(2012) 03 DEL CK 0108

In the Delhi High Court

Case No : MAC. App. No. 556 of 2007

Prashant Dutta and Another — APPELLANT

Vs

National Insurance Co. Ltd. and Others — RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 147(1), 2(5), 2(7)

Citation : (2012) 4 ILR Delhi 671

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Amit Sethi, for the Appellant; Shantha Devi Raman and Mr. Sunil Kumar Tiwari for R-1, for the Respondent

Judgement

J.R. Midha

1. The accident dated 4th June, 2006 resulted in the death of Om Prakash. The deceased was survived by his widow, mother and four children who filed the claim petition before the Claims Tribunal. The deceased was aged 27 years at the time of the accident and was working as a conductor on the offending bus bearing No. DL-1P-5998. The Claims Tribunal took the minimum wages of Rs. 3,271/- into consideration, deducted 1/4th towards personal expenses, applied the multiplier of 18, added Rs. 60,000/- towards loss of love and affection and Rs. 20,000/- towards funeral expenses. The total compensation awarded is Rs. 6,09,902/-. The Claims Tribunal exonerated the insurance company and held the driver and owner liable to pay the award amount. The appellants are the owner and driver of the offending vehicle and have challenged the impugned award on the limited ground that the offending vehicle was validly insured and, therefore, respondent No. 1 alone is liable to pay the entire award amount to the claimants. Learned counsel for the appellants submit that the deceased, employed as a conductor, was validly covered under the insurance policy and, therefore, respondent No. 1 alone is responsible to pay the insurance amount.

2. The widow of the deceased appeared in the witness box as PW-1 and deposed

that her husband was on duty on the vehicle as a conductor at the time of the accident. She reiterated the same in her cross-examination. The learned Trial Court has taken the deceased to be helper on the basis of the statement of respondent No. 1 who appeared in the witness box as RW-1. However, respondent No. 1 did not produce any document to show that the deceased was a helper. Respondent No. 1 did not lead any evidence to rebut the evidence of PW-1 that the deceased was a conductor. The term conductor has been defined in Section 2(5) of the Motor Vehicles Act as a person engaged in collecting fares from passengers, regulating their entrance into and exit from the vehicle and performing such other functions as may be prescribed. The offending vehicle involved in the present case is a chartered bus which is a contract carriage as defined in Section 2(7) of the Motor Vehicles Act. Since there is no requirement of ticketing in a chartered bus, the person who regulates the entrance/exit of the passengers and other functions is a conductor within the meaning of Section 2(5) of the Act even if he has been named as a helper. In the present case, this Court is of the view that the deceased was a conductor on the offending vehicle as per the testimony of PW- 1. However, even assuming that the deceased was a helper as contended by respondent No. 1, he falls within the meaning of conductor u/s 2(5) of the Motor Vehicles Act as he was performing the work of a conductor and there was no other conductor on the chartered bus.

3. The liability of the insurance company in respect of the Workmen''s Compensation in respect of the driver and conductor of the offending vehicle u/s 147(1) of the Motor Vehicles Act is statutory and, therefore, respondent No. 1 would be liable to pay the Workmen''s Compensation. The insurance policy of the offending vehicle has been placed on record as Annexure-F (colly.) with the appeal in which respondent No. 1 has charged the premium for Workmen''s Compensation to the employee. u/s 147(1) of the Motor Vehicles Act, 1988, the insurance company is required to compulsorily cover the liability in respect of the death or bodily injury of the driver and conductor in the case of public service vehicle. The contention of respondent No. 1 that they have charged for premium for one employee is untenable in view of the statutory requirement of Section 147 (1) of the Motor Vehicles Act to cover the driver and the conductor. Even if the contention of respondent No. 1 that the policy covered one employee is accepted, the policy should be construed to cover the deceased. In that view of the matter, this Court is of the view that respondent No. 1 is liable to pay Workmen''s Compensation in respect of death of the deceased and the remaining amount of compensation is liable to be paid by the appellants.

4. The liability of respondent No. 1 under the Workmen''s Compensation Act, 1923 is computed to be Rs. 3,49,294/- (Rs. 3,271/2 x Rs. 213.57) taking the minimum wages of Rs. 3,271/- per month as the income of the deceased.

5. The appeal is partly allowed to the extent that out of the award amount of Rs. 6,09,902/-, respondent No. 1 shall be liable to pay Rs. 3,49,294/- along with interest @ 7.5% per annum from the date of filing of the claim petition till

realization to respondent Nos.2 to 7. The remaining amount of Rs. 2,60,608/- (Rs. 6,09,902 - Rs. 3,49,294) along with interest @ 7.5% per annum for the date of filing of the claim petition till realization shall be paid by the appellants.

6. The appellants deposited a sum of Rs. 3,31,650/- with the Registrar General of this Court in terms of the order dated 12th September, 2007. The aforesaid amount was initially kept in fixed deposit. Vide order dated 10th March, 2008, the aforesaid amount along with interest thereon was directed to be remitted to the Claims Tribunal and the Claims Tribunal was directed to disburse the said amount to the claimants in terms of the award. Accordingly, a sum of Rs. 3,41,344/- was sent to the Claims Tribunal on 16th May, 2008. The liability of the appellants in terms of this judgment as on 16th May, 2008 was Rs. 2,96,442/- (Rs. 2,60,608 +'' interest of Rs. 35,834/- for the period 17th July, 2006 to 16th May, 2008) which has been paid to the claimants. The appellants are thus entitled to refund of Rs. 44,902/- (Rs. 3,41,344 - Rs. 2,96,442) from respondent No. 1. Respondent No. 1 is directed to make the payment of the aforesaid amount of Rs. 44,902/- along with interest @7.5% per annum with effect from 16th May, 2008 up to the date of realization to appellant No. 1 within 30 days. Respondent No. 1 is also directed to deposit Rs. 3,49,294/- along with interest @7.5% per annum from the date of filing of the claim petition (17th July, 2006) till realization with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Lokesh within 30 days. Upon the aforesaid amount being deposited, UCO Bank shall keep the said amount in fixed deposit till further orders.

7. The order of disbursement of the said amount shall be passed after examining the claimants on 27th April, 2012. Let the Court notice be issued to respondent Nos.2 to 7 as well as their counsel, returnable on 27th April, 2012. The Court notice shall indicate that the claimants shall remain present in Court on the next date of hearing. Copy of the judgment be sent to respondents No. 2 to 7. The statutory amount of Rs. 25,000/- deposited by the appellants along with these appeals be refunded back to the appellants through counsel within four weeks.