(2008) 08 DEL CK 0037

In the Delhi High Court

Case No : MAC App. No. 297 of 2008 and CM No. 6725 of 2008

United India Insurance Co. APPELLANT

Vs

Vijay Karketta alias Rohan, Shri Sukhdev Singh and Shri Ashok Chug (Owner) RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2), 170, 173

Citation : (2008) 08 DEL CK 0037

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : S.L. Gupta and Ram Ashray, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The present appeal u/s 173 of the Motor Vehicles Act,1988 (for short as the "Act") has been filed by the Appellant against the award dated 10.01.08 passed by Ms. Sukhvinder Kaur, Presiding Officer, Motor Accident Claims Tribunal, New Delhi.

2. Brief facts of the case are that on 30.12.2000 at about 9.50 p.m., Sh. Vijay Karketta, Claimant/ Respondent No. 1 herein, aged 22 years was going on his cycle with one of the staff member who was sitting on the front rod of his cycle from his sub-office at Lajpat Nagar-II to his residence. When he reached near Mathura Road Kalka mode near Okhla Bus Depot-II, then a truck trailor No: DL-1GA-1906 driven rashly and negligently at a fast speed came from behind and hit him. Due to the impact, he fell down on the road along with his cycle and the offending truck came over him due to which he sustained serious injuries. After the accident, he was taken to the Holy Family Hospital, New Delhi.

3. A compensation of Rs. 47,96,360/- has been claimed by the Respondent No. 1 against the Respondent No. 2 herein, being the driver of the offending vehicle,

Respondent No. 3 herein, being the owner of the offending vehicle & Appellant herein, as the offending vehicle is insured with them.

4. Respondent No. 2 opted not to appear despite service by way of publication and was proceeded ex-parte before the Trial Court.

5. Respondent No. 3 in his written statement has admitted that the offending truck was registered in his name. However, he has denied that the accident was caused due to the negligence on the part of the Respondent No. 2. It is stated that accident was caused due to the act of the Respondent No. 1 himself who has to be naturally well aware that bicycle is meant only for one person and pillion rider is not allowed. It is further stated that the cyclist was riding the bicycle on the main road carelessly in utter disregard of all safety rules.

6. Appellant though admitted that the offending truck was insured with it on the date of accident, it contested the claim on the ground that it was not be liable to pay any compensation in case it is found that the vehicle was being driven by a person without permission or authority of the insured or the said vehicle was used contrary to the terms of insurance policy or driver was not holding a proper and valid driving licence.

7. Vide impugned judgment, the Tribunal awarded the compensation of Rs. 12,93,000/- (rounded off) along with the interest @ 9% per annum from the date of filing the petition i.e. 25.02.02 till the date of its realization.

8. It has been contended by the Learned Counsel for the Appellant that the Tribunal has erred in awarding the sum of Rs. 8,00,000/- towards cost of future treatment of injuries, as till April 2006 (date of evidence) only a sum of Rs. 1,31,673/- was spent on treatment. Any future treatment after six years of occurrence of injury does not appear to be possible. Further, on 02.05.08, Sh. Surender Kumar Advocate, who had investigated regarding the present Magical Treatment of Respondent No. 1 has informed the Insurance Company that the Respondent No. 1 has not spent any major amount on his treatment since April 2006 to 02.05.08. On his suggestion to the Respondent No. 1 that why he does not take the treatment from AIIMS at Delhi or any other Government Hospital at Delhi or Noida, Respondent No. 1 told him that his personal doctor is giving him the treatment free of cost as he is personally known to him. Thus, the Respondent No. 1 is not entitled to Rs. 8,00,000/- for future treatment. The Tribunal has calculated permanent disability of the claimant to the extent of 62% and has also awarded Rs. 50,000/- towards loss of marriage prospects. Thus, the Tribunal arrived at the conclusion that injuries are of permanent nature and not curable, then what future treatment is required and how it will help the injured.

9. In the present appeal, the Appellant has challenged the quantum of award.

10. Section 170 of the Act reads as under:

170. Impleading insurer in certain cases.-Where in the course of any inquiry, the Claims Tribunal is satisfied that -

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

(b) the person against whom the claim is made has filed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in Sub-section (2) of Section 149, 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.

11. In Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, , the Apex Court while dealing with the question as to whether Respondent No. 1-Insurance Company could have filed an appeal in the High Court against the award of the Motor Accidents Claims Tribunal and got the quantum of compensation reduced when the insured had not filed such appeal and when Respondent No. 1-Insurance Company had not moved the Tribunal u/s 170 of the Act for getting the right to contest the proceedings on merit, held as under;

It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined respondent No. 1- Insurance Company in the Claim Petition but that was done with a view to thrust the statutory liability on the Insurance Company on account of the contract of the insurance. That was not an order of the Court itself permitting the Insurance Company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently, it must be held that on the facts of the present case, respondent No. 1- Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal.

12. In National Insurance Co. Ltd. and Another Vs. Smt. Balbir Kaur and Others, , the Punjab and Haryana High Court held as under;

If the insurance company does not plead before the Tribunal that there was any collusion between the claimants and the person against whom the claim was made and does not ask the Tribunal to pass an order u/s 170 of the Act allowing it to contest the claim on merits it will have no right to contest the same on the grounds other than those mentioned in Sub-section (2) of Section 149 of the Act. In the case before us, the insurance company did not plead collusion between the claimants and the Insured and there is no order passed by the Tribunal allowing the insurance company to contest the claim on merits. As a matter of fact, the insurance company did not make any prayer to the Tribunal to allow it to contest the claim on all or any of the grounds available to the insured. Not having done so before the Tribunal, we are of the view that the insurer cannot be allowed to challenge the award on merits for the first time in appeal before this Court. The application filed by the appellant u/s 170 of the Act seeking permission to contest the claim on merits itself is, thus, misconceived and not maintainable as such a plea could only be made before the Tribunal and not before this Court as is clear from the plain language of the section.

13. Thus, it is well-settled that when permission of the Tribunal to contest the claim on merits had not been obtained as per requirement, the insurer cannot be permitted to challenge the award on merits. Further, the Insurance Company in appeal is not entitled to challenge the award on merit, i.e., on the question of negligence and quantum, unless the conditions enacted in Section 170 of the Act are complied with.

14. Here, the Appellant has filed the present appeal challenging the award on quantum only. Since no permission u/s 170 of the Act has been granted, the Appellant i.e. Insurance Company, being the insurer cannot take this plea in the present appeal.

15. Appellant in its written statement has taken certain preliminary objections. As per objection No. 3 it is stated that;

Even otherwise, unless and until it is proved that the Respondent No. 1 on 30.12.2000 while driving the offending vehicle No. DL-1GA-1906 was holding a valid and effective driving licence, no liability can be imposed against the answering Respondent.

16. The Trial Court on the pleading of the parties framed three issues and issue No. 2 reads as under;

Whether Respondent No. 3 is not liable for compensation on the account of preliminary objections taken by it in its written statement?

17. On this issue, the finding given by the Tribunal is that;

No evidence has been adduced by Respondent No. 3 to establish its defence taken in the preliminary objections of its written statement. Accordingly Issue No. 2 is decided against Respondent No. 3 and in favour of the petitioners.

18. Hence, the present appeal as well as application for condonation of delay under these circumstances are not maintainable and the same are hereby dismissed.

19. No order as to costs.

20. Trial Court record be sent back.

