(2012) 05 DEL CK 0343

In the Delhi High Court

Case No : FAO 679 of 2003 and MAC App. 959 of 2011

United India Insurance Co. Ltd. APPELLANT

Vs

Satish Kumar and Others
 Satish Kumar and Others Vs United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 31-05-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 147(1), 217, 217(2), 217(2)(c)

Citation : (2012) 05 DEL CK 0343

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

Bench : Single Bench

Advocate : Pankaj Seth in FAO 679/2003 and Nemo in MAC app. 959/2011, for the Appellant; Pankaj Seth, Advocate in MAC App. 959/2011, for the Respondent

Judgement

G.P. Mittal, J.—These two Appeals (FAO 679/2003 and Cross Appeal MAC APP. 959/2011) arise out of a judgment dated 10.01.2003 whereby while awarding a compensation of Rs. 63,400/- in favour of Respondents No. 1 and 2, the Motor Accident Claims Tribunal (the Claims Tribunal) rejected the Appellant Insurance Company''s plea that it had the limited liability of Rs. 15,000/- per passenger and made the Appellant Insurance Company liable to pay the entire compensation. Respondents No. 1 and 2 have filed Cross Appeal (MAC APP.959/2011) on the plea that the compensation awarded is grossly meager and cannot be said to be just compensation.

2. Deceased Hari Singh, aged 49 years was travelling in bus No. DEP-6733. On noticing a Haryana Roadways Bus coming from the opposite direction at a very fast speed, the driver of bus No. DEP-6733 (Respondent No. 3) lost its control. It collided against a tree resulting into injuries on the person of several passengers. The injuries in the case of deceased Hari Singh proved fatal.

3. During inquiry before the Claims Tribunal, Respondents No. 1 and 2 (the Claimants hereinafter) placed on record the deceased''s Salary Certificate showing his salary to be Rs. 1486/- per month. The Claims Tribunal in the

absence of any formal proof took the minimum wages of an unskilled worker as Rs. 750/- per month; made some addition towards the future prospects; deducted 50% towards the personal and living expenses and awarded a compensation of Rs. 63,400/- (including the interim compensation of Rs. 25,000/-).

4. It is urged on behalf of the Appellant Insurance Company that the Claims Tribunal erred in coming to the conclusion that a passenger travelling in a bus is to be treated at par with a third party and making the Insurance Company liable to pay the entire compensation.

5. It is urged that the Insurance Company duly proved that the insured (Respondent No. 4 Dayawati) paid a premium of Rs. 612/- @ Rs. 12/- per passenger. Thus, it covered the risk of Rs. 15,000/- only per passenger.

6. On the other hand, it is urged by the learned counsel for the Claimants that the deceased Hari Singh was working in MCD since 19.10.1963 on regular basis. Being a Group ''D'' employee in the Pay Scale of Rs. 750 to 990/- w.e.f. 01.01.1986, had he been alive, he would have been in the Scale of Rs. 2750 to 4400/- w.e.f. 01.01.1996. His salary of Rs. 1,486/- was not believed. The future prospects were not adequately added in the pay of Rs. 1486/- as on the date of the accident. It is urged that the compensation towards non-pecuniary heads is on the lower side.

7. It is important to note that this accident took place on 18.09.1989 and the Motor Vehicles Act, 1988 (the Act) came into force w.e.f. 01.07.1989. Section 147 of the Act lifted the limit of liability in respect of death or bodily injury to any person as was there u/s 95(2) of the Motor Vehicles Act, 1939(the old Act). The question whether the liability under the statutory policy in respect of the personal injury was to be made unlimited came for consideration before the Supreme Court in National Insurance Company Ltd. Vs. Behari Lal and Others, . The Supreme Court held that the policy of insurance issued with limited liability before the commencement of the new Act would become a policy with unlimited liability vis-?-vis death or injury to the third party till the expiry of the policy or till four months whichever was earlier. After a period of four months the insurance policy would become invalid. The Supreme Court emphasized that there could not be two types of statutory policy under the Act. Paras 8 to 13 of the Report are extracted hereunder:

8. It is quite clear that Sub-section (2) of Section 147 of the New Act directs that subject to proviso to Sub-section (1), a statutory policy shall cover the amount of liability incurred except in respect of damage to any property of a third party for which a limit of rupees six thousand is specified. A careful reading of the proviso to Sub-section (2) discloses that any policy of insurance, issued with any limited liability and in force immediately before the commencement of the New Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy, whichever is earlier.

9. Now, a policy of insurance may be a contract policy or a statutory policy. The proviso does not deal with unlimited liability which an insurer may undertake under a contract policy. It deals with a statutory policy with limited liability, the question, which, arises here is: what is the import of the phrase, "with any limited liability and in force.'' To understand the meaning of this phrase, it becomes necessary to refer to Section 95 of the Old Act which deals with requirements of policies and limits of liability. Under Sub-section (2) of Section 95 a policy of insurance (a statutory policy) was required to cover any liability incurred in respect of any one accident, in the case of a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment: (1) in respect of persons other than passengers carried for hire or reward, a limit of one lakh and fifty thousand rupees in all; and (2) in respect of passengers a limit of fifteen thousand rupees for each individual passenger. Therefore, the phrase means a statutory policy under the Old Act with the limit prescribed therein which was valid immediately before the commencement of the New Act. The words are not employed to limit the liability of an insurance company to the amount specified in the policy by virtue of the provisions of Section 95(2) of the Old Act either for a period of four months or for a lesser period during which the policy is valid. It is argued by Mr. Sharma that by the proviso the liability of the Insurance Company is limited to the amount mentioned in the existing statutory policy issued under the old Act. We are afraid, we cannot accede to this contention and he can derive no benefit by relying on the following observation of this Court in New India Assurance Company Vs. Shri Satpal Singh and Others, .

