(2014) 11 DEL CK 0368

In the Delhi High Court

Case No : MAC App. 894/2014

United India Insurance Co. Ltd. and Others — APPELLANT

Vs

Umar Mohd and Others — RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152
Penal Code, 1860 (IPC) — Section 336

Citation : (2014) 11 DEL CK 0368

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Manish Kaushik, Advocate for K.L. Nandwani, Advocates for the Appellant; O.P. Mannie, Advocates for the Respondent

Judgement

Jayant Nath, J.—MAC. APP. No. 1215/2012 is filed by National Insurance Company Ltd. seeking to impugn the award dated 27.08.2012. MAC. APP. 894/2014 is filed by the United India Insurance Company Ltd. seeking to impugn the same award.

2. These two separate appeals are filed as the award has held the two vehicles responsible for the accident and accordingly, the appellants in the two appeals have been held liable to pay the award amount.

CM No. 16561/2014 in MAC. APP. 894/2014

3. I will first deal with the application i.e. CM No. 16561/2014 filed by United India Insurance Company Ltd. for condonation of delay of 765 days in filing of the appeal.

4. It is urged that as per the award passed by the Tribunal dated 27.08.2012 the compensation had to be paid by the National Insurance Company Ltd. and DTC whose offending vehicle is insured with the appellant. It is urged that it was only subsequently when respondent No. 1 filed an application under Section 152 CPC on 23.08.2014 that notice was issued to the appellant. It is only on receipt of the

notice that the appellant realised that respondent No. 1 is trying to take action against the appellant. Accordingly, it is urged that the appellant was advised to file the present appeal. It was in this background it is urged that the delay in filing of the appeal be condoned.

5. For the reasons stated in the application, in my opinion sufficient grounds are made out to condone the delay. The delay of 765 days in filing of the application is condoned.

6. The application is allowed.

MAC. APP. 894/2014 and MAC. APP. 1215/2012

7. The brief facts which led to the filing of the claim petition are that respondent No. 1 on 21.07.2009 was going on his two-wheeler scooter. The accident took place at Sector 13 Rohini. The appellant was going parallel to a car said to be driven at a very fast speed in a zig zag manner rashly and negligently. When the two vehicles, namely, two-wheeler of respondent No. 1 and the car were parallel to each other, suddenly the front side gate of the car was opened and hit the scooter of respondent No. 1 with great force. Respondent No. 1 fell down on the road. In the meantime, a DTC bus came from behind and ran over both the legs of respondent No. 1 and he sustained serious and grievous injuries all over his body.

8. The Tribunal framed the following issues:--

"1. Whether on 21.07.2009, at about 11.00 am near Anubhav Apartment, Bus Stand, AB Road, Sector-13, Rohini the petitioner suffered injuries in the accident involving vehicle No. DL-4C/U-0170 and DTC bus bearing registration No. DL-IP/B-5527? OPP

2. Whether this accident was caused due to rash and negligent driving of R-1 or R-3? (OPP)

3. Whether the petitioner is entitled for any compensation, if any, from whom and to what extent? OPP

4. Relief."

9. On issue No. 1 the Tribunal held that the accident took place due to the negligent driving of the driver of the car and the driver of the DTC bus and answered this issue accordingly.

10. On compensation, namely, issue No. 3 the Tribunal awarded the following compensation:--

11. The first bone of contention between the two appellant companies is: As to which of the Insurance Companies is liable to pay the award and in what proportion?

12. A perusal of the Award would show that though the Tribunal does not specify

the proportion in which the appellants are to pay the amount, directions were given that respondent No. 2, namely, National Insurance Company Ltd. and respondent No. 4, DTC would pay the award amount. The parties agree that instead of respondent No. 4 it should actually be respondent No. 5, namely, United India Insurance Company Ltd. which is the relevant insurance company.

13. A perusal of the Award further shows that the Tribunal has noted that the two drivers of the two offending vehicles, namely, respondents No. 2 and 3 have been implicated in a criminal case under Section 336 IPC and chargesheet has been filed.

