(2020) 07 J&K CK 0064

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 153 Of 2011, 304 Of 2013, IA No. 99001 Of 2011, 554, 865 Of 2013, 1 Of 2015

Oriental Insurance Co. Ltd — APPELLANT

Vs

Paras Ram And Others — RESPONDENT

Date of Decision : 16-07-2020

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2020) 07 J&K CK 0064

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Amrit Sarin

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

MA 153/2011

This appeal filed by the Oriental Insurance Company (hereinafter referred to as the 'insurer') is directed against the interim award dated 15.12.2010 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as the 'Tribunal') under Section 140 of Motor Vehicles Act whereby the insurer was directed to pay compensation of Rs.25000/- on account of 'no fault liability' to respondent No.1 i.e the claimant.

The Tribunal has concluded the proceedings and has passed the final award on 10.05.2013 which is subject matter of challenge in MA 304/2013.

In view of the above, this appeal has been rendered infructuous and the same is, accordingly, dismissed as having been rendered infructuous.

MA 304/2013

1. Oriental Insurance Company Ltd. (hereinafter referred to as the 'insurer') is in

appeal against the award dated 10.05.2013 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as the 'Tribunal') in file No. 22/claims titled 'Paras Ram vs. Raman Gutpa and others whereby and whereunder respondent No.1 (hereinafter referred to as the 'claimant') has been held entitled to compensation of Rs.2,25,000/-along with interest at the rate of 7.5% per annum from the date of filing of petition till its realization.

2. The impugned award has been assailed by the insurer solely on the ground that the claim petition under Section 166 of M.V.Act was not maintainable, in that, the claimant, at the time of accident, was working as labourer with the offending Truck owned by the insured.

3. Mr. Amrit Sarin, learned counsel for the insurer submits that, having regard to the fact that the injured was an employee of the insured, the liability of the insurer could not have been higher than what is prescribed under the Employees Compensation Act, 1923 (hereinafter referred to as 'the Act')

4. Having heard learned counsel for the insurer and perused the record, I am of the view that the aforesaid plea raised by the insurer for the first time in this appeal is not available to it for the reasons given hereinafter.

5. On the basis of pleadings of the parties, the Tribunal framed the following issues:

MA 153/2011

(i) Whether an accident took place on 11.08.2008 at Kanyala near Jindrah Tehsil and District by rash and negligent driving of offending vehicle No. JK02AG-6807 in the hands of erring driver as a result of which petitioner suffered grievous injuries ? OPP

(ii) If issue No.1 is proved in affirmative, whether petitioner is entitled to the compensation; if so to what amount and from whom ? OPP

(iii) Whether claim petition is hit by payment of wages Act or not ? OPR-3

(iv) Whether at the time of accident driver of offending vehicle was not holding a valid and effective driving licence and drove the vehicle in violation of terms and conditions of insurance policy ? OPR-3

(v) Relief ? O.P. Parties

6. A perusal of the issues clearly indicates that no issue with regard to the limited liability of the insurer in terms of the Act has been specifically framed. There is no effort made by the insurer before the Tribunal to have a specific issue framed, so that the parties could lead their evidence accordingly.

7. In the absence of specific pleadings and the issue framed by the Tribunal, this Court, in this appeal, cannot permit the insurer to raise an issue which is essentially an issue of fact, Otherwise also, I have given my thoughtful consideration to the point raised by the learned counsel for the insurer and find

that even if the compensation payable to the claimant is computed in terms of the Act, there would be no substantial difference in the amount payable.

8. In the given facts and circumstances and also looking to the fact that a very reasonable, just and fair award has been passed by the Tribunal, I am not inclined to accept the plea of the insurer.

9. For the foregoing reasons, I find no merit in this appeal. The same is, accordingly, dismissed.

The amount deposited in the Registry shall be released in favour of the claimant after proper identification strictly in terms of the impugned award.

