(2007) 07 DEL CK 0175

In the Delhi High Court

Case No : F.A.O. No. 52 of 1989 and C.M. No. 28/89

United India Insurance Co. Ltd. APPELLANT

Vs

Sh. Sunil Kumar Sharma RESPONDENT

Date of Decision : 25-07-2007

Acts Referred:
Motor Vehicles Act, 1939 — Section 95(2)

Citation : (2007) 07 DEL CK 0175

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Vijay Malhotra, V. Tomar and Veenit Malhotra, for the Appellant; Kapil Tyagi in FAO. No. 52/1989 and CM.No.28/89, FAO. No. 53/1989 and CM. No. 1730/89, H.R. Khan Suhel and Saif Khan, in F.A.O. No. 55/1989, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—The four captioned appeals and three cross objections arise out of the same accident involving a bus bearing No. DEP-2800.

2. On 26.11.1982, an unfortunate accident had occurred when a car bearing No. DEA-3007 and bus bearing No. DEP-2800 collided with each other.

3. There were 4 passengers travelling in the car. As a result of the said accident, 3 passengers namely Anand Shivpuri, Sunil, Gopal Singh sustained injuries while 4th passenger P.S. Ramanathan died.

4. Dependents of the deceased, P.S. Ramanathan filed a claim petition claiming compensation on account of death of the deceased in the said road accident. Injured also filed claim petitions claiming compensation. All the claim petitions were consolidated and tried together by the Tribunal.

5. Defence raised by the insurance company was that the policy issued in respect of bus was a statutory policy and as per Section 95(2) of the Motor Vehicles Act, 1939, it''s liability under the policy was limited to the extent of Rs. 50,000/- only.

6. After considering the evidence on record pertaining to the accident and holding that the accident in question was caused due to rash and negligent driving by the driver of the bus No. DEP-2800, learned Tribunal awarded compensation to the dependents of the deceased as also to the injured. Defence of the insurance company that it''s liability was limited to the extent of Rs. 50,000/- was rejected by the learned Tribunal as it was held that onus to prove that the policy was a statutory policy only was upon the insurance company and that it had failed to prove the same.

7. FAO. Nos. 52/1989, 53/1989, 54/1989 and 55/1989 are the appeals filed by the insurance company challenging the award dated 24.11.1988 in so far it determines that the liability of the insurance company is unlimited.

8. Learned Counsel for the appellant insurance company submitted that the Tribunal erred in not restricting the liability of the insurance company to Rs. 50,000/- only.

9. Learned Counsel for the appellant relied upon testimony of R.K. Mehra, Assitant Manager, United India Insurance Company, RW-1 in support of his contention that the liability of the insurance company limited to the extent of Rs. 50,000/- only.

10. Bhajan Singh, RW-1 produced a photocopy of a policy of insurance (Ex.R-1) and deposed that the said copy was a photocopy of the office policy (carbon copy) issued in respect of bus No. DEP-2800.

11. Learned Counsel for the appellant contented that the Tribunal failed to appreciate the testimony of the R.K. Mehra, RW-1 which according to the Learned Counsel clearly proved that the policy issued by the insurance company was a statutory policy. He further contended that in absence of any evidence to show that an extra premium was charged by the insurance company to cover risk to a larger extent, the learned Tribunal erred in holding that the liability of the insurance company is unlimited.

12. The question is whether R.K. Mehra, RW-1 successfully proved that the policy of insurance (Ex.R-1) produced by him was the photocopy of the original policy issued by the insurance company.

13. I have perused the testimony of R.K. Mehra, RW-1.

14. R.K. Mehra, RW-1 admitted in cross examination that he had no personal knowledge regarding the original policy issued by the insurance company.

15. R.K. Mehra, RW-1 deposed that no extra premium was charged for covering the third party risk. But later in cross examination, he stated that extra premium was charged.

16. As regards insurance company''s failure to produce office copy and other records pertaining to issue of insurance cover in respect of insurance cover, R.K. Mehra, RW-1 deposed that he had no knowledge about the same. He stated that

he had no knowledge whether office copy was destroyed or not.

17. I also note that no notice was served by the insurance company calling upon the owner of the offending bus to produce the original policy.

18. The above circumstances compel me to draw an adverse inference against the insurance company. I am in perfect agreement with the finding of the learned Tribunal that appellant insurance company failed to prove that Ex.R-1 was a photocopy of the office copy of the policy of insurance. More so, when the witness failed to explain as to from which copy Ex.R-1 was photocopied.

19. In the decision reported as National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, Supreme Court made it imperative for the insurance companies to establish the insurance policy by placing on record office copy of the policy in so far as third party claims are concerned. In para 10 of the report, it was observed as under:

10. Before parting with the case, we consider it necessary to refer to the attitude often adopted by the Insurance Companies, as was adopted even in this case, of not filing a copy of the policy before the Tribunal and even before the High Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case if instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases where the Insurance Company concerned wishes to take a defence in claim petition that its liability is not in excess of the statutory liability along with its defence.

20. I, therefore, dismiss FAO. Nos. 52/89, 53/89, 54/89 and 55/89.

21. Vide CM. No. 1730/1989 in FAO. No. 53/89 claimants of the deceased P.