

(2011) 09 DEL CK 0342

In the Delhi High Court

Case No : Mac. App. No. 21 of 2006

The United India Insurance Co. Ltd.

APPELLANT

Vs

Jaswant Singh and Others

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8
Motor Vehicles Act, 1988 — Section 140, 149(2), 166

Citation : (2013) ACJ 56 : (2012) 2 TAC 552

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Vishnu Mehra, Ms. Sakshi Gupta and Mr. Yatin Chandra, for the Appellant; Anshuman Bal, Advocate for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—Final arguments in these appeals were heard on 19th August, 2011. Counsel for the parties were given time to file the written submissions within one week. Though this Court has waited for almost two weeks, no such written submissions have been filed by either parties. Thus, without waiting any further, it is deemed proper to pronounce the judgment on the basis of oral submissions of the counsel for the parties, pleadings in the appeal and trial court record.

2. Two petitions were filed by the two sets of claimants, as a result of singular accident which took place on 27th November, 2001 at about 1.20 a.m. On that ill-fated night, two persons, viz., Devender Singh and Kapil Kumar were travelling by two-wheeler scooter No. DL 2SF 2032, when the scooter was hit against the rear of a truck tailor No. HR 26GA 2301, which was parked in the middle of the road without headlights. Both the occupants died. Both of them were aged about 20 years. They were unmarried. By Claim Petitions compensation was sought u/s 166 and 140 of the Motor Vehicle Act (hereinafter referred to as "the Act") by

their respective parents (hereinafter referred to as "the claimants"). These petitions have been decided vide a common award dated 24th August, 2005 by the Motor Accident Claims Tribunal, New Delhi ("the Tribunal" for brevity), granting compensation of Rs. 5,12,400/- to the parents of Devender Singh and Rs. 4,21,950/- to the parents of Kapil Kumar. Interest @ 6% is also awarded to both sets of claimants. In both these petitions, the claimants had impleaded Pawan Kumar, owner of the truck as the respondent No.1 and the appellant, the insurer of the truck as the respondent No.2. The owner of the vehicle simply shifted the burden on the insurance company on the ground that the truck, i.e., the offending vehicle was comprehensively insured. The insurance company took up the plea that the deceased themselves were liable for their negligent driving. Following issues were framed:

(i) Whether the deceased Devender and Kapil sustained fatal injuries in road accident dated 27th November, 2001 because of rash and negligent driving of truck tailor No.HR 26GA 2301 by its driver owned by respondent No.1 insured with respondent No.2? OPP

(ii) If issue No.1 is proved in affirmative to what amount of compensation the petitioners are entitled to and from whom? OPP

(iii) Relief.

3. Claimant Jaswant Singh examined himself as PW1, Hari Kishan as PW2, an eye-witness and claimant Dharam Singh examined himself as PW3. No evidence whatsoever was led by Shri Pawan Kumar or the appellant-Insurance company.

4. Believing the testimony of the eye-witness, who was driving his Maruti car and was behind the scooter being driven by the deceased, the learned Tribunal decided the issue No. (i) in favour of the claimants holding that the offending truck was parked in the middle of the road without any headlight or without any indication light and there was no light on the road. Due to complete darkness, they could not see the truck tailor with the result scooter was hit with the rear of the truck in this accident. Both the deceased sustained serious injuries and were removed by the said eye-witness along with friends to Rao Tula Ram Hospital, Jafarpur, Delhi where they were declared brought dead. Parking the vehicle in the middle of the road without indication lights/head lights was treated as negligence on the part of the driver of the offending vehicle. The Tribunal recorded that a person using a road at mid night has no presumption that somebody would park his vehicle in middle of the road without any indication lights at such late hours when generally there is no traffic on the road. Road users generally drive at fast speed at night. In such circumstances, if accident is caused, it is solely due to culpable negligence of owner or driver, whosoever had parked the vehicle in middle of the road. In this case, it is not disputed by the owner that his truck was parked in the middle of the road. Even if truck was parked in the middle of the road by the driver, driver was working under the employment of the owner and hence, owner of the offending vehicle is liable to pay compensation. It is

vicarious liability which makes the owner as well as insurance company liable to pay the compensation amount. Even as per the F.I.R. as well as Challan, it was mentioned that when the police visited the spot, the offending vehicle was found parked in the middle of the road.

