

(2012) 11 DEL CK 0215
In the Delhi High Court
Case No : MAC. APP. 324 of 2009

Ram Bahal Bharti

APPELLANT

Vs

Amit etc.

RESPONDENT

Date of Decision : 07-11-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(5), 149(1), 168

Citation : (2012) 11 DEL CK 0215

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

Bench : Single Bench

Advocate : Jatinder Kamra, for the Appellant; Neerja Sachdeva, Advocate for the Respondent No. 3 Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appeal is directed against a judgment dated 21.01.2009 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 7,40,326/-, the Respondent No. 3 New India Assurance Co. Ltd. was exonerated of its liability to pay the compensation on the ground that the contract of insurance was cancelled because of dishonour of the cheque paid towards the premium. There is twin challenge to the judgment. First, the compensation awarded is on the lower side. It is stated that since the Appellant was incapacitated to work and was granted compensation on account of loss of earning capacity to the extent of 80%, an addition of 30% should have been made on account of future prospects/inflation. Reliance is placed on the judgment of the Supreme Court reported as Santosh Devi Vs. National Insurance Company Ltd. and Others, . It is urged that the compensation of Rs. 30,000/- granted towards pain and suffering in case of amputation of a leg is very meagre and niggardly. Second, the Respondent Insurance Company failed to prove that any intimation regarding dishonour of the cheque was sent to the insured. Thus, the Respondent Insurance Company was under obligation to indemnify the insured and pay the compensation to the Appellant who was the

third party.

2. I have before me the Trial Court record. The Claims Tribunal accepted the Appellant's plea that he was working as a salesman. The Claims Tribunal held that the work of a salesman required lot of travelling and moving around. Amputation of his leg would, therefore, affected his earning capacity to the extent of 80%. This finding is not challenged by the Respondent Insurance Company.

3. Section 168 of the Motor Vehicles Act, 1988(the Act) enjoins payment of just compensation. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the Supreme Court held as under:-

5...The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales". All this means that the sum awarded must be fair and reasonable by accepted legal standards.

4. In case of fatal accident, an addition of 50% is made in the deceased's income towards future prospects whenever there is evidence with regard to the same. An addition of 30% is made towards inflation in case of a menial worker or a self-employed person even when there is no evidence with regard to future prospects. The addition as aforesaid has to be made while computing the loss of earning capacity because the injured has to be placed in the same position as he was insofar as money can put him. In Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, , in para 9 of the report the Supreme Court held as under:

9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.

5. An addition towards future prospects while granting loss of earning capacity was granted by the learned Single Judge of this Court in Sunil Kumar Vs. Inder Singh and Others,

6. The Appellant was granted compensation on the minimum wages of a skilled worker. The same would come to Rs. 8,26,151/- (Rs. 3894/- + 30% x 12 x 17 x 80%) instead of Rs. 6,35,500/- awarded by the Claims Tribunal.

7. The Claims Tribunal awarded a compensation of Rs. 30,000/- towards pain and suffering. This accident took place in the year 2007. In Govind Yadav Vs. The

New India Insurance Company Limited, , in case of amputation of above knee of a victim aged 24 years in an accident which took place in the year 2004, the Supreme Court granted a compensation of Rs. 1,50,000/- towards pain and suffering. Following Govind Yadav, I would grant a compensation of Rs. 1,50,000/- towards pain and suffering. The compensation is computed as under:

LIABILITY:

8. The Respondent Insurance Company's plea that the contract of insurance was cancelled and an intimation in this regard was sent to the insured was accepted by the Claims Tribunal and the Respondent Insurance Company was exonerated of its liability to pay the compensation.

9. The Supreme Court in its latest report in United India Insurance Company Limited v. Laxmamma & Ors., (2012) 5 SCC 234 relying on Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, , New India Assurance Co. Ltd. Vs. Rula and Others, , and Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., held that where the contract of insurance is cancelled because of dishonour of the cheque and on information in this regard is given to the insured before the accident, the insurer would not be liable to pay the compensation. Para 26 of the report is extracted hereunder:-

26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.

10. The question for consideration is whether an intimation with regard to either dishonour of the cheque or cancellation of the policy was given to the insured before the date of the accident. In order to prove the same the Respondent Insurance Company relied on a notice Ex. R3W1/3 purported to have been sent by registered post and the postal receipt was sought to be proved as Ex. R3W1/4. A perusal of the postal receipt shows that it does not bear even the name of the injured (Anil Kumar). Thus, it cannot be said that the Respondent Anil Kumar was informed about dishonour of the cheque. Similarly, an intimation with regard to the cancellation of the policy is purported to have been issued to

the Respondent Anil Kumar on 19.08.2006. The Respondent Insurance Company sought to prove an entry No. 1592 (Ex. R3W1/7) with regard to sending a letter by registered post. A perusal of the extract of the dispatch register shows that there is overwriting while mentioning the number of the policy in the appropriate column. Moreover, the postal receipt with regard to the letter purported to have been sent by registered post has not been proved. Thus, the Respondent Insurance Company utterly failed to prove that the Respondent Anil Kumar (the injured) was informed about the cancellation of the insurance policy before the date of the accident. In this view of the matter, the Respondent Insurance Company cannot avoid its liability on the basis of the insurance policy issued to the insured.

11. The compensation awarded by the Claims Tribunal and enhanced compensation of Rs. 3,10,651/- shall be paid by the Respondent Insurance Company. The enhanced compensation shall also carry interest @ 8% per annum as awarded by the Claims Tribunal.

12. The compensation awarded along with interest shall be deposited by New India Assurance Co. Ltd. with the Claims Tribunal within six weeks.

13. Since this accident took place in the year 2007, 40% of the award amount shall be released in favour of the Appellant immediately on deposit, rest 60% shall be kept in the Fixed Deposit for a period of five years, 10 years and fifteen years in equal proportion.

14. The Appeal is allowed in above terms. Pending Applications stand disposed of.