14. The Tribunal also noted the evidence of P.W.-5, namely, respondent No. 1 who is an eye witness of the accident. P.W.-5 in his affidavit by way of evidence has clearly pointed out that while he was travelling parallel to the car, suddenly, the car while in motion has opened the front door which hit his two wheeler with great force. As a result of the opening of the door respondent No. 1 fell down. Behind the two vehicles, namely, the car and the two-wheeler a DTC bus was coming which as per P.W.-5 was also being driven in a rash and negligent manner and ran over the legs of respondent No. 1.

15. Opening of the door of the car while in motion without noticing a vehicle is running parallel to the car is a clear indication of negligence of the car driver. Further the driver of the DTC bus ought to have been careful while driving a heavy vehicle and should have managed not to cause injuries to respondent No. 1.

16. In the light of the above evidence, there are no reasons to differ with the findings recorded by the Tribunal.

17. Learned counsel appearing for the appellant in MAC. APP. 1215/2012 sought to challenge the compensation awarded. He submits that the Tribunal has wrongly assessed the functional disability of respondent No. 1 at 86%. He further seeks to impugn the enhancement of assessed income by 50% for future prospects as according to the learned counsel for the appellant respondent No. 1 on the date of the accident was 43 years old. He has also impugned the grant of interest @ 12% p.a. for the pendency of the proceedings before the Tribunal.

18. As far as the functional disability is concerned, the Tribunal has noted that respondent No. 1 was working as a carpenter dealing and manufacturing in wood items/materials. He was said to be earning Rs. 18,900/- per month. ITR filed shows that he was drawing a salary of Rs. 2,26,810/- per year. The Tribunal also noted that P.W.-8 Dr. G.C. Verma, Specialist Orthopaedics, Baba Saheb Ambedkar Hospital, Delhi has proved that respondent No. 1 suffered permanent disability of 86% in relation to his both lower limbs.

19. Keeping into account the judgment of the Supreme Court in the case of Anya v. University of Oxford, 2001 EWCA Civ 405 (CA) and the disability of 86% of both lower limbs and also keeping into account the profession of respondent No.

1, there is no reason to differ with the findings recorded by the Tribunal assessing the functional disability at 86%.

20. The Tribunal has while computing loss of income assessed the income of respondent No. 1 at 2,26,810/- per year based on the ITR. The Tribunal has increased this income by 50% on account of future prospects.

21. As the age of respondent No. 1 was 43 years on the date of the accident, keeping into account the ratio of the judgment of the Supreme Court in the case of Anya v. University of Oxford, 2001 EWCA Civ 405 (CA) , the increase in the income would by 30% and not 50%. Accordingly, loss of future income would now come to Rs. 35,50,030 (Rs. 2,26,810/- + 30% x 14 x 86%).

22. As far as the interest part is concerned, the Tribunal has directed that the award amount shall be paid @ 12% p.a. from the date of filing till the amount is paid. The said interest is discretionary relief at the discretion of the Tribunal and there are no reasons to interfere with the same.

23. The award amount is now re-calculated and reads as follows:--

24. The appellants in the two appeals shall deposit their balance of respective share of the award amount with interest as directed by the Tribunal @ 12% from the date of filing till deposit in this court before the Registrar General of this Court. On receipt of the said amount, the entire award amount as it would then have deposited would be released to respondent No. 1 as per the directions in the Award. However, it is clarified that only 75% of the award amount with up to date interest shall be kept in fixed deposit as per the directions in the award and the balance amount 25% shall be released to respondent No. 1. It may further be noted that a sum of Rs. 3,39,800/- was directed to be paid as future medical expenses which was actually for an artificial limb. The said sum of Rs. 3,39,800/- shall be kept in a separate fixed deposit. This amount shall be released to respondent No. 1 on receipt of an estimate from an appropriate reputed company for the artificial limb. The cheque would be prepared by UCO Bank, Delhi High Court in favour of the Company supplying the limb.

25. MAC. APP. 1215/2012 stands disposed of.

26. There are no additional submissions made in MAC App. No. 694/2014. In view of the above order the same is also dismissed.

27. All pending applications stands disposed of.

28. The Statutory amount, if any, be refunded to the appellants.