(2012) 10 DEL CK 0268

In the Delhi High Court

Case No : MAC. APP. 282 of 2005

The New India Assurance Co. Ltd. — APPELLANT

Vs

Santosh Kumari and Others — RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A

Citation : (2012) 10 DEL CK 0268

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Pankaj Seth, for the Appellant;

Final Decision : Partly Allowed

Judgement

G.P. Mittal, J.—The Respondents No. 1 to 6 filed a Claim petition u/s 163-A of the Motor Vehicles Act, 1988(the Act) for claiming compensation for the death of Rajinder Pal Singh who was the husband of the First Respondent and father of Respondents No. 2 to 6. It was claimed that on 24.05.2003 at about 11.05 pm, deceased Rajinder Pal Singh while driving the TSR No. DL-1R-G-7151 had reached Deen Dayal Upadhyay Marg, New Delhi, on account of some obstruction placed on the road by one Narang Construction, deceased Rajinder Pal Singh suffered injuries which proved to be fatal. The Respondent Narang Construction filed written statement contesting the claim of any negligence on its part. The Motor Accident Claims Tribunal (the Claims Tribunal) opined that it was not proved that the accident was caused on the deceased''s own negligence and thus held the owner(Respondent Narinder Singh) and the insurer of the TSR, that is, the Appellant liable to pay the compensation in accordance with the structured formula given u/s 163-A of the Act.

2. The Appellant New India Assurance Co. Ltd. impugns the judgment on the ground that the driver of the TSR was not a third party, hence the Appellant was not liable to pay the compensation. It is stated that the accident occurred on account of deceased''s own negligence who was driving the TSR unmindful of the

construction work going on the road and thus, he himself would be blamed for the accident.

3. It is not in dispute that deceased Rajinder Pal Singh was a driver working under Respondent Narinder Singh, owner of the TSR; copy of the cover note and the insurance policy was placed on record by the Claimants which is not disputed by the Appellant Insurance Company. A sum of Rs. 25/- was also paid towards coverage of liability to the employee under the Workmen''s Compensation Act. The specific clause of the Indian Motor Tariff under which the coverage was issued was not mentioned. A perusal of the Indian Motor Tariff shows that its clause IMT 28 issued u/s 7 of the Indian Motor Tariff covers legal liability to pay the driver etc., which is extracted hereunder:

IMT. 28. LEGAL LIABILITY TO PAID DRIVER AND/OR CONDUCTOR AND/OR CLEANER EMPLOYED IN CONNECTION WITH THE OPERATION OF INSURED VEHICLE

(For all Classes of vehicles.)

In consideration of an additional premium of Rs. 25/-notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer shall indemnify the insured against the insured''s legal liability under the Workmen''s Compensation Act, 1923, the Fatal Accidents Act, 1855 or at Common Law and subsequent amendments of these Acts prior to the date of this Endorsement in respect of personal injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the vehicle insured herein and will in addition be responsible for all costs and expenses incurred with its written consent.

Provided always that

(1) this Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurer or group of insurers a Policy of Insurance in respect of liability as herein defined for insured''s general employees;

(2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations;

(3) the insured shall keep record of the name of each paid driver conductor cleaner or persons employed in loading and/or unloading and the amount of wages and salaries and other earnings paid to such employees and shall at all times allow the insurer to inspect such records on demand.

(4) in the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed.

Subject otherwise to the terms conditions limitations and exceptions of the Policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988.

In case of Private cars/motorised two wheelers (not used for hire or reward) delete this para.

4. Thus, the Appellant Insurance Company covered the legal liability not only under the Workmen''s Compensation Act, 1923 but also under the common law. Although, it has not been proved that deceased Manoj Kumar was himself responsible for the accident, yet even if an employee received an employment injury on account of his own negligence, he cannot be denied the compensation. In the circumstances, the Appellant cannot escape the liability to pay the compensation.

5. As far as quantum of compensation is concerned, in a Petition u/s 163-A of the Act, the compensation has to be awarded strictly accordingly to the Second Schedule. This question was dealt with in great detail in a judgment of this Court in NEW INDIA ASSURANCE CO. LTD. v. PITAMBER & ORS., MAC. APP. 304/2009 decided on 23.01.2012. This Court referred to the decision in Oriental Insurance Company Limited v. Smt. Pataso & Ors., MAC. APP. 962/2005 decided on 01.09.2008; Oriental Insurance Company Limited v. Om Prakash & Ors., 1 (2009) ACC 148; Jagdish & Anr. v. Madhav Raj Mishra and Anr. MAC. APP. 190/2011 decided on 19.04.2011; and Oriental Insurance Company Limited v. Anita Devi & Ors., 20011 (5) AD (Del) 138 , decided on 10.05.2011; The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., ; and Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, ; and held that in a Petition u/s 163-A of the Act there is a cap of Rs. 40,000/- on the annual income and the compensation including non-pecuniary damages have to be awarded as per the Second Schedule.

6. Turning to the facts of the instant case. Deceased''s age was claimed to be 56 years. The loss of dependency of Rs. 2,13,336/- reached by the Claims Tribunal is in order. The compensation towards non-pecuniary damages is, however, on the higher side. As per the Second Schedule, only a sum of Rs. 2,000/- towards funeral expenses, Rs. 5,000/- towards loss of consortium and Rs. 2,500/-/- towards loss to estate is payable to the legal representatives. The overall compensation thus comes to Rs. 2,22,836/-.

7. By an order dated 12.04.2005, a sum of Rs. 1,00,000/- was ordered to be released in favour of the Claimants. Rest of the amount payable to them under this judgment shall be released to them along with the interest accrued during the pendency of the Appeal. Remaining amount along with proportionate interest shall be refunded to the Appellant New India Assurance Co. Ltd.

8. The Appeal is partly allowed in above terms.

9. Statutory amount of Rs. 25,000/-, if any, shall be refunded to the Appellant Insurance Company. Pending Applications stand disposed of.

