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(2024) 10 RAJ CK 1196

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Misc. Appeal No. 714 Of 2024

Universal Sompo General Insurance Co. Ltd. — APPELLANT

Vs

Pushpa Kanwar — RESPONDENT

Date of Decision : 07-10-2024

Acts Referred:
Code of Criminal Procedure, 1973 — Section 446

Citation : (2024) 10 RAJ CK 1196

Hon'ble Judges : Arun Monga, J

Bench : Single Bench

Advocate : M.K Dudy, Vikram Singh Rajpurohit

Final Decision : Disposed of

Judgement

Rekha Borana, J

1. The present appeal has been preferred against the impugned judgment and award dated 22.11.2023 passed by Motor Accident Claims Tribunal, Bikaner in MAC Case No.219/2022 (CIS No.219/2022) whereby the claim petition as preferred under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') was allowed and a sum of Rs.5,00,000/-with interest @ 9% per annum had been awarded in favour of the claimants.

2. At this stage itself, it is relevant to note that although the claim petition was preferred by the claimants in terms of Section 163-A of the Act (as it then existed), the learned Tribunal proceeded on to decide the same in terms of the amended provision of Section 164 of the Act on the premise that the Motor Vehicles (Amendment) Act, 2019 (hereinafter referred to as 'the Act of 2019') had come into effect from 01.09.2019 and hence, the present appeal would be governed by the amended provision.

3. Admittedly, the vehicle in question was driven by deceased Prem Singh who was found to be negligent in the police investigation but because of his death, a final report was filed.

4. Mr.Vishal Singhal, learned counsel for the appellant Insurance Company raised the following grounds :

(i) The present claim petition could not have been decided by the learned Tribunal in terms of Section 164 of the Act as the said provision was substituted vide amendment which came into effect

from 1st April 2022 only. The present claim petition pertaining to an accident of June, 2021 could not have been governed by the said provision.

(ii) So far as Section 163-A of the Act is concerned, it pre-supposes a 'victim' whereas in the present matter, the deceased himself was the tortfeasor and could not have been termed to be a 'victim'. Further, the deceased was not a third party qua the vehicle involved in the accident and therefore also, the claimants could not have maintained the claim in terms of Section 163-A of the Act.

(iii) The deceased, in the present matter, stepped into the shoes of the owner and hence, no claim against the owner and the insurer of the vehicle could have been made by the claimants.

5. In support of his submissions, learned counsel relied upon the following judgments of the Hon'ble Apex Court and various High Courts :

(i) Chandrakanta Tiwari Vs. New India Assurance Co. Ltd.; 2020 (7) SCC 386

(ii) Oriental Insurance Co. Ltd. Vs. Rajni Devi; 2008(3) RLW (Raj.) 2285

(iii) Narayana Rao Vs. Nagaraj; 2019(6) KarLJ 358

(iv) Sangeetha Vs. Krishna Chari; 2020 ACJ 61

(v) Ayyappan Pillai Vs. Thomas M.; 2020(3) KHC 313

(vi) First Appeal No.771/2009; The Oriental Insurance Co. Ltd. vs. Shri Wasudeo Mukaji Sambhalkar & Ors. (decided on 08.02.2023) by the Nagpur Bench of Bombay High Court

(vii) The Divisional Manager, TATA AIG Gen. Ins. Co.Ltd. Vs. A.C.Jagadeesann & Anr.; 2023 ACJ 122

(viii) First Appeal No.78/2012; The New India Assurance Company Ltd. vs. Kaushallyabai & Ors. (decided on 21.02.2024) by the Aurangabad Bench of Bombay High Court.

6. Per contra, learned counsel for the respondents claimants while relying upon the Hon'ble Apex Court judgment in Shivaji & Anr. vs. Divisional Manager, United India Insurance & Ors.; (2019) 12 SCC 395 submitted that in a proceeding under Section 163-A of the Act, the insurer cannot raise any defence of negligence on part of the victim to counter a claim for compensation.

So far as the decision of the claim petition by the learned Tribunal under Section

164 of the Act is concerned, learned counsel submitted that the same would even otherwise make no difference as the intent of both the provisions remains the same and even the compensation as payable in terms of both the provisions, in the case of death, remains the same.

