(1995) 09 DEL CK 0066

In the Delhi High Court

Case No : First Appeal No. 216 and 223 of 1982

New India Assurance Co. Ltd. APPELLANT

Vs

Indra Jaggannathan and Others RESPONDENT

Date of Decision : 14-09-1995

Acts Referred:

Citation : (1996) 1 ACC 267 : (1996) 61 DLT 139 : (1996) 112 PLR 31

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : G.K. Sharma, S.P. Aggarwal, Sandip Aggarwal and O.P. Goyal, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present judgment will dispose of Fao Nos. 216/82 and 223/82. The brief facts are that on April 27, 1974 at about 8.45 a.m. deceased P.Jagannathan was driving his two -.wheeler scooter No. CJN-72 on Station Road, Delhi Cantt. Shri Steven Casewell (respondent No. I in Fao No. 223/82) was sitting asa pillion rider. It was stated that scooter was being driven on the correct side and at normal speed. When it reached the load near Raj RiflesContre, bus No. DLP-5420 tame from the opposite direction. The bus was alleged to be driven rashly, recklessly and negligently by Kashmir Singh, respondent No. 2. The said respondent was driving the bus at a very fast speed and without any proper look out was overtaking and while doing so the bus came on the wrong side and violently hit the two-wheeler scooter driven by the deceased in which the injured Steven Casewell was going. The said accident resulted in the death of P. Jagannathan and injuries to Steven Casewell. The bus in question was owned by respondent No. 3 and was insured with appellant Insurance Company. Smt. Indra Jagannathan, widow of the deceased, claimed compensation of Rs. 5 lakhs Along with interest at the rate of 12 per cent per annum from the date of accident till realisation. In her claim petition (Suit No. 105/79) it was stated that the deceased was aged about 34 years and was working as Accountant with M/s.

Engineers India Ltd. and was earning Rs. 1,303.00 and ether benefits as provided under the rules of the Company. It was further pleaded that he was in good health Respondents 4 and 5 are the parents of the deceased. The injured-claimant Steven Casewell filed his claim petition on the ground that he suffered fracture of shaft femur right leg with compound fracture of patella which was removed. He has stated that he suffered head injuries and cut wounds on right cheek, lower lip and scratches over the right leg. He has claimed the compensation of Rs. 1,00,000.00 lakh with interest at the rate of 12 per cent per annum from the date of accident till realisation

(2) Both the claim petitions were contested by the appellant New India Assurance Co. Ltd. It was stated that the liability of the company was limited to the extent of Rs. 50,000.00 in respect of one and series of claims arising out of one accident. The following issues were framed on the pleadings of the Parties : Suit No. 105179 (Smt. Indra Jaggunathan v. Kashmir Singh 1. Whether Shri P. Jagannathan sustained fatal injuries due to rash and negligent driving of bus No, DLP-5420 on the part of respondent No Whether the petitioner is the legal representative of the deceased? Whether the deceased was guilty of contributory negligence? If so, its effect? To what amount of compensation, if any, is the petitioner entitled and from whom? Relief Suit No. 106/79 (Steven Casewall v. Kashmir Singh 1. Whether the accident took place due to rash and negligent driving of respondent No. 1 resulting injuries to the petitioner? 141 2. Whether the petitioner was guilty of contributory negligence? If so its effect? 3. To what amount of compensation if any,)is the petitioner entitled and from whom? 4. Whether Insurance Company is not liable for reasons .stated in the preliminary'' objections of its written statement? If so, with what effect? 5. Relief. The issues with regard to negligence and limit of liability of the appellant Insurance Company are common and it will not be necessary to deal with them Separately. The Tribunal on appreciation of evidence has come to the conclusion that there was no negligence on the part of the deceased Shri P Jaggannathan and issues I and 2 in Suit No. 105/79 (FAO No. 216/82) were decided accordingly. Similar finding was given in respect of the claim petition filed by the injured Steven Case well .These findings are not challenged before me and the same are accordingly affirmed. The Tribunal assessed the evidence on record anil held that the carry-home salary of the deceased Shri P. Jaggannathan was Rs. 13,094.00 per annum. The yearly dependency was assessed at Rs. 8,729.00. The deceased was 34 years of age and the multiplier of Ii was held as appropriate by the Tribunal. The total amount on that basis was assessed at Rs. 96,009.00. The deduction for lumpsum payment was made from this amount to the extent of 10 per cent and the ultimate assessment was made in the sum of Rs. 86,418.00 rounded of Rs. 86,420.00. This amount was held payable in the following proportion : i. Rs. 24,000.00 to the mother of the deceased Smt Lakshmi Padmanabhan, respondent No. 4; 2. Rs. 62,420.00 in favor of the widow Smt. Indra Jaggannathan , respondent No. 1 herein. In the other claim petition (Suit No. 106/79) which is subject matter of challenge in Fao No. 223/82, the Tribunal

made an award in the sum of Rs. 14,500.00 in favor of respondent No. I therein for the injuries sustained by him in the accident. The respondents-claimants have not filed any appeal or cross objections to claim enhancement and no challenge is made to the awards by the appellant Insurance Company or by the other respondents. They are, accordingly, affirmed. Mr. Sharma who appears for the Insurance Company only impugns the award in favor of Smt. Indra Jaggannathan (FAO No. 216/82) to the extent that the Tribunal has erred in fixing the liability of the Insurance Company as unlimited on the basis of the policy which was filed in the Court. He contends that the policy specifically limits the liability of the Company to such amount as is necessary to meet the requirements of Motor Vehicles Act, as amended up to December 29,1969. The liability fixed under the Act, according to him, was only Rs. 50,000.00 at the relevant time. Therefore, the award in excess of that amount cannot be sustained. There is no doubt that the Tribunal has based his finding on the question of liability of the appellant company by referring to the policy which has been filed on record. I have perused the copy of the policy which indicates that the same is comprehensive policy and is not an "Act only" policy. There is no doubt that comprehensive insurance of the vehicle and payment of higher premium on this score would not mean that the limit of liability with regard to third party risk became unlimited or higher to the statutory liability. A specific agreement has to be arrived at between the owner and the Insurance Company and separate premium has to be paid on the amount of liability undertaken by the Insurance Company in this regard. There is no evidence on record which has been brought to my notice to indicate that the higher premium has not been paid to cover the additional liability of the appellant company. The policy is neither the original nor the carbon copy but only an attested true copy of the same. In this background, it cannot be held that the liability of the Insurance Company, appellant herein, is limited only t(s the extent of Rs. 50,000.00. There is no reason to interfere in the impugned awards. The Tribunal has correctly assessed the liability of the appellant as unlimited. The appeals, Fao Nos-216 and 223/82 are, consequently, dismissed with costs, which are quantified at Rs. 2,500.00 in each case.

