(2012) 07 DEL CK 0447

In the Delhi High Court

Case No : MAC.APP. 166 of 2010

Oriental Insurance Company Ltd — APPELLANT

Vs

Chandona Pramanik and Others — RESPONDENT

Date of Decision : 11-07-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)(a), 163A

Citation : (2012) 07 DEL CK 0447

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Manjusha Wadhwa, for the Appellant; Mahesh Kumar, for R-1 to R-3, for the Respondent

Final Decision : Disposed Off

Judgement

G.P. Mittal, J.—The Appellant Oriental Insurance Company Limited impugns a judgment dated 19.12.2009 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 6,09,550/- was awarded in favour of the Respondents No.1 to 3 (the Claimants) for the death of one Johar who died in a motor vehicle accident which occurred on 28.11.2003. A Claim Petition u/s 163-A of the Motor Vehicles Act, 1988 (the Act) was preferred by the Respondents No.1 to 3 claiming the income of the deceased to be Rs. 40,000/- per annum. In the absence of any proof of income, the Claims Tribunal took the minimum wages of an unskilled worker i.e. Rs. 2784/- per month, added 50% towards inflation on basis of the judgment of this Court in National Insurance Company Ltd. v. Kailash Devi, II (2008) ACC 770, and applied the multiplier of ''16'' to compute the loss of dependency as Rs. 5,34,528/-. On adding a sum of Rs. 50,000/- towards loss of love and affection and Rs. 25,000/- towards funeral expenses, the overall compensation was computed as Rs. 6,09,528/- (rounded off to Rs. 6,09,550/-).

2. The Claims Tribunal found that the driver of the offending TSR (Nand Lal, Respondent No.5) did not possess a valid driving licence to drive a TSR and,

therefore, held that the Appellant would pay the compensation in the first instance with the right to recover the same.

3. There is twin challenge to the judgment.

4. Firstly, it is urged that in a Claim Petition u/s 163-A of the Act, no addition towards inflation can be made and the compensation has to be granted on the deceased''s income on the date of the accident as per the structured formula provided in the Second Schedule to the Act.

5. Secondly, it is contended that in case of possession of no driving licence by Respondent No.5, the Appellant ought to have been totally exonerated and instead, the owner and the driver of the offending vehicle should have been made liable to pay the compensation.

6. It is no longer res integra that in a Petition u/s 163-A of the Act, the compensation has to be awarded in accordance with the Second Schedule.

7. In The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., and Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, it was held that Section 163-A of the Act provides speedy remedy to a distinct and specified class of citizen i.e. the persons whose annual income was Rs. 40,000/- or less and the compensation is payable as per the Second Schedule.

8. In the absence of any evidence with regard to the deceased''s income, the Claims Tribunal was justified in taking his income as Rs. 2784/- per month. The multiplier at the age of 32 as per the Second Schedule would be ''17'' instead of ''16'' as taken by the Claims Tribunal. The loss of dependency thus comes to Rs. 3,78,624/- (2784/- x 12 x 2/3 x 17).

9. In addition, the Claimants would be entitled to compensation of Rs. 9,500/- towards non pecuniary damages (i.e. Rs. 2,500/- towards loss to estate, Rs. 5,000/- towards loss of consortium and Rs. 2,000/- towards funeral expenses).

10. The overall compensation thus comes to Rs. 3,88,124/-.

11. With regard to second contention, it may be sated that on appreciation of evidence, the Claims Tribunal found that the owner and the driver failed to produce any driving licence in spite of service of notice under Order XII Rule 8 CPC.

12. In the circumstances, the Claims Tribunal rightly drew an inference that the driver did not possess a valid driving licence and that is why, the owner and the driver failed to produce the same. This view is supported by a judgment of this Court in New India Assurance Co. Ltd. v. Sanjay Kumar and Ors., ILR 2007(II) Delhi 733.

13. With regard to the payment of compensation in case of breach of the terms of policy, it is well settled that the insurer is liable to satisfy the decree vis-?-vis

the third party and is entitled to recover the same from the owner and the driver in the same proceeding without having recourse to independent civil proceedings.

14. There is an authoritative pronouncement of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, Paras 73, 104 and 105 are extracted hereunder :-

73. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

xxx

xxx

104. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.

15. Following Swaran Singh, (Supra) this Court in National Insurance Company Limited v. Sanjay Kumar, ILR, 2007 (2), Delhi, 733 held that even when breach of the terms and conditions of policy of insurance in terms of Section 149(2)(a) of the Motor Vehicle Act, 1988 is proved, the insurance company would still be required to pay the sum awarded to the claimant, but would be entitled to the recovery rights against the insured.

16. In MAC APP 329/2010, Oriental Insurance Company Limited Vs. Rakesh Kumar and Others, decided on 3rd February, 2012, this Court noticed National Insurance Co. Ltd. Vs. Swaran Singh and Others, , Sohan Lal Passi Vs. P. Sesh Reddy and others, New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., and United India Insurance Company Ltd. Vs. Lehru and Others, and held that even when there is a willful breach of the terms of policy u/s 149(2)(a) of the Act, the Insurance Company is under obligation to indemnify the liability towards the third party and recover the same from the owner.

17. Learned counsel for the Appellant places reliance of the Supreme Court judgment in Malla Prakasarao Vs. Malla Janaki and Others, ; to urge that the Appellant should be totally exonerated.

18. This Court in MAC APP.329/2010 titled Oriental Insurance Co. Ltd. v. Rakesh Kumar & Ors.'' decided on 29.02.2012, considered the judgments in Malla Prakasarao Vs. Malla Janaki and Others, , National Insurance Co. Ltd. Vs. Kusum Rai and Others, National Insurance Company Limited v. Vidhyadhar Mahariwala & Ors., (2008) 12 SCC 701; Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, and Premkumari and Others Vs. Prahlad Dev and Others, Sohan Lal Passi Vs. P. Sesh Reddy and others, New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., United India Insurance Company Ltd. Vs. Lehru

and Others, National Insurance Co. Ltd. Vs. Swaran Singh and Others, , Oriental Insurance Co. Ltd. Vs. Zaharulnisha and Others, National Insurance Co. Ltd. Vs. Geeta Bhat and Others, and National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, and held that the three Bench decision of the Supreme Court in Sohan Lal Passi Vs. P. Sesh Reddy and others, and National Insurance Co. Ltd. Vs. Swaran Singh and Others, would be a binding precedent.

19. In the circumstances, I hold that the Claims Tribunal rightly made the Appellant Insurance Company to satisfy the decree in the first instance with a right to recover the same. The Claims Tribunal was, however, silent as to the mode of recovery. It is directed that the Appellant Insurance Company shall be entitled to recover the amount of compensation paid along with interest from the Respondents No.4 and 5, the owner and driver of the offending vehicle in execution of the impugned judgment without having recourse to independent civil proceedings.

20. In view of the above discussion, the compensation amount is reduced from Rs. 6,09,550/- to Rs. 3,88,124/-. This amount along with interest @ 7.5% per annum as awarded by the Claims Tribunal shall be released to the Respondents No.1 to 3 in terms of the order passed by the Claims Tribunal.

21. Rest of the amount along with proportionate interest and the interest accrued on this amount during pendency of the Appeal shall be refunded to the Appellant Insurance Company.

22. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. Pending Applications also stand disposed of.