

(2013) 02 AHC CK 0206

In the Allahabad High Court

Case No : First Appeal From Order No. 410 of 2013

Oriental Insurance Company Ltd.

APPELLANT

Vs

Pankaj and Another

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Citation : (2013) 02 AHC CK 0206

Hon'ble Judges : Rakesh Tiwari, J and Anil Kumar Sharma, J

Final Decision : Dismissed

Judgement

Heard learned counsel for the appellant and learned counsel for claimant/respondent no. 1 at length and perused the impugned award as also the papers filed along with the memo of appeal.

The appellant has challenged the award dated 5.11.2012 passed by MACT/Special Judge (SC/ST Act), Meerut in M.A.C. no. 337/2008, whereby compensation of Rs. 5,35,000/ together with simple interest @ 6% per annum had been awarded to respondent no. 1 on account of grievous injuries sustained by him in the instant motor accident.

The claimant (respondent no. 1) filed claim petition for an award of Rs. 20.50 lacs together with interest @ 12% per annum for grievous injuries sustained by him on 15.1.2007 at about 3 a.m. in the vicinity of P.S. Daurala District Meerut near Sakauti bridge when he was travelling in car UA 7M/2131 driven rashly and negligently by its driver Punit Bhatia and the car losing balance collided with a tree. In the accident the car was badly damaged and Punit Bhatia, the driver of the car was also injured. It was further averred in the petition that the aforesaid car was owned by respondent no. 2 and it was insured with the appellant. It has been further stated that the claimant has become permanently disabled on account of injuries sustained by him in the accident. After the accident he was medically treated in KMC Hospital, Meerut and Batra Hospital, New Delhi. The insurer has paid the O.D. Claim (owner's damage) to the owner of the vehicle for its damage. The owner of the car admitted the accident and sustaining of injuries

by the claimant. The appellant contested the claim denying the contents of claim petition and stated that the claim petition had been filed in collusion with the owner of the car, who has never informed them that the claimant was also travelling in the car at the time of accident and he also sustained injuries. The payment of OD claim to the owner of the car has been admitted by the appellant but their contention is that the owner of the car in his OD claim has mentioned that no body sustained injuries in the car. Without admitting the accident, it has been averred by the appellant that the vehicle was being plied without any valid permit and fitness; the driver had no valid and effective driving license and the claimant had no monthly income. The parties adduced their oral and documentary evidence in support of their respective case. The Tribunal after hearing the parties' counsel has awarded compensation to the claimant respondent no. 1 as stated earlier.

Learned counsel for the appellant has urged the following points before us;

that the claimant did not sustain injury as he was not traveling in the car in question on the alleged date and time of the accident;

that the negligence of the driver of the car in question had not been proved;

that the owner of car in question has concealed material facts when OD claim was given to him;

that the Tribunal has incorrectly appreciated the evidence available on record;

that the alleged permanent disability of the claimant has not been proved;

that an application u/s 340 Cr.P.C. was filed by the appellant to punish the claimant and owner of the car by the competent Court after lodging FIR against them, but this application has not been disposed of by the Tribunal.

Per contra learned counsel for the respondent no. 1 refuting the above arguments has stated that the appellant has paid the OD claim to owner of the car (respondent no.2) for the damage caused to the car involved in the accident; that the evidence adduced in the case clearly prove that the claimant was traveling in the car insured by the appellant and the car met with an accident due to rash and negligent driving of its driver, who was also injured in the accident and both of them were taken by PW3 in his ambulance from the spot and admitted in KMC Hospital, Meerut after the accident; that claimant was treated in KMC Hospital, Meerut and thereafter in Batra Hospital, New Delhi and he has suffered 50% disability, which had been proved by Dr. Ravindra Singh PW2; that the investigator of the appellant has not fairly investigated the case and his report is tainted and the appeal has no force and is liable to be dismissed.

