

(2009) 09 DEL CK 0210
In the Delhi High Court
Case No : MAC.APP. No. 148 of 2006

The New India Assurance Co. Ltd.

APPELLANT

Vs

Anita and Others

RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Evidence Act, 1872 — Section 114

Citation : (2009) 09 DEL CK 0210

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : R.K. Tripathi, for the Appellant; Rajiv Khosla, for R-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

J.R. Midha, J.—The appellant has challenged the award of the learned Tribunal whereby compensation of Rs. 2,19,000/- has been awarded to claimants/respondent Nos. 1 and 2.

2. The accident dated 9th February, 1981 resulted in the death of Jai Bhagwan. The deceased was survived by his daughter and son who filed the claim petition before the learned Tribunal. The deceased was aged 27 years at the time of the accident and was earning Rs. 1,000/- per month. The learned Tribunal took the future prospects into consideration and Rs. 1,500/- was taken towards the income of the deceased after future prospects. 1/3rd was deducted towards the personal expenses of the deceased and the multiplier of 17 was applied to compute the loss of dependency at Rs. 2,04,000/-. Rs. 15,000/- has been awarded towards the non-pecuniary compensation. The total compensation awarded is Rs. 2,19,000/-.

3. The only ground urged by Learned Counsel for the appellant at the time of hearing of this appeal is that the offending vehicle in question was not validly insured with the appellant and, therefore, the appellant is not liable to pay the

compensation to the claimants.

4. The claim petition was filed before the learned Tribunal on 7th August, 1981. However, the file of the learned Tribunal was lost in the year 1994 and efforts were made to trace the file but were unsuccessful. Consequently, the learned Tribunal directed the parties to reconstruct the file in August, 2000 and the de novo trial started in the year 2000. The owner of the offending vehicle appeared in the witness box as R2W1 and deposed that the offending vehicle was insured with New India Assurance Company Limited vide policy No. 4517116495. He further deposed that the policy was submitted before the learned Tribunal in the year 1991 and the photocopy of the same was not retained. R2W1 further deposed that the copies of the policy and other relevant documents were also furnished to the police at the time of the investigation. R2W1 also led secondary evidence to prove the policy by producing the original day book pertaining to the year 1981-1982 which contained entry of Rs. 2,043/- towards the premium for insurance of the offending vehicle from 12th November, 1980 to 11th November, 1981. The copy of the relevant page of the day book was exhibited as Ex.R2W1/1. R2W1 also produced the balance sheet for the year 1980-1981 in which the payment of premium was reflected. Copy of the balance sheet was exhibited as Ex. R2W1/2.

5. The appellant also produced the witness R2W2 who deposed that policy No. 4517116495 pertains to the Divisional Office, Karol Bagh of the appellant. R2W2 did not produce any record. No evidence was led to rebut the evidence of R2W1.

6. The insurance policy has not come on record either from the owner or by the Insurance Company at the time of retrial. The accident is dated 9th February, 1981 in respect of which the claim petition was filed in August, 1981. The owner claimed to have filed the insurance policy before the learned Tribunal. However, the same cannot be confirmed because the record of the learned Tribunal was lost in 1994 and was reconstructed in the year 2000. The owner has successfully led the secondary evidence to prove the payment of premium for insurance of the bus in question by means of Ex.R2W1/1 and Ex.R2W1/2. The appellant has not been able to rebut the secondary evidence led by the owner of the offending vehicle. This is a case of civil nature where the test of preponderance of probability has to be applied and the presumption has to be drawn u/s 114 of the Indian Evidence Act. The appellant has not led any evidence to rebut the Ex. R2W1 and Ex.R2W1/2. The appellant has also admitted that the policy number given by the claimant as well as by the owner of the offending vehicle pertains to their office. Even if the record pertaining to the said policy was lost, some evidence could have been led by the appellant to rebut the evidence led by the owner of the offending vehicle.

7. In the facts and circumstances of this case, the offending vehicle is held to be validly insured with the appellant on the date of the accident, therefore, the finding of the learned Tribunal holding the appellant to be liable to pay the award amount to the claimant is upheld.

8. The appeal is dismissed. No costs.
9. The appellant has deposited the entire award amount with the learned Tribunal in terms of order dated 6th March, 2006. The learned Tribunal is directed to release the award amount to the claimants in terms of its award.
10. The Learned Counsel for the claimants submits that the appellant has not deposited the entire award amount and there is short deposit. The claimants are at liberty to approach the learned Tribunal for claiming the short deposit, if any.
11. All the pending applications stand dismissed.
12. The LCR and the execution file of this case be sent back to the learned Tribunal.
13. Copy of this order be given "Dasti" to Learned Counsel for both the parties under the signature of Court Master.