(2009) 07 DEL CK 0214

In the Delhi High Court

Case No : MAC. APP. 919 of 2006

Ramesh Kumar Maini APPELLANT

Vs

United Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 95

Citation : (2009) 6 ILR Delhi 761

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

Bench : Single Bench

Advocate : Hemant Chaudhari, S.W. Haider and Pinki Talukdar, for the Appellant; Udit Kumar Chaturvedi and A.K. Dev for R-1, for the Respondent

Judgement

J.R. Midha, J.—The appellant has challenged the award of the learned Tribunal whereby compensation of Rs. 6,02,160/- has been awarded to the claimants.

2. The accident dated 26th April, 2003 resulted in the death of Ram Udgar Yadav. The deceased was survived by his widow, two sons, parents and sister, who filed the claim petition before the learned Tribunal against the driver, owner and Insurance company of the offending vehicle.

3. The appellant is the owner of the offending vehicle. The appellant contested the claim petition on the ground that the vehicle was validly insured with respondent No. 1 and therefore, respondent No. 1 alone is liable to pay the compensation to the claimants. The driver of the offending vehicle took the same plea. A joint written statement was filed by the driver and the owner of the offending vehicle before the learned Tribunal.

4. Respondent No. 1 admitted the insurance of the offending vehicle in para 17 of the written statement before the learned Tribunal. Usual defences were taken by respondent No. 1 before the learned Tribunal in their written statement but no specific plea was raised for avoiding the liability on the ground that the accident in question did not occur at a public place.

5. The following issues were framed by the learned Tribunal on 11th November, 2003:

i. Whether the deceased Ram Udgar Yadav died in an accident arising out of the use of the motor vehicle No. HR-38C-0117 driven in a rash and negligent manner by R1?

ii. Whether the petition is bad for non-joinder of a necessary party, i.e., the driver of the said vehicle and the owner of the godown where the accident had taken place? OPR 3.

iii. Whether the petitioner No. 6 was dependent upon the deceased as envisaged under the Law? OPP

iv. Whether the petitioners are entitled to any compensation, if any to what amount and from whom?

v. Relief.

6. The claimants produced two witnesses, namely, PW-1 and PW-2 before the learned Tribunal. The owner of the offending vehicle appeared in the witness box as R3W1 to prove that the driver of the offending vehicle was holding a valid driving licence at the time of the accident and there was a valid permit. There was no cross-examination of the owner by the insurance company. The Assistant Administrative Officer of the insurance company appeared as R3W2 to prove the policy - Ex.R3W2/A. No defence whatsoever was raised even at the stage of leading evidence by the insurance company.

7. At the stage of final arguments, respondent No. 1 raised a plea for the first time that the accident occurred within the premises of a godown which is not a public place u/s 146 of the Motor Vehicles Act and, therefore, respondent No. 1 is not liable to pay any amount under the policy. Although, no such defence was taken in the written statement and no evidence was led by respondent No. 1, surprisingly the learned Tribunal accepted the contention of respondent No. 1 and exonerated respondent No. 1 and passed an award against the owner and driver of the offending vehicle.

8. The appellant has challenged the impugned award on the ground that the contention raised by respondent No. 1 before the learned Tribunal was neither pleaded nor proved by respondent No. 1 and the learned Tribunal erred in accepting the same. Without prejudice, it is submitted that the accident occurred at a public place and, therefore, the finding of the learned Tribunal is not sustainable even in law.

9. With respect to the first ground of challenge by the appellant, it is matter of record of the Trial Court that respondent No. 1 never raised any defence that the accident did not take place in a public place in the written statement. No issue was, therefore, framed by the learned Tribunal. The witness of respondent No. 1, namely, R3W2 also did not dispute the liability under the policy. The owner of the

offending vehicle appeared in the witness box as R3W1 but was not even cross-examined by respondent No. 1. In these circumstances, the learned Tribunal clearly erred in accepting the contention raised by respondent No. 1 for the first time during the course of arguments in the absence of any pleading or evidence on record.

10. The learned Tribunal has referred to and relied upon the judgment of Madras High Court in the case of Mangalamma and Others Vs. Express Newspapers Ltd. and Another, in which the accident occurred within the premises of the Express Newspaper Estate, Madras. The Madras High Court held the same to be a private place and not a public place and, therefore, the Insurance Company was not held to be liable to pay any compensation.

11. The learned Counsel for the appellant submits that for the purposes of Chapter VIII of the Motor Vehicles Act, the expression "public place" covers all places including those of private ownership where the members of public have access, whether free or controlled, in any manner whatsoever. The learned Counsel for the appellant refers to and relies upon the Full Bench judgment of the Bombay High Court in the case of Pandurang Chimaji Agale Vs. New India Life Insurance Company Ltd., in which the Court examined all the previous judgments including the judgment of the Madras High Court relied upon by the learned Tribunal. In the aforesaid case, the accident had occurred at a private road in the compound of the industrial establishment where entry was regulated by passes and the learned Tribunal held it not to be a public place and insurance company was exonerated. The Full Bench of Bombay High Court has held the place of accident to be a public place within the meaning of Section 95 and the Insurance Company was held to be liable. The judgment of the Madras High Court was considered in para 12 of the aforesaid judgment. The Bombay High Court held as under:

For the reasons which we have discussed earlier, we prefer the view taken by the latter authorities and hold that at least for the purpose of chapter VIII of the Act the expression ''public place'' will cover all places including those of private ownership where members of public have an access whether free or controlled in any manner whatsoever.