5. Learned Tribunal, thereafter, discussed the quantum of compensation that was payable to the claimants and discussed the cases of the two deceased persons in the following manner:

Kapil: Kapil was 20 years of age and a student of final year, who was also doing computer course from NIIT. His father appeared as PW1 and deposed that Kapil was doing tuition work and earning Rs. 5,000/- per month. He was unmarried and used to contribute his entire earning to the maintenance of his family members. The Tribunal recorded that there was no documentary proof of the deceased and applied the ratio of the judgment in the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, . The learned Tribunal took into consideration minimum wages as applicable in Delhi at a relevant time for a graduate on the premise that the deceased, Kapil had already completed two years of his Graduation and was a student of 3rd Year, when he died who would have completed graduation within few months; and he had also done Computer course from NIIT. Thus, the minimum wage of Rs. 3352/- was taken into account.

Devender: Devender was also aged 20 years and was cousin brother of Kapil. His father, Dharam Singh appeared as PW-3 and deposed that he was earning Rs. 5,000 to Rs. 6,000/-. The Tribunal recorded that in his case also documentary proof of income was not given. However, on the premise that when two boys of the same age and it was not necessary that a Graduate earns more than a non-graduate and further that Devender was doing business. In the case of Devender also, the Tribunal took Rs. 3,350/-.

6. Thereafter, following the judgment of Sarla Dixit (supra), the Tribunal considered the future prospect and opined that their income would have been doubled, had they not died premature. In this manner, the average gross income was calculated as Rs. 5025/- (Rs. 3350 + Rs. 6700/2). Since the boys were unmarried and aged 20 years, the Tribunal opined that they would have contributed their entire income towards maintenance of their family at least for a period of next 6/7 years. Thereafter, they would have contributed one third towards the maintenance of their parents. On that basis, average dependency of parents was taken as 50% of their monthly income, which comes to Rs. 2512/-, rounding it off to Rs. 2515/-. The annual loss of dependency was, thus, calculated at Rs. 30,150/- (2515 x 12). Thereafter, taking into consideration the age of the parents, Multiplier of 16 in the case of Kapil and Multiplier of 13 was applied in the case of Devender. On this basis, compensation of Rs. 4,82,400/- and Rs. 3,91,950/- respectively was calculated. Both the claimants were given Rs. 10,000/- and Rs. 20,000/- on account of loss of love and affection as well and pain and agony thereby worked out to a total compensation of Rs. 5,12,400/- and Rs. 4,21,950/- respectively.

7. In these circumstances, appeals preferred by the insurance company against the aforesaid common award of the learned Tribunal, two primarily contentions are raised. First contention is predicated on Section 149(2) of the Act and it is argued that since the driver of the offending vehicle was not holding a driving license, the insurance company could not be held liable to pay the compensation. It was submitted that the Tribunal had not dealt with this issue at all. Learned counsel also pointed out that notice under Order XII Rule 8 of the CPC was served upon the owner/driver of the vehicle. But in response, neither they delivered the license nor they produced the driving license before the Tribunal. In these circumstances, adverse inference should have been drawn against them. Second argument was that in any case, the compensation awarded was excessive.

8. Reverting to the first contention, it can be seen from the argument raised by the learned counsel for the appellant that the appellant is taking shelter of the statutory defence available u/s 149(2) of the Act. Accordingly to the learned counsel, the driver of the offending vehicle truck was not holding any driving license. Notice under Order XII Rule 8 issued, which was not replied to. Grievance is that the Tribunal has not dealt with this aspect. However, when one peruses the written statement to the claim filed by the claimants, it would be found that no such plea was taken specifically or in clear terms. It appears that for this reason, even no issue was framed. Therefore, the Tribunal cannot be blamed or faulted with for non-consideration of the aforesaid purported plea. It is also to be noted that no evidence was laid before the learned Tribunal to show that the driving license was fake and no witness was produced by the Transport Authority. It cannot be presumed that the driver was not having a valid driving license merely because both the driver and the owner of truck No. HR 26GA 2301 did not appear before the Tribunal and were proceeded ex parte or did not respond to notice under Order XII Rule 8 of C.P.C. This aspect is clearly covered by the judgment of the Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, .

9. Even otherwise, as per law, the liability of insurance company qua the claimants would still remain. At the most, it would give the insurance company right to recover the amount from the driver/owner of the offending truck.

10. In this view of the matter, it would be open to the insurance company to file appropriate case against the driver/owner of the offending vehicle for recovery of the amount. If any such suit is filed, the same can be defended on all possible defenses including that of limitation.

11. Coming to the second contention based on excessive compensation given by the Tribunal, apart from raising a plea that the claim is excessive and in regard to the mandatory provisions of Section 166 of the Act, nothing is pointed out as to how the award of the claim is excessive. No specific argument was raised contesting the finding of the Tribunal on this aspect.

12. In the absence of any such plea, it is not possible to accept the vague contention of the appellant raised in this behalf. The result of the aforesaid discussion would be to dismiss the present appeal.

No costs.