(2015) 09 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Case No : F.A.O No. 2668 of 2015

Reliance General Insurance Co. Ltd. — APPELLANT

Vs

Navin Kumar and Others — RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 149(2), 170, 96

Citation : (2015) 09 P&H CK 0133

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Subhash Goyal, for the Appellant

Final Decision : Dismissed

Judgement

Ritu Bahri, J—This appeal is by the insurance company disputing the liability foisted upon it by the Motor Accident Claims Tribunal, S.A.S Nagar (for brevity, ''Tribunal''), vide its order dated 19.12.2014 whereby the appellant-Company (for short ''the appellant'') was held liable to make the compensation to the tune of Rs. 9,09,415/-.

2. The applicant alleged that on 02.10.2007, he along with Madhusudan was going on their motorcycle No. DL-9SS-3607, which was being driven by Madhusudan at a normal speed and in the meantime, one Tipper bearing NO. HR-37-B-3342 came from the side of Zirakpur, which was being driven by Amrik Singh at a fast and in a rash and negligent manner and struck in their motorcycle, as a result of which, they both fell down and received multiple injuries. They were taken to GMCH-32 but on the way Madhusudan succumbed to injuries and claimant was referred to PGI, Chandigarh where he remained under treatment. F.I.R No. 194 dated 02.10.2007 was lodged by Ashok Kumar.

3. The claimant was 23 years old at the time of accident and was working in ICICI Bank and was earning Rs. 30,000/- per month.

4. Learned counsel for the appellant contends that the learned Tribunal has erred

in taking the income of the injured at Rs. 6000/- per month as the evidence with regard to the employment of the injured was missing. The Tribunal consider the injured as a daily wager and assessed his income at Rs. 6000/- but the income of daily wager in 2007 was very much lesser.

5. Learned counsel for the appellant further contends that the learned Tribunal further erred in taking an increase in income to the extent of 50% towards future prospects of the injured.

6. Reference can be made to deposition of C.W.2 Dr. Rakesh Kumar, Orthopedic Surgeon, Civil Hospital, Mohali, who has assessed his permanent disability to be 75% qua his left arm because of restricted movements of left shoulder malunited humerus left side, loss of supination and pronation of left forearm along with function of left hand. Further it has been stated by the doctor that the claimant will not be in a position to do his daily chores and the disability will affect his earning capacity. Though the claimant as failed to produce any document to show that he was working in ICICI Bank, but the learned Tribunal by taking him to be a labourer, fixed his salary at Rs. 6000/-, as one arm of the claimant gets crippled and it will affect the working and earning capacity of the whole body of the person.

7. Reference at this stage can be made to a judgment of Hon''ble the Supreme Court in a case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, (2002) ACJ 1950 : AIR 2002 SC 3350 : (2003) 95 CLT 157 : (2002) 112 CompCas 257 : (2002) 7 JT 251 : (2002) 3 PLR 621 : (2002) 6 SCALE 569 : (2002) 7 SCC 456 : (2002) 2 SCR 456 Supp wherein Hon''ble the Supreme Court had discussed in detail the provisions of Section 149 of the Motor Vehicles Act and has held that the Insurer is entitled to file an appeal only on the issues and grounds prescribed under Section 149(2) or on satisfaction of the conditions prescribed specified in Section 170 not to challenge only quantum of compensation. Hon''ble the Supreme Court in para Nos. 19, 20, 21, 22 & 31 observed as under:-

"19. In Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, (1999) 1 ACC 497 : (1998) ACJ 513 : (1998) 6 AD 33 : AIR 1998 SC 2968 : (1998) 4 JT 300 : (1998) 119 PLR 624 : (1998) 3 SCC 140 : (1998) AIRSCW 2819 : (1998) 8 Supreme 579 , it was held that an insurance company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in Section 170 are found to be satisfied and for that purpose the insurance company has to obtain an order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless this procedure is followed, the insurance company cannot have a wider defence on merits than what is available to it by way of statutory defences. In absence of the existence of the conditions precedent mentioned in Section 170, the insurance company was not entitled to file an appeal on merits questioning the quantum of compensation.