The legislature has also taken care of even the policies which were in force on the date of commencement of the Act by specifically providing that any policy of insurance containing any limit regarding the insurer''s liability shall continue to be effective for a period of four months from commencement of "the Act or till the date of expiry of such policy, whichever is earlier. This means, after the said period of four months, a new. insurance policy consistent with the New Act is required to be obtained.

10. There the question before this Court was with regard to liability of the Insurance Company in case of death of a gratuitous passenger in the truck which met with an accident resulting in his death. We cannot read the observation, quoted above, as laying down the law that the amount specified in the policy in force on the date of the commencement of the New Act will be payable for a period of four months after such commencement or till the date of expiry of such policy, whichever is earlier.

11. In our view, the proviso cannot be so interpreted as to subject the insurance companies to different maximum liabilities under statutory policies in respect of accidents occurring during the same period. We do not think that this could be the intention of the Parliament. Having fixed a date for enforcement of the New Act incorporating the requirement of a statutory policy u/s 147(1) thereof, the

effect of the provision could not have been whittled down during the period which may vary from one day to four months depending upon when the existing policy expires within the said period of four months. It merely indicates the span of validity of existing policy. Here, it is pertinent to notice the provisions of Section 217(2) of the New Act which deal with the effect of repeal of the Old Act (under which a statutory policy was taken) on coming into force of the New Act. Sub-section (1) of Section 217 repeals, inter cilia, the Old Act. Clause (c) of Sub-section (2), which is relevant, provides that notwithstanding the repeal under Sub-section (1) of the old Act any document, referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to the New Act or the corresponding provisions thereof.

12. In this context, it will be useful to refer to the decision of this Court in Padma Srinivasan Vs. Premier Insurance Company Limited, . In that case after the policy was taken u/s 95(2)(a) of the old Act,-it was amended in 1969 so as to increase the liability of the insurer from Rs. 15,000/- to Rs. 50,000/-. The accident which gave rise to the appeal occurred after the amended provision came into force. Chandrachud, C.J. speaking for a three-Judge Bench observed:

Since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the state of the law obtaining at the time of the accident for determining the extent of the insurer''s liability under a statutory policy. In this behalf, the governing factor for determining the application of the appropriate law is not the date on which the policy of insurance came into force but the dale on which the cause of action accrued for enforcing liability arising under the terms of the policy. That we consider to be a reasonable manner in which to understand and interpret the contract of issuance entered into by the insured and the insurer in this case.

We are not persuaded to accept the contention of Mr. Sharma that the proviso in question is incorporated to nullify the effect of the judgment. The proviso to Sub-section (2) of Section 147 cannot be read as a proviso to Section 217(2)(c) of the New Act and it does not, in case of the existing policy being in force on the date of the occurrence of the accident, limit the liability of the Insurance Company to the amount mentioned in Section 95(2) of the Old Act.

13. From the above discussion, it follows that the proviso to Sub-section (2) of Section 147 does not limit the liability of Insurance Companies to payment of combination to the extent specified in the policy of insurance in terms of Section 95(2) of the Old Act which is in force before the commencement of the New Act for a period of four months after commencement of the New Act or till the date of expiry of such a policy, whichever is earlier. In this view of the matter, we endorse the view taken by the Division Bench of the High Court of Gujarat in Kacharabhai L. Limbachia v. Ratan Singh J. Rathod-Patelia,) 1998 ACJ 326 (Guj) and by the Division Bench of the Punjab and Haryana High Court in National Insurance Company Ltd. v. Puja Roller Flour Mills (P) Ltd., (1997) 2 Punj LR 199.

8. Thus, the question whether the liability was limited to Rs. 15,000/- per passenger or whether the Appellant Insurance Company was under obligation to satisfy the claim of third party on account of avoidance clause with a right to recover the same from the insured loses any significance. In this case, the accident took place within four months of the coming into force of the new Act. The liability of the Insurance Company in view of the Supreme Court report in National Insurance Co. Ltd.(supra) is unlimited.

9. Coming to the Cross-Objections (MAC. APP. No. 959/2011), it may be noticed that PW1''s testimony that his father was in Government Service was not challenged in cross-examination. Although the salary certificate was not proved by calling an official from the MCD, yet in the absence of any rebuttal and challenge to PW1''s testimony, I would accept the salary certificate for the purpose of computation of the loss of dependency.

10. The deceased Hari Singh was aged 49 years on the date of the accident. The Claimants were entitled to an addition of 30% towards future prospects. Following Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the compensation comes to Rs. 2,00,907/-(Rs. 1486/- + 30% x 12 x 2/3 x 13). Considering that this accident took place in the year 1989 and the deceased left behind two sons who had just attained majority, I would award a sum of Rs. 10,000/- towards loss of love and affection, Rs. 5,000/- towards loss to estate and Rs. 2,000/- towards funeral expenses.

11. The overall compensation thus stands increased from Rs. 63,400/- to Rs. 2,17,907/-.

12. The enhanced compensation of Rs. 1,54,507/- shall carry interest @ 7.5% per annum from the date of the filing of the Petition till its payment. The Appellant Insurance Company is directed to deposit the enhanced compensation with the UCO Bank, Delhi High Court Branch in the name of the Respondents No. 1 and 2 within six weeks.

13. The compensation awarded shall be equally apportioned between the Respondents No. 1 and 2. The amount shall be released in favour of the Respondents No. 1 and 2 immediately on deposit.

14. In view of the discussion above, FAO No. 679/2003 is dismissed.

15. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company on filing a report regarding deposit of the enhanced compensation.

16. The MAC. APP. No. 959/2011 is allowed. Pending Applications stand disposed of.