
(2013) 01 DEL CK 0327
In the Delhi High Court
Case No : MAC. (A) 72 of 2010

Ravinder Kumar and Others

APPELLANT

Vs

New India Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 5, Order 22 Rule 6

Citation : (2013) 2 AD 225 : (2013) 2 PLR 53

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Rakesh Kakkar, for the Appellant; Varun Sarin, Manish Jain, Mr. Kunwar Pal Singh and Mr. Harmesh Kumar for R3, for the Respondent

Judgement

Suresh Kait, J.—Instant appeal has been filed by the appellant/owner of the offending vehicle against the impugned award dated 14.10.2009 whereby Id. Tribunal awarded an amount of Rs. 5,59,214/- with interest @ 7.5% from the date of filing of the petition till the date of realization minus the amount of interim compensation, if any, paid to the claimants in past. While passing the impugned award, Id. Tribunal opined that all the respondents (therein) are jointly and severally liable, but since the vehicle being insured, the liability for making the payment will be that of the insurance company. However, the insurance company has been given right to recover the amount in view of the discussion in the award either from the respondents no. 1, 3 and 4 (before Tribunal).

2. Being aggrieved, instant appeal has been filed by two appellants i.e. respondent nos. 1 & 3 before Tribunal.

3. During the pendency of the instant appeal, LRs of respondent no. 3 moved CM. No. 811/ 2013, whereby are seeking release of the awarded amount in favour of the LRs for the reasons that respondent no. 3 had expired on 11.08.2009.

4. Ld. Counsel appearing for the Insurance Company i.e. respondent no. 1 has

submitted that arguments heard by the Id. Tribunal on 13.10.2009. Thereafter award was pronounced on 14.10.2009. However, death of respondent no. 3 never been brought in the knowledge of the Id. Tribunal either during the arguments or before passing the award and even during the pendency of the appeal.

5. Ld. Counsel further submits that the accident took place on 06.02.2004. Respondent no. 3 sustained injuries due to said accident. As per the certificate issued by the Doctor, his disability was assessed as 70% permanent disability.

6. Ld. Counsel further submits that the award in question was passed in favour of a dead person, which cannot be sustainable under law.

7. Ld. Counsel further submits that even the present case does not fall under Order XXII Rr. 6 CPC as in the present case, respondent no. 3 died on 11.08.2009 and arguments were heard on 13.10.2009 and finally the award pronounced on 14.10.2009.

8. He further submits that Order XXII Rr. 5 CPC provides as under:

Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or deceased defendant, such question shall be determined by the Court.

[provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate court to try the question and to return the records together with evidence, if any recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.]

9. Ld. Counsel submits the question of the LR's has not been determined by the trial court, therefore, the award dated 14.10.2009 has to be set aside.

10. Ld. Counsel appearing on behalf of the LR's of respondent no. 3 has submitted as stated in the application mentioned above that respondent no. 3 had expired on 11.08.2009 and his LR's had contacted to the lawyers and informed about the death of respondent no. 3 and also supplied the death certificate to this effect. However, the said Counsel appearing before the Id. Tribunal fails to apprise the Id. Tribunal about this fact.

11. Be that as it may, the arguments were heard and the matter was reserved for judgment on 03.10.2009, whereas the death of respondent no. 3 took place on 11.08.2009 much prior to the Id. Tribunal reserved for the judgment. Finally, Id. Tribunal passed the award vide judgment dated 14.10.2009. On perusal of the award, it is established that this fact was not in the knowledge of the Id. Tribunal. Therefore, there is no discussion on this issue and award has been passed in favour of the dead person, which cannot be sustainable under law.

12. In the facts and circumstances of the case, I set aside the award dated 14.10.2009.

13. In view of the above, liberty is granted to LRs of respondent no. 3 to take steps on or before 06.02.2013.

14. Id. Tribunal shall pass fresh award in accordance with the law on taking steps by the LRs of respondent no. 3. I expect from the Tribunal to pass a fresh award expeditiously.

15. Parties are directed to appear before the Id. Tribunal on 06.02.2013 for direction.

16. Needless to state that if the appellants are still aggrieved with the award passed by the Id. Tribunal, liberty is granted to challenge before the appropriate forum.

17. Consequently, instant appeal becomes infructuous. TCR be returned back to the Id. Tribunal.

CM. Nos. 2354/2010, 22859/2010 and 811/2013

In view of the above, instant applications also become infructuous and disposed of as such.

Dasti to the parties under signature of the Court Master.