

(2003) 02 DEL CK 0123

In the Delhi High Court

Case No : FAO 64 of 1997

The New India Assurance Co. Ltd.

APPELLANT

Vs

Mrs. Meena Khattar, Master Himanshu Khattar, Master Monti Khattar and Mrs. Bhag Kwati Khattar

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Motor Vehicles Act, 1939 — Section 110C(2A), 149(2)

Citation : (2003) 2 ACC 549 : (2003) 105 DLT 245 : (2003) 69 DRJ 76

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Advocate : P.K. Seth, for the Appellant; Preetjeet Singh for respondents Nos. 1 to 3 and LR of respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Kapoor, J.—Heard learned counsel for the parties.

2. One of the preliminary objections raised by learned counsel for the respondents is about the maintainability of the appeal.

3. As regards the question of maintainability of the appeal, it is evident that the Insurance Company is not entitled to file any appeal unless and until the provisions of Section 110-C (2-A) of the Motor Vehicles Act, 1939 are complied with. This provision read as under:-

"110-C. Procedure and powers of Claims Tribunals.-

(1) xxx(2) xxx [(2-A) Where in the course of any inquiry, the Claims Tribunal is satisfied that--

(i) there is collusion between the person making the claim and the person against whom the claim is made, or

(ii) the person against whom the claim is made has failed to contest the claim, it

may, for reasons to be recorded by it in writing, direct that the insurer who may be liable in respect of such claim, shall be imp leaded as a party to the proceeding and the insurer so imp leaded shall thereupon have the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made]."

1. Neither the condition about collusion was fulfilled nor the permission of the learned Tribunal had been obtained. Obviously, the appellants are not entitled to contest on merits. This very question was considered in para 26 of the judgment in National Insurance Co. Ltd. v. Nicolletta Rohtagi & Ors. (supra). The Supreme Court also referred to the observations made in judgment in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravan and Others, as under:-

"In other words, the Legislature has insisted and make it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the Legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependents of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the Legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision, has Therefore, to be interpreted in the light of the aforesaid perspective."

2. The Supreme Court after noting the aforesaid observations have quoted the same with approval and made following further observations in paras 27 and 28 of the judgment:-

"27. We have noticed the legislative development in regard to third party rights in England and found that the object of those legislations was to protect the interest of third party rights. The 1939 Act as well as 1988 Act both were enacted on pattern of English statute with the object to relieve the distress and miseries of victims of accidents and reduce the profitability of the insured in regard to occupational hazard undertaken by them by way of business activities and not to promote business interests of Insurance Companies even though they may be nationalised companies."

28. For the aforesaid reasons, as well as the learned Judges in United India Insurance Co. Ltd. (supra), have failed to notice the limited grounds available to an insurer u/s 149(2) of the Act, we are of the view that the decision in United Insurance Co. (supra), does not lay down the correct view of law."

3. It is not possible to accept the contention of the learned counsel for the appellant that the matter should be considered by this Court as a petition and not as an appeal to do substantial justice in between the parties, for what the law prohibits, I do not think, any Court is supposed to consider that aspect by resorting to the provisions of Article 226 or 227. Consequently, the appeal is not

maintainable.

4. The next point for the sake of arguments, as submitted by learned counsel for the appellant is that the learned Tribunal has erred in just doubling the income of the deceased and deducting 1/3rd out of it for the purpose of finding the average dependency of the claimants. The claimants are widow, Smt. Meena Khattar, two sons, namely, Himanshu and Monty and Smt. Bhagwati Khattar, mother of the deceased. In the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , the observations of the Supreme Court in para 6 relating to General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, are as under:-

"16. However, a scientific basis for arriving at a proper multiplicand and multiplier is supplied by a later decision of this Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . A Division Bench of this Court consisting of M.N. Venkatachaliah, J. (as His Lordship then was) and G.N. Ray, J. considered in detail appropriate method for arriving at proper multiplicand and multiplier in fatal accident cases in the light of decided cases in this country as well as in England and laid down principles for computing compensation in motor vehicle accident cases."

5. Learned counsel for the appellant pointed out supposing for the sake of arguments that if the judgment in Sarla Dixit's case (supra) was followed and 17 years multiplier is applied then the total amount of compensation comes to Rs. 7,46,000/- while the learned Tribunal has awarded a compensation amounting to Rs. 8,06,000/-. Thus, there is difference of Rs. 60,00/- with proportionate interest. It may be mentioned that in terms of the judgment in Susamma Thomas (supra), the income was to be doubled and taken as gross income and thereafter deductions towards personal expenses were made. The judgment in the case of Susamma Thomas (supra) was referred to in the judgment in UP State Road Transport Corporation v. Trilok Chand, 1 (1996) ACC 592 as well as in the case of Sarla Dixit (supra). In UP State Road Transport Corporation v. Trilok Chand (supra) this aspect was not disturbed. The judgment was referred to with approval so far as the multiplier is concerned. It may be mentioned that, thus, while considering the future prospects the income in the case of a person who is in stable employment, his income may be doubled and this principle appears to have been impliedly approved by not saying that the future prospects could not be considered. Similarly, in the case of Sarla Dixit (supra) this judgment was again referred to. The method of considering future prospects has been referred to as "appropriate" twice, but there is some difference in calculation. I think both the principles can be taken and acted upon depending on the circumstances of each and every case, for it is dependent on the stable income and also possible future prospects. A person may just get one promotion, may not get second or third promotion, but it may be terminated or otherwise dealt with by the employer. There are many imponderables and the Court has to deal with such

imponderables adopting appropriate methodology. If the learned Tribunal has followed *Susamma Thomas (supra)*, by adopting the method of calculating compensation as per method adopted in *Susamma Thomas (supra)* having been approved in the two aforementioned cases, it is difficult to say that the approach of the learned Tribunal was wrong. In any case, it is a difference of just Rs. 60,000/- if we apply 17 years' multiplier. One must not forget that monetary compensation does not compensate the loss of a dear person. It takes care even about monetary loss half way, for it does not consider ever increasing cost and ever decreasing real worth of money in the days of inflationary economy. It also does not take care of a situation where income goes up and in some cases it is noticed that it has gone up and in some cases it is noticed that it has gone up three to four times considering the present pay packet of persons junior to the deceased in such matters. In such circumstances, I do not think that where the appeal itself is not maintainable, this aspect should be considered seriously in the aforementioned circumstances. Consequently, I do not find any force in this submission.

6. It is submitted lastly, that the deceased was a passenger in the bus and the liability of the appellant would be confined to Rs. 15,000/-. But learned counsel for the appellant found himself in embarrassing situation when he was asked to show any evidence in that respect. In absence of any evidence, I do not think that any other view can be taken, particularly in the aforementioned circumstance of non-maintainability of the appeal and in absence of any evidence.

7. The appeal is dismissed accordingly.