7. Heard the counsels and perused the record.

8. So far as the issue whether the insurer can be permitted to raise any defence of negligence on part of the victim is concerned, the same no more remains res integra. The Hon'ble Apex Court while deciding the reference on the same issue in the case of United India Insurance Company Limited Vs. Sunil Kumar and Another; (2019) 12 SCC 398, held that in a proceeding under Section 163-A of the Act, it is not open for the insurer to raise any defence of negligence on part of the victim.

Reiterating the above position of law, the Hon'ble Apex Court in Shivaji's case (supra) held as under :

"4. The issue which arises before us is no longer res integra and is covered by a recent judgment of three judges of this Court in United India Insurance Co. Ltd. v. Sunil Kumar and another, wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163-A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is "final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability were taking an unduly long time". The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163-A of the Act, it would "bring a proceeding under Section 163-A of the Act, at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention". Consequently, it was held that in a proceeding under Section 163-A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation."

9. In view of the above ratio as laid down by Hon'ble the Apex Court, the judgments of various High Courts as relied upon by learned counsel for the appellant, would be of no help to him and this Court is not required to probe into the same.

10. So far as the applicability of amended provision of Section 164 of the Act is concerned, true it is that the learned Tribunal wrongly recorded a finding that the same came into effect from 01.09.2019 as, the correct position is that vide S.O. 859(E) dated 25.02.2022 of the Ministry of Road Transport and Highways, Section 51 of the Act of 2019 was brought into effect. Vide Section 51 of the Act of 2019, the existing Chapter XI of the Act was substituted with a new Chapter XI. Meaning thereby, the existing Sections 145 to 164 (Chapter XI) were substituted by the complete new Chapter comprising of Sections 145 to 164D.

Therefore, the finding recorded by the learned Tribunal to the effect that the matter would be governed by Section 164 of the Act is hereby set aside.

11. But then, the decision of the present claim petition, in terms of Section 164 of the Act, would even otherwise, not make any difference so far as the compensation amount/claim awarded is concerned.

12. Section 163A of the Act (as it then existed) read as under :-

"163A. 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 or the authorised 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."

13. The Second Schedule to the Act as amended vide S.O.2022 (E) dated 22.05.2018, read as under :

"[THE SECOND SCHEDULE

(See section 163A)

SCHEDULE FOR COMPENSATION FOR THIRD PARTY FATAL ACCIDENTS/INJURY CASES CLAIMS

1.(a) Fatal Accidents:

Compensation payable in case of Death shall be five lakh rupees.

(b) Accidents resulting to permanent disability:

Compensation payable shall be = [Rs.5,00,000 x percentage disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923)]:

Provided that the minimum compensation in case of permanent disability of any kind shall not be less than fifty thousand rupees.

(c) Accidents resulting in minor injury:

A fixed compensation of twenty five thousand rupees shall be payable:

2. On and from the date of 1st day of January, 2019 the amount of compensation specified in the clauses (a) to (c) of paragraph (1) shall stand increased by 5 percent annually.]"

14. The existing provision of Section 164 of the Act reads as under :-

"Section 164 - Payment of compensation in case of death or grevious hurt, etc. -- (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 or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(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.

15. A bare perusal of the above provisions makes it clear that the compensation amount to be awarded in case of death, in the matters governed by both Section 163A and the substituted Section 164 is, five lakh rupees. The compensation as awarded in the present matter is Rs.5 lakh with interest. What can therefore be concluded is that the present claim petition, even if had been decided in terms of the then existing Section 163A of the Act, the compensation as awarded by the learned Tribunal, would have remained the same.

16. In view of the above conclusion, this Court is of the opinion that remanding the matter to the learned Tribunal for computation afresh, in terms of Section 163A of the Act, would be a futile exercise. It is therefore, hereby directed/ declared that the impugned award dated 22.11.2023 be read/deemed to have been decided in terms of the then existing Section 163A of the Act.

17. The award dated 22.11.2023 is hence, modified only to the above extent. No interference in the compensation amount as awarded, is called for and the same is hereby, affirmed. The present appeal stands disposed of.

18. The appellant Insurance Company shall be under an obligation to deposit the

amount of compensation as per the award with immediate effect, if not deposited yet. The amount when deposited be disbursed to the claimants in terms of the award with utmost expedition.

19. Stay petition and the pending applications, if any, also stand disposed of.