12. The learned Counsel for the appellant also refers to and relies upon the following judgments where the Patna High Court, Madras High Court, Gujarat High Court, Andhra Pradesh High Court and Orissa High Court have taken the same view:

Case Title & Citation

(i) Pandurang Chimaji Agale Vs. New India Life Insurance Company Ltd., .

(ii) Rajasthan State Road Transport Corporation and Others Vs. Ramotar, .

(iii) New India Assurance Co. Ltd. Vs. Urmila Devi and Others, .

(iv) National Insurance Co. Ltd. Vs. Sahiba Khatun and Others, .

(v) The Associated Cement Co. Ltd. Vs. Union of India (UOI), .

(vi) United India Insurance Co. Ltd. Vs. Gujarat Ship Trading Corporation, .

(vii) Pappoo Vs. Om Prakash and Others, .

(viii) Chinna Gangappa Vs. B. Sanjeeva Reddy and Another, .

(ix) Smt. Amrit Kaur and Others Vs. The Chandigarh Transport Undertaking and Others, .

(x) Lanka Sarmma Vs. Rajendra Singh and Others, .

(xi) Smt. Sayamma Vs. Shabbir Ahmed A. Rehman and another,

(xii) Oriental Fire and General Insurance Co. Ltd. Vs. Raghunath Muduli and Others, .

13. The Judgment of the Andhra Pradesh High Court in the case of Chinna Gangappa Vs. B. Sanjeeva Reddy and Another, specifically relates to the auto garage where a tractor was sent for repairs and was being reversed towards its trailer when a labourer was injured. The insurance company raised the defence that the garage was not a public place. Following, Lanka Sarmma Vs. Rajendra Singh and Others, and Pandurang Chimaji Agale Vs. New India Life Insurance Company Ltd., , the Andhra Pradesh High Court held the auto garage to be a public place and Insurance Company was held to be liable.

14. I agree with the view taken by the Full Bench of Bombay High Court in the case of Pandurang Chimaji Agale Vs. New India Life Insurance Company Ltd., and followed by Patna High Court, Madras High Court, Gujarat High Court, Andhra Pradesh High Court and Orissa High Court that for the purposes of Chapter VIII of the Motor Vehicles Act, the expression "public place" will cover all places including those of private ownership where public has access, whether free or controlled in any manner whatsoever. The finding of the learned Tribunal in this regards is, therefore, erroneous.

15. For all the aforesaid reasons, the appeal is allowed and the impugned award is set aside insofar as the learned Tribunal has held the appellant and respondent No. 2 to be liable to pay the award amount. Respondent No. 1 shall be liable to pay the entire award amount along with interest to the claimants/respondents No. 3 to 7. Since the appellant has been unnecessary dragged in this litigation, the respondent No. 1 shall be liable to pay the cost of Rs. 15,000/- to the appellant.

16. The appellant has deposited a sum of Rs. 1,00,000/- with the learned Tribunal in compliance with the order dated 21st November, 2006. Respondent No. 1 is directed to refund the said amount of Rs. 1,00,000/- to the appellant along with interest at the rate 9% per annum from the date of deposit i.e. 28.11.2006 up to the date of payment. The remaining award amount i.e. Rs.

5,02,160/- along with interest thereon is payable to the claimants.

17. Respondent No. 1 is directed to deposit the entire award amount along with up to date interest minus Rs. 1,00,000/- with UCO Bank, Delhi High Court Branch within 30 days. The deposit be made by means of an account payee cheque drawn in the name of UCO Bank A/c. Meena Devi and be handed over to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400).

18. There is no appearance on behalf of the claimants/respondents No. 2 to 7. It is an unfortunate case where the claimants have suffered because of this litigation. It is more than six years after the accident and the claimants are suffering because of this litigation between the owner and the driver. It is noted that the claimants are residents of Village Narsar in District Darbhanga, Bihar. The claimant/respondent No. 3, widow was aged 24 years and the children were aged 13, 14 and 7-1/2 years and the parents were 46 and 40 years at the time of the accident. The claimants have chosen not to appear today. It appears that they do not have any means of sustenance and to visit Delhi to appear before this Court. For the injustice caused to the claimants, further cost of Rs. 20,000/- is imposed on respondent No. 1 to be paid to claimants/respondents No. 2 to 7.

19. Fresh court notice be issued to claimants/respondents No. 3 to 7. It should be specified in the court notice that this appeal has been disposed of and the Insurance company has been directed to deposit the award amount within 30 days and, therefore, the claimants should approach this Court for withdrawal of the amount. Since the claimants appear to be illiterate, Court notice be also issued to the Superintendent of Police, Darbangha, Bihar, requesting him to convey to the claimants about the disposal of this appeal.

20. Copy of this order be given dasti to counsel for both the parties.

21. Copy of this order be also sent to Mr. K.L. Nandwani, nominated counsel of the United India Insurance Company Ltd. for bringing the grave injustice caused to the claimants due to this litigation to the notice of Mr. Milind Kharat, General Manager (Motor Claims), United India Insurance Co. Ltd. Mr. Milind Kharat is also requested to convey this order to the claimants through their local office and if the claimants are unable to approach this Court due to financial constraints, the arrangement for their travel and stay at Delhi be made out of the cost imposed.

22. List for compliance on 7th September, 2009.

