(2010) 11 P&H CK 0082

In the Punjab And Haryana At Chandigarh

Case No : X Obj. No. 51-CII of 2010 in F.A.0 No. 1469 of 2006

Roop Rani and Others — APPELLANT

Vs

Vijay Singh @ Vikay K. Singh and Others — RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 165, 166, 168, 169, 171

Citation : (2011) 162 PLR 231

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—This appeal seeks for enhancement for compensation awarded to the claimants who were the widow and mother of the deceased. Yet another person, who had joined the petition namely the brother of the deceased was not awarded with any compensation.

2. The deceased was 28 years of age and was said to be a Mason. The evidence was that he also did some dairy business for augmenting his income and he was earning Rs. 10,000/- per month. In the absence of any documentary evidence, the Tribunal held that he would have earned Rs. 100/- per day and he could not have earned money on all the 30 days and took the overall income to be Rs. 2500/-. The Tribunal adopted a multiplier of 18 but the point of dispute is the extent of deduction made by the Tribunal at 1/3rd. The Tribunal while determining compensation did not make any provision for loss to estate, funeral expenses and loss of consortium. It did not also provide for interest.

3. I cannot fault the Tribunal as regards the assessment of income. I will also not make any modification with reference to deduction for personal expenses in 1/3rd. The choice of multiplier was also correct. I will find no reason to modify the extent of dependence as determined by the Tribunal at Rs. 3,60,000/-. However, the Tribunal was in error in not providing for loss of consortium to the

wife, which I will provide at Rs. 5,000/- and add an additional amount of Rs. 5,000/- towards loss to estate. I will add another sum of Rs. 2500/- towards the funeral expenses and provide for an additional sum of Rs. 12,500/- over what was determined.

4. The Tribunal was also in error in not providing for interest which is statutorily provided for u/s 171 of the Motor Vehicles Act. The payment of interest is a method of compensating for the time lag between the accident and the awards passed by the Tribunal and to further compensate for the loss of value of money. The claimants shall, therefore, be liable for interest @7.5% on the entire amount as awarded by this Court from the date of petition till the date of payment.

5. The owner against whom a right of recovery had been granted for the insurer on the ground that the driver did not have a valid driving licence has come on cross appeal against the award.

6. A preliminary objection is made by the insurance company to contend that the owner must have preferred an independent appeal and can not canvass the correctness of the decision in the cross appeal filed by the claimants. The owner is aggrieved not merely on the right of recovery granted to the insurer but also on the quantum of compensation which is ultimately to be shouldered on him and therefore, it is not as if the cross appeal addressed only a ground against a co-Respondent in appeal. The owner who is ultimately directed to make the payment to the insurer shall be treated as aggrieved even against the award passed in favour of the claimant. I, however, see the point that Respondent in a proceeding cannot seek for an adjudication which is essentially a matter of dispute amongst the Respondents themselves. Insurance Company is also a party and present in Court and I would not take up the objection which, in my view, is more a matter of procedure than of substance. The Tribunal is competent to frame its own procedure for disposal of cases u/s 165, 166, 168 and 169 which, detail the procedure and powers allowing the Tribunal to have the same powers as a civil court in the matter of creation of evidence but shall not be necessarily governed by the rules of Code of Civil Procedure. What is possible for a Tribunal shall a fortiorari be available to Appellate Court also. I will allow the owner to join issue on the correctness of finding relating to the driving licence even by way of cross appeal untrammelled by strict rules of procedure and examine this issue after hearing the insurance company to contest the issue of merits.

7. It is contended that the cross appeal itself was filed after a delay of four years. The explanation offered for the same is that no service had been effected and as soon as the service had been effected on the owner, the cross appeal had been filed. If ever there was a delay, 1 condone the same.

8. The driver had produced a driving licence as R-I that gave the number of licence as 19141 dated 11.02.1993, said to have been issued by DTO at Amritsar. A copy of licence bore two endorsements of renewal one as per endorsement

number 8099 dated 10.02.1999 and another with number 29432 dated 6.04.2002. The witness from the DTO Amritsar gave evidence to the effect that there was a bomb blast at Amritsar registration office and the original records of the year 1992 were burnt and witness had produced the renewal registers only.

Learned Counsel appearing for the owner points out that the copy of the renewal register did not show the details with reference to the particular number 8099 and 29432 respectively. The Tribunal however, has held that the renewals had been in the name of one Rajinder Singh. I have sent for the records and have examined the same. The document produced in Court does not make reference to either the renewal entry 8099 or 29432. The document R-l/3 merely refers to one particular entry 29492 in the name of Jaspal Raj son of Harbans Lal and it is not possible to match the document produced before the Court with the details found under the copy of licence produced through R-l to record a finding that the insurance company had established that the renewal was fake. I set aside the finding of the Tribunal and allow the cross appeal filed by the Appellant treating the same as an independent appeal filed by the owner against the award. The award providing for a right of recovery for the insurer consequently is set aside and the liability to satisfy the award shall be only on the insurance company.

9. In view of the finding rendered making the insurer liable, the amount deposited by the owner at the time of preferring the appeal is permitted to be withdrawn. Any additional amount deposited by the owner shall also be permitted to be withdrawn. I have already held in the above paragraphs that owner shall be fully indemnified and the insurer shall bear the liability for the compensation. The right of enforcement of award shall, therefore, be available only against the insurance company. The appeal and cross objection are allowed to the above extent.

