
(2013) 10 DEL CK 0228
In the Delhi High Court
Case No : MAC.App. 960 of 2011

New India Assurance Co. Ltd.

APPELLANT

Vs

Ram Partap and Others

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 66, 88

Citation : (2013) 10 DEL CK 0228

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Sameer Nandwani, for the Appellant; Anshuman Bal, for R1 and R2 and Mr. Praveen Kumar Jain, for R3 and R4, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Instant appeal has been preferred against the impugned award dated 06.08.2011 whereby, Id. Tribunal has granted compensation for a sum of Rs. 6,02,980/- with interest @ 7.5% per annum from the date of filing of the petition till realization. Id. Counsel appearing on behalf of the appellant has argued that on 08.08.2009 at about 9 A.M. deceased Lalit was going on his motorcycle from Najafgarh to Old Kakrola Road. When he reached Najafgarh near Dabas Medical Store, offending truck bearing registration no. HR-16GA-0319 came from opposite direction and hit the motorcycle. As a result thereof, deceased fell down on the road and received fatal injuries. Id. Counsel submits that above narrated accident was head on collision, despite that Id. Tribunal has not ascertained any contributory negligence on the part of the deceased.

2. On information, Police registered an FIR Ex. PW1/1 against the driver of the offending vehicle HR-16GA-0319 and accordingly with site plan DAR was filed, which is on record. It is established from the DAR that there is no case filed against any other vehicle except the offending vehicle as mentioned above. In the DAR it is nowhere stated that the said accident had taken place as a result of

contributory negligence.

3. Every head on collision cannot be said to be a contributory negligence until and unless it is specifically investigated or proved by the opposite party that drivers of both the vehicles were equally responsible for the said accident. Therefore, I do not find any discrepancy in the view taken by the Id. Tribunal that there was no contributory negligence on the part of the deceased.

4. The second ground argued by the Id. Counsel for the appellant is that the driver of the offending vehicle was not having valid permit to ply the vehicle in Delhi and in that eventuality Id. Tribunal ought to have exonerated the appellant.

5. Id. Counsel for the appellant submits that as per Section 88 of the Motor Vehicles Act, 1988 a vehicle can go up to 16 Kms. beyond the route permit, whereas in the present case, permit of the offending vehicle was to ply in Haryana only and its last border was at Najafgarh. The vehicle reached Roshanara Road, Delhi which is 90 Kms. from its origin at Bhiwani and the same is contrary to Section 88 of Act.

6. However, the admitted fact is that the said vehicle came to Roshanara Road at Delhi for repair, which has been proved by R1 W2, driver of the vehicle no. HR-61-2338, which towed the offending vehicle and taken to the workshop namely; M/s. Lokesh Engineering Works at Roshana Road, Delhi from Bhiwani (Haryana).

7. The aforementioned witness has specifically stated that the offending vehicle no. HR-16G-0319 was having some serious mechanical problem at Bhiwani and was not road worthy in the first week of August, 2009. Therefore, the vehicle was in need of some special repair work, which was easily available at Delhi only.

8. Also stated that he brought the vehicle from Bhiwani to Delhi via, Bhiwani, Jhajjar, Najafgarh and reached to Roshanara Road, Delhi and left the offending vehicle at the workshop as mentioned above.

9. R1W3 has proved R1W3/B, i.e., the bill qua the repair paid by the owner of the offending vehicle to Lokesh Auto Engineering Works.

10. As per Section 66 of the Motor Vehicles Act, 1988, a vehicle can be taken to any place for repair. Therefore, the limitation of 16 Kms. provides in Section 88 of the Act is not applicable in the present case as the offending vehicle came from Bhiwani to Delhi for repair purposes.

11. The driver of the offending vehicle has deposed that the said vehicle was towed from Bhiwani to Delhi one day prior to the date of the accident. However, his statement has no bearing in view of the statements made by R1W2 and R1W3 who proved that the offending vehicle reached to the Lokesh Auto Engineering Works and towed by R1W2.

12. It is important to note that R1W2 and R1W2 have not been cross-examined by the appellant/insurance company on the issue raised by them. Moreover, they

have not cross-examined any witness to belie their statements.

13. It is legally significant to note the findings in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , wherein it is held as under:

102. The summary of our findings to the various issues as raised in these petitions are as follows:

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured u/s 149(2) of the Act.

14. In view of the above dictum in Swarn Singh (Supra), the alleged deviations in the permit are not sufficient to exonerate from the liability. The stipulations in the insurance policy are interpreted on the basis of two concepts: rule of main purpose and fundamental breach. Therefore, there is no wilful breach in terms of the insurance policy. Thus, I do not find any substance on the ground taken by the appellant.

15. The third issue argued by the Id. Counsel for the appellant is that claimants filed the salary certificate of the deceased as Rs. 7,200/- per month, however, same has been rejected by the Id. Tribunal for the reasons, that seems to be fabricated.

16. Id. Counsel submits that in such eventuality, his notional income of Rs. 15,000/- per annum should have been considered as per the second schedule of the Motor Vehicles Act. Settled law is that if a person is not an earning member, then his annual income has to be considered as per the Second Schedule of the Act.

17. In the case in hand, deceased died at the age of 21 years. Claimants filed the salary certificate of the deceased, however they could not prove the same. Therefore, Id. Tribunal has rightly assessed the monthly income of the deceased as per the minimum wages applicable at the relevant time.

18. In view of above, I do not find any discrepancy in the order passed by the Id. Tribunal. Accordingly, instant appeal stands dismissed.

CM. No. 19925/2011

With the dismissal of the instant appeal, instant application has become infructuous and dismissed as such.