On perusal of the record we find that the claimant has categorically stated that in the night of 14/15.1.2007 he was going to Delhi from Dehradun with his friend Punit Bhatia in his Santro car UA 07M2131, which was being driven by him and when they reached near bridge of Sakauti, due to rash and negligent driving of

the driver, the car dashed with a tree causing him serious injuries. The driver also sustained injuries. They were taken in an ambulance to KMC Hospital, Meerut where he under went treatment for about a week and thereafter he was admitted in Batra Hospital, New Delhi where he had undergone surgery and implants (ORIF). The appellant had tried to establish that the injured claimant was not traveling in the aforementioned car and for this purpose they have relied on OD claim of owner of vehicle, his information to the police on 20.1.2007 and intimation sent by KMC Hospital to the police of P.S. Transport Nagar on 15.1.2007. The owner of the car had appeared before the Tribunal, but the case of his OD claim or the facts contained in his police report were not put to him in cross examination. The OD claim was investigated by the Investigator R. P. Dubey, DW4 whose deposition has been annexed as Annexure 5 with memo of appeal. His testimony shows that he has cursorily investigated the case as he did not enquire from the hospital where Punit Bhatia was treated. He has recorded statement of OP no. 2 and his son Punit Bhatia but it is not clear when their statements were recorded. This statement of OP no. 2 was not put to him when he appeared in the witness box before the Tribunal. The statement of Anil Kumar DW5, Record Keeper of KMC Hospital, has made the things quite clear. In cross examination he has stated that Punit Bhatia and Pankaj Kumar (claimant) were admitted in the hospital having been injured in the same accident at admission register's sl. no. 525 and 526 respectively. He has further admitted that they were injured in the accident between an Alto car and the truck, which is not the case of either party i.e. claimant and owner of the car OP no. 1. The evidence on record had been meticulously examined and evaluated by the Tribunal in correct perspective. Thus the Tribunal has rightly held that the claimant suffered injuries while he was traveling in the car of OP no. 2, which was being driven rashly and negligently by his son Punit Bhatia, who too sustained injuries in the accident, therefore, there is no force in the argument advanced by the learned counsel for the appellant.

Now as regards suppression of facts by OP no. 1 in his OD claim submitted before the appellant, the copy of OD claim form submitted by him is Annexure 4. Perusal of this document shows that in the column meant for "Third party injury/property damage", "N.A." (not applicable) has been written, while the next column i.e. "Injury to Driver/occupant" had been left blank. Admittedly the driver of the car namely Punit Bhatia had also sustained injuries in the accident, but it had not been mentioned. Similarly no injury to any other occupant has been mentioned. This clearly shows that the OD claim was not properly investigated by the officials of the appellant and once they had given OD claim regarding damage to the insured vehicle to the insurer, they cannot deny compensation to the third party for the injuries sustained by him in the same accident on account of rash and negligent driving of the vehicle by its driver.

The claimant has allegedly suffered permanent disability to the extent of 50% and to prove it he has examined Dr. Ravindra Singh PW2 before the Tribunal. After discussing the evidence led by the parties in the case, the Tribunal has

observed:

In our view, the aforesaid findings of the Tribunal on issue no. 1 regarding negligence of car driver and sustaining of grievous injuries by the claimant in the instant accident are based on correct appreciation of evidence led by the parties in the case and there is no factual or legal error therein.

We agree with the learned counsel for the appellant where he contended that the claimant had to establish the negligence of the driver before the insurer could be asked to indemnify the insured including the third party on his behalf.

No foundation could be laid by the appellant to attract the law laid down by the Apex Court in the case of Raj Kumar Vs. Ajay Kumar 2011 ACJ 1. The Hon'ble Court in para 13 of the report has summarized the principles relating to permanent disability and its proof in the motor accident claim cases. At serial no. (iii) of these principles, which is relevant for our purpose, it has been mentioned

"iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety."

