(2010) 08 BOM CK 0210

In the Bombay High Court

Case No : First Appeal No. 21 of 2003

Shri Aleixo Manuel Fancisco Rodolf D''Silva alias Aleixo Manuel D''Silva alias Alex D''Silva — APPELLANT

Vs

United India Insurance Company Ltd. — RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 140(1), 140(2), 147, 149

Citation : (2010) 08 BOM CK 0210

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : S. Kakodkar, for the Appellant; A.R.S. Netravalkar, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—By this appeal, the appellant takes exception to the judgment and order dated 16th September, 2002 passed by the Motor Accident Claims Tribunal, South Goa, Margao in Miscellaneous Claim Petition No. 86/2002 dismissing the Claim Petition filed by the appellant/claimant u/s 140 of the Motor Vehicles Act, 1988 (''the Act'' for short).

2. The claimant filed an application u/s 140 of the Act claiming compensation of Rs. 25,000/-. According to the claimant, he was proceeding on his motorcycle bearing No. GA-02-D-9728 towards his residence at Majorda. At Kesarval, his vehicle skidded off the road and he sustained injuries. According to the claimant, he sustained permanent disablement.

3. The respondent contested the application primarily on the ground that the claimant himself being the owner/insured of the vehicle, he was not covered under the policy issued, and Claims Tribunal had no jurisdiction to entertain the application. Before the Tribunal, the claimant also produced insurance policy in respect of the vehicle. The learned Tribunal held that the claimant/appellant was

not entitled to any compensation in terms of Section 140 of the Act.

4. Mr. Kakodkar, learned Counsel for the claimant submitted that the claimant is entitled for compensation in terms of Section 140 of the Act to the extent of Rs. 25,000/- on a principle of no fault liability and even if the claimant himself was rash and negligent in driving, the same by itself would not disentitle him from claiming compensation u/s 140 of the Act. He further submitted that in any event, in terms of the insurance policy clause IMT-71(d), the claimant was entitled to Rs. 20,000/- (Rs. Twenty Thousand only). According to Mr. Kakodkar, the claimant has to be considered as a third party within the meaning of Section 147 and 149 of the Act and, therefore, the claimant could not have been denied compensation. The application u/s 140 of the Act seeking compensation has been wrongly dismissed by the learned Tribunal. In support of his submissions, Mr. Kakodkar relied upon the judgment of this Court in the case of United India Insurance Co. Ltd. Vs. Anubai Gopichand Thakare and Others, .

5. Per contra, Mr. Netravalkar, learned Counsel for the respondent submitted that since the claimant himself was the owner/insured, he is not entitled to any compensation on the principle of no fault liability in terms of Section 140 of the Act and further that the claimant not being the third party, is not entitled to any compensation. He further submitted that even in terms of the policy relied upon by the claimant, the claimant is not entitled to any compensation. In support of his submission, Mr. Netravalkar relied upon the Division Bench judgment of Karnataka High Court in the case of Oriental Insurance Co. Ltd. v. Sharda G. and Ors. 2010 ACJ 977.

6. I have considered the rival submissions and perused the record.

7. There is no dispute that the claimant himself is the owner/insured of the vehicle involved in the accident. Therefore, the moot question which arises for consideration is whether he is entitled to compensation in terms of Section 140 of the Act. Section 140 of the Act reads thus-

140 - Liability to pay compensation in certain cases on the principle of no fault - (1) Whether death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that Sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in

respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163A.

8. On plain reading of Section 140 of the Act, it is evident that primary liability in case of an accident resulting in death or permanent disability of any person, the liability is of the owner/owners of the vehicle involved in the accident and the question of rashness and negligence cannot be gone into while deciding the application u/s 140 of the Act. In the present case, in view of the admitted position that the claimant himself was the owner, it is unconceivable that in terms of Section 140 of the Act the claimant can claim compensation. The purpose of enacting Section 140 is to enable the third party from getting compensation irrespective of the proof of rashness and negligence on the part of the driver of the vehicle insured. u/s 140, it is the primary liability of the owner of the vehicle involved in the accident to pay compensation to the legal representative of the deceased or the person suffering permanent disability. This being the position, it is unconceivable that the owner/insured, who himself meets with an accident and suffers permanent disability can claim compensation u/s 140 of the Act. Therefore, I am of the considered opinion that the learned Tribunal was perfectly justified in rejecting the claim of the claimant u/s 140 of the Act.

9. Insofar as the reliance placed by Mr. Kakodkar on the insurance policy is concerned, the relevant clause reads thus -

IMT-71- Personal Accident cover for drivers (other than paid Drivers)

It is hereby understood and agreed that the company undertakes to pay compensation on the scale provided for bodily injury/death as herein after defined sustained by driver (other than paid driver) of the vehicle in direct connection with the use of Motor Vehicles or whilst mounting or dismounting of driving the vehicle and caused by violent accidental external and visible means which independently of any other cause shall within 12 calendar months of the occurrence of such injury result in:

10. A bare reading of Clause (d) discloses that the claimant in this case is entitled to get Rs. 20,000/- in case he suffers permanent total disablement from injuries which shall be direct consequences thereof, which permanently, totally, absolutely disable the insured from engaging in any employment or occupation of any description. The liability of the Insurance Company arises only when the claimant satisfies the condition in Clause (d). In the present case, the application has been filed solely on the ground that he has suffered permanent disability. Therefore, Clause (d) of IMT- 71 of the Insurance Policy would not advance the case of the claimant.

11. I do not deem it necessary to refer the authorities cited by both sides since they are not relevant having regard to the facts of the present case.

12. In the result, therefore, I find no merit in the appeal. Hence, the appeal is dismissed with no order as to costs.