(2010) 02 P&H CK 0246

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 1259 of 2009

Suresh APPELLANT

Vs

Oriental Insurance Company Limited RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(2), 147(2)(b), 166

Citation : (2010) 4 RCR(Civil) 3

Hon'ble Judges : Vinod K.Sharma, J

Judgement

Vinod K.Sharma, J.

1 This appeal by the owner and driver of the offending vehicle, is directed against the impugned part of the award dated 22.1.2009, passed by the learned Motor Accident Claims Tribunal, Karnal (for short the Tribunal) vide which the liability of the Insurance Company was fixed at Rs. 6,000/ (Rupees six thousand only) only by invoking the provisions of Section 147(2) of the Motor Vehicles Act, 1988 (for short the Act).

2 The claimant had filed a petition under section 166 of the Act, claiming compensation on account of death and as also injuries caused to the animals belonging to him in motor vehicular accident. The claimant sought compensation on account of vehicular accident which took place on 2.6.2006 within the jurisdiction of Police Station, City Karnal on which 11 sheep and one ram died at the spot, whereas two sheep and two cows sustained injuries.

3 The claim was contested by the appellant as also the Insurance Company, by denying the liability, on the plea that the driver of the truck was neither negligent nor driving the truck in a rash and negligent manner.

4 On the pleadings of the parties, and the evidence led, the learned Tribunal recorded a finding, that the accident in question took place on 2.6.2006 at about 10/10.30 a.m. in the area of Police Station, City Karnal on account of rash and negligent driving of Truck No. HR690909, which was being driven in a rash and

negligent manner by respondent No. 1, which resulted in the death of 11 sheep, one ram and injuries to one cow.

5 The plea of the Insurance Company that the driver of the Truck did not have a valid and effective driving licence and that the truck was not insured with respondent No. 3, was not accepted. The learned Tribunal assessed the compensation of Rs. 48,000/, (Rupees forty eight thousand only) to be payable for the damages. The liability was held to be joint and several of all the respondents, including the Insurance Company.

6 However, in the relief clause, the learned Tribunal fixed the liability of Insurance company at Rs. 6000/ (Rupees six thousand only). The relief clause reads as under :

"30. Thus, in view of the above discussion, the present claim petition is hereby accepted with costs. The claimant is entitled to receive the amount of Rs. 48,000/ (Rupees Forty Eight Thousand only) as compensation.

31. The amount of compensation payable to the petitioner shall carry interest @ 7.5% per annum from the date of filing of this petition till final realization.

32. The respondents No. 1 to 3 are jointly and severally liable to pay the compensation amount to the petitioner. Out of the total amount of compensation, the insurance companyrespondent No. 3 shall pay to the extent of Rs. 6000/ only and the remaining amount of compensation shall be paid by the respondents No. 1 and 2 in equal share. The amount of compensation awarded to the claimant, if realized, is ordered to be paid to him in cash.

33. The counsel fee is assessed to Rs. 1000/ each side.

34. Memo of costs be prepared accordingly and file be consigned to record room."

7 Learned counsel for the respondents has challenged the impugned part of the relief clause vide which the liability of respondent No. 3 was fixed at Rs. 6,000/ (Rupees six thousand only), on the plea that neither there was any pleading nor any averment by the Insurance Company claiming that the liability of the insurance could only be Rs. 6,000/ (Rupees six thousand only), furthermore no evidence was led in support of this plea.

8 Learned counsel appearing on behalf of appellant also contended that it is the duty of the Insurance Company to reimburse the third party claims, for the tortuous act, committed by the insured or his employee. The liability incurred by the insured or his employee under the Motor Vehicles Act, is also required to be met by Insurance Company.

9 Learned counsel for the appellant placed reliance on the Hon''ble Full Bench judgment of this court in National Insurance Company Limited v. Smt. Santro Devi, 1998(1) RCR(Civil) 156 : 1966 (3) PLR 667 in support of the contention raised.

10 Learned counsel appearing on behalf of the Insurance Company, on the other hand supported the award, by relying on the provisions of 147(2) of the Act, to contend that the liability of the Insurance company with regard to damage to the property of 3rd party is limited to Rs. 6,000/ (Rupees six thousand only) only. Learned counsel for the appellant, however, contended that the case did not fall under Section 147(2) of the Act.

11 On consideration, I find force in the contentions raised by the learned counsel for the appellants.

12 In order to bring the case within section 147(2)(b) of the Act it was incumbent upon the Insurance Company to have pleaded and led evidence in this regard in view of the provisions of Section 147(5) which read as under :

"147. Requirements of policies and limits of liability.

(1) to (4) xx xx

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

13 Therefore, reading of the provisions of Section 147(5) of the Act with the judgment of this court in the case of National Insurance Company Limited v. Smt. Santro Devi (supra), would show that it was not open to the learned Tribunal in the absence of any material on record to restrict the liability of the Insurance Company to Rs. 6,000/ (Rupees six thousand only). Provisions of Section 147(2)(b) of the Act are otherwise not applicable to the case as the sheep and cows could not be said to be the property as they are living animals and therefore, the liability of the Insurance Company could not be restricted to Rs. 6,000/ (Rupees six thousand only) as held by the learned Tribunal.

14 For the reasons stated, the impugned part of the award passed by the leaned Tribunal is set aside and the liability for the whole of the compensation is ordered to be fixed jointly and severely on the driver, owner and the Insurance Company. Appeal allowed. No costs.