In view of the above principle, it would not be proper to hold that the disability certificate cannot be given by a qualified doctor who examines the injured/claimant subsequently to assess the extent of his permanent disability. As regards loss of earning capacity of claimant, we have his testimony and he has been extensively cross-examined at the hands of counsel for the appellant before the Tribunal. He has categorically stated that on account of injuries he has become permanently disabled and he has lost his job with the Casio company, where he was getting Rs. 10,000/ per month as salary.

Now as regards non-disposal of appellant's application u/s 340 Cr.P.C., suffice to say that in view of the findings of the Tribunal, which are being affirmed by us, the application has become infructuous. It is noteworthy that the prayer made in the application was also not within the purview of S. 340 aforesaid.

In view of the above discussion, we find that all the arguments advanced by the learned counsel for the appellant in support of appeal have no force and are hereby repelled.

Before parting with the case, we must record our concern about the manner in which the claims in motor accident claim cases are being resisted by the insurance company, who being a commercial organization also owe social responsibility. The provisions in Motor Vehicles Act for awarding compensation for the injury or death of person in a motor accident to himself or dependent claimants is a beneficial piece of legislation. The object and purpose of enacting thereof is very obvious a socioeconomic legislation. Not only this the Parliament has gone to the extent of making compulsory third party insurance for the motor

vehicles. This act of Parliament further fortifies its intention, desire and object to provide a provision where these poor claimants, the dependents of the deceased or injured himself get the compensation without any problem or difficulty. After taking premium from the insurer, when ever any claim is preferred, they take those defences all which ought not to have been taken by them in a particular case. They have a battery of competent and efficient legal officers and lawyers to aid and advice them and plead their case before the concerned Tribunal, Forum or the Court, but we find from experience that their pleadings are worst than an ordinary litigant. For example in the instant case the claimant had given the correct policy number of the car of O.P. No. 2 with name of the office of O.P. No. 1 and the period of validity in the title of the claim petition, but even then they have stated in para32 of the WS, as under:

"32. That the full particular of insurance have not been furnished by the petitioner. Answering opposite party have its offices through out India. The numbers of policies are issued in a year run into lakhs. It is impossible to find out whether the vehicle said to be involved in this accident was insured through answering opposite party until the details of policy, date of issue, validity period and issuing officer etc. are not known."

It is strange that without going through the claim petition filed by the claimant, the written statement has been drafted and filed in a very cursory manner. Similarly in para35 and 36 it has been averred:

"35. That without prejudice to above the answering opposite party submits that the alleged accident as stated in the claim petition had not been occurred by Santro car no. UA07M2131. It is further submitted that the involved vehicle had no valid fitness & permit to ply the vehicle. Hence the answering opposite party is not liable to indemnify the owner of the vehicle.

36. That it is further submitted that the driver of the Santro car no. UA07M2131 did not have a valid and effective driving license and in view of this no liability can be fastened to the insurer of the said vehicle."

In the claim petition, the claimant in para23 ?l? has clearly noted as under:

No reply to this averment of the claim petition had been given by the appellant in its written statement. How an OD claim of an insured can be made good by the insurer without verifying the terms and conditions of the policy, which also include the validity of vehicle's permit, fitness and driving license of its driver? This is nothing but irresponsible and callous attitude of the officers of the appellant, who on flimsy grounds try to avoid the liability of the insurance company under the contract of insurance, which itself is a sacrosanct document. The insured with a hope to have his loss being indemnified by the insurance company in any eventuality agrees to pay the premium which are being raised almost every year and when the turn comes to have the agreement fulfilled, the insurer takes uturn and sees the insured like an enemy and untiring exercise is being undertaken to somehow avoid the claim. We hope that the insurance

company would come forward to contest the cases before the Tribunal or Court etc. by taking bonafide case and make good the insured for his legitimate loss incurred in motor accident.

In view of the above discussion, we find that the Tribunal has returned correct findings on all issues involved in the case, they are based on evidence led by the parties in the case and are not at all illegal or perverse. Thus, the appeal sans merit and is dismissed at the stage of admission.

The Registry is directed to remit the statutory amount deposited by the appellant in this Court to the concerned Tribunal within 3weeks.