Ltd. — APPELLANT

Vs

Alok Dwivedi alias Santosh Dwivedi and Others — RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 170, 173

Citation : (2010) 6 AWC 6169

Hon'ble Judges : Satya Poot Mehrotra, J;Rajesh Chandra, J

Bench : Division Bench

Advocate : Brijesh Chandra Naik, for the Appellant;

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra and Rajesh Chandra, JJ.—The present appeal has been filed u/s 173 of the Motor Vehicles Act, 1988 against the judgment and order/award dated 21.8.2009 passed by the Motor Accidents Claims Tribunal, Allahabad in Motor Accident Claim Petition No. 389 of 2005 filed by the claimant-Respondent No. 1 claiming compensation in respect of an accident which took place on 21.1.2005 wherein the claimant-Respondent No. 1 sustained injuries, and consequently, became physically handicapped.

2. The case of the claimant-Respondent No. 1 was that on 21.1.2005, at about 12.30 in the afternoon, the claimant-Respondent No. 1 was going with his uncle Ashutosh Dwivedi on Hero Honda Motorcycle bearing Registration No. U.P. 45A/0278 which was being driven by the said Ashutosh Dwivedi while the claimant-Respondent No. 1 was sitting on the said Motorcycle as pillion rider ; and that when the said Motorcycle reached Kali Sarak Crossing in mohalla Pura Padain, Police Station Daraganj, district Allahabad, a Mini Truck bearing Registration No. U.G.V. 507, which was being driven by its driver rashly and negligently, hit the said Motorcycle from behind which resulted in the claimant-Respondent No. 1 falling on the ground and sustaining serious injuries, including fracture in his left leg ; and that the said Ashutosh Dwivedi. who was driving the

Motorcycle, also sustained injuries. The claimant-Respondent No. 1 remained hospitalised in Tej Bahadur Sapru Hospital, Allahabad and then in Parvati Hospital, Jawahar Lal Nehru Road, Allahabad. As a result of the injuries sustained by the claimant-Respondent No. 1, he has become physically handicapped.

3. Written statement was filed on behalf of Bhaiya Ram Pal (Respondent No. 3 herein) who denied having any connection with the truck in question or with the accident in question.

4. Written statement was also filed by Hans Bahadur Singh (Respondent No. 2 herein) admitting himself to be the owner of the truck in question, and asserting that all the documents pertaining to the truck in question were valid on the date of the accident. It was denied that the accident took place on account of rash and negligent driving by the driver of the truck in question.

5. The Appellant-insurance company also filed its written statement. It was, inter alia, denied that the accident in question took place on account of rash and negligent driving by the driver of the truck in question. It was denied that the driver of the truck in question was having a valid and effective licence at the time of the accident.

6. The Tribunal framed seven Issues.

Issue No. 1 was as to whether the accident in question was caused by the truck in question, namely, vehicle No. U.G.V. 507.

Issue No. 2 was as to whether the accident in question took place on account of rash and negligent driving by the driver of the truck in question.

Issue No. 6 was as to whether the accident in question took place on account of rash and negligent driving by the driver of the motorcycle in question, namely. Motorcycle No. U.P.-45-A/0278.

The Tribunal decided the above issues together and concluded that the accident in question took place on account of rash and negligent driving by the driver of the truck in question and not on account of rash and negligent driving by the driver of the motorcycle in question.

Issue No. 3 was as to whether the truck in question was insured with the Appellant-insurance company.

Issue No. 4 was as to whether the driver of the truck in question was having valid licence on the date of the accident.

7. The Tribunal decided the above issues together, and concluded that the truck in question was registered in the name of Hans Bahadur Singh (Respondent No. 2 herein), and was insured with the Appellant-insurance company for the period from 9.10.2004 to 8.10.2005 ; and that the truck in question was having valid permit and fitness certificate. The Tribunal further held that the driver of the truck in question (Bhaiya Ram Pal) was having Driving Licence issued on

30.12.1996 for driving light motor vehicle which was endorsed for driving heavy vehicle also w.e.f. 21.12.2001, and the said licence was valid for the periods from 1.1.2005 to 20.12.2007. The Tribunal held that as the driver of the truck in question was having licence for driving Heavy Motor Vehicle and the truck in question was a Mini Truck, there was no violation of the Insurance Policy in case the driver was driving the truck in question.

Issue No. 5 was as to whether the claim petition was bad for non-joinder of necessary party. The Tribunal decided the said issue in the negative.

Issue No. 7 was as to whether the claimant-Respondent No. 1 was entitled to any compensation, and if yes, as to what was the quantum of such compensation and against whom the same was to be awarded. The Tribunal held that the claimant-Respondent No. 1 was entitled to compensation amounting to Rs. 1,81,584 with interest @ 6 per cent per annum with effect from the date of filing of the claim petition till the date of actual payment, and the liability for the payment of the said compensation was on the Appellant-insurance company.

8. The Appellant-insurance company has filed the present appeal challenging the aforesaid award.

9. We have heard Sri Brijesh Chandra Naik, learned Counsel for the Appellant-insurance company, and perused the record filed with the appeal.

10. From a perusal of the record, it is evident that an application was filed on behalf of the Appellant-insurance company u/s 170 of the Motor Vehicles Act, 1988 seeking permission to contest the claim petition on all grounds which were available to the owner of the truck in question/insured person. However, the Tribunal by the order dated 7.8.2008 rejected the said application.

Thus, it is evident that no permission u/s 170 of the Motor Vehicles Act, 1988 was granted to the Appellant-insurance company.

11. Section 170 of the Motor Vehicles Act, 1988 provides as follows

170. Impleading insurer in certain cases.--Where in the course of any inquiry, the Claims Tribunal is satisfied that--

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim, it may for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in Sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

Sub-section (2) of Section 149 of the Motor Vehicles Act, 1988, which is referred to in Section 170 of the said Act. is as under:

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.--(1)....

(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal ; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle--

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle ; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification ; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) to (7)....

12. Reading the above-quoted Section 170 and Sub-section (2) of Section 149 together, it is evident that in case the Tribunal grants permission to the insurer u/s 170 of the Motor Vehicles Act. 1988, the insurer will get right to contest the claim petition on all or any of the grounds that are available to the person against whom the claim has been made. However, if such permission u/s 170 of the Motor Vehicles Act, 1988 is not granted to the insurer by the Tribunal, then the insurer will be able to defend the award of compensation against it only on the limited grounds indicated in Sub-section (2) of Section 149 of the said Act. One such ground is that the person driving the vehicle in question is not duly

licensed or has been disqualified for holding or obtaining a driving licence during the period of disqualification.

13. Thus, in the absence of permission u/s 170 of the Motor Vehicles Act, 1988, the insurer will be able to defend the claim for compensation against the insurer on the limited grounds mentioned in Sub-section (2) of Section 149 of the Motor Vehicles Act, 1988. Therefore, in such a case, when an appeal is filed by insurer u/s 173 of the Motor Vehicles Act, 1988 against the award made by the Tribunal, such appeal may be considered only on the limited grounds mentioned in Sub-section (2) of Section 149 of the said Act.

14. In view of the above, it is evident that the Appellant-insurance company in the present case may only challenge the findings recorded by the Tribunal in respect of Issue Nos. 3 and 4.

15. As noted above, the Tribunal has held that the truck in question was insured with the Appellant-insurance company for the period from 9.10.2004 to 8.10.2005. Thus, the truck in question was duly insured with the Appellant-insurance company on the date of the accident.

16. The Tribunal has further held that the driver of the truck in question (Bhaiya Ram Pal) was having Driving Licence dated 30.12.1996 for driving Light Motor Vehicle, and the said licence was endorsed on 21.12.2001 for driving Heavy Vehicle, and the said licence was valid for the period from 1.1.2005 to 20.12.2007. Thus, on the date of the accident, the driver of the truck in question was having a valid and effective licence for driving Light Motor Vehicle as well as Heavy Motor Vehicle. The truck in question was a Mini Truck, and there was no violation of the insurance policy in case the driver was driving the truck in question.

The findings recorded by the Tribunal are based on the documentary evidence brought on record.

17. Sri Brijesh Chandra Naik, learned Counsel for the Appellant-insurance company has not been able to show any error in the findings recorded by the Tribunal on the aforesaid issues.

18. Having gone through the findings recorded by the Tribunal on the aforesaid issues, we agree with the reasoning and the conclusions recorded by the Tribunal on the said issues. In our view, the Tribunal has recorded correct findings on the said issues on consideration of the documentary evidence brought on record, and the said findings do not call for any interference by this Court.

19. In view of the above, the appeal filed by the Appellant-insurance company lacks merits, and the same is liable to be dismissed.

20. The appeal is accordingly dismissed. However, on the facts and in the circumstances of the case, there will be no order as to costs.

The amount of Rs. 25,000 deposited by the Appellant-insurance company while filing the present appeal, will be remitted to the Tribunal for being adjusted towards the deposit to be made by the Appellant-insurance company under the impugned award.