20. In Narendra Kumar and Another Vs. Yarenissa and Others, (1997) 1 ACC 341 : (1998) ACJ 244 : (1998) 7 JT 445 : (1997) 116 PLR 417 : (1998) 9 SCC 202 , question arose whether there can be a joint appeal by an insurer and owner of the offending vehicle. It was held that even in the case of a joint appeal by the insurer and the owner of an offending vehicle, if an award has been made against the tortfeasors as well as the insurer, even though an appeal filed by the insurer is not competent, it may not be dismissed as such. The tortfeasor can proceed with the appeal after the cause title is suitably amended by deleting the name of the insurer. In the said case, it also held thus:

"The ground on which the insurer can defend the action commenced against the tortfeasors are limited and unless one or mare of those grounds is/are available, the Insurance Company is not and cannot be treated as a party to the proceedings. That is the reason why the courts have consistently taken the view that the Insurance Company has no right to prefer an appeal under Section 110D of the Act unless it has been impleaded and allowed to defend on one or more of the grounds set out in sub-section (2) of Section 96 or in the situation envisaged by sub-section 2(A) of Section 110-C of the Act."

21. In Chinnama George and Others Vs. N.K. Raju and Another, (2000) 1 ACC 577 : (2000) ACJ 777 : AIR 2000 SC 1565 : (2000) 101 CompCas 252 : (2000) 2 CTC 252 : (2000) 4 JT 207 : (2000) 125 PLR 1(2) : (2000) 3 SCALE 106 : (2000) 4 SCC 130 : (2000) 2 SCR 1050 : (2000) 2 UJ 925 : (2000) AIRSCW 1321 : (2000) 3 Supreme 136 , it was held that if none of the conditions as contained in sub-section (2) of Section 149 exists for the insurer to avoid the liability, the insurer is legally bound to satisfy the award and the insurer cannot be a person aggrieved by the award. In such a case, the insurer will be barred from filing an appeal against the award of the Tribunal. It was also held that the insurer cannot maintain a joint appeal along with the owner or driver if defence of any ground under Section 149(2) is not available to it.

22. In Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, (2000) 2 ACC 291 : (2000) ACJ 801 : (2000) 85 FLR 801 : (2000) 5 JT 355 : (2000) 1 LLJ 1656 : (2000) 125 PLR 768 : (2000) 4 SCALE 85 : (2000) 5 SCC 113 : (2000) 2 UJ 1283 , it was held that the insurer having not obtained permission under Section 170 of 1988 Act, is not entitled to prefer any appeal to the High Court against the award given by the Tribunal on merits.

31. We have already held that unless the conditions precedent specified in Section 170 of 1988 Act is satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek permission of the tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the

insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-sections (2) of Section 149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award."

8. This view of Hon''ble the Supreme Court has been followed right from the year 1998.

9. This view has been followed in a case of Punam Devi and Another Vs. Divisional Manager, New India Assurance Co. Ltd. and Others, (2004) 1 ACC 720 : (2004) ACJ 785 : AIR 2004 SC 1742 : (2004) 120 CompCas 131 : (2004) 2 CTC 79 : (2004) 3 JT 332 : (2004) 137 PLR 295 : (2004) 2 SCALE 693 : (2004) 3 SCC 386 : (2004) 2 SCR 354 : (2004) AIRSCW 1308 : (2004) AIRSCW 3263 : (2004) 5 Supreme 548 wherein it was held that the Insurance Company cannot challenge quantum of compensation. The only ground open to insurer is contained in Section 149(2) of the Motor Vehicles Act.

10. In view of the above mentioned judgments, the appeal is dismissed being devoid of any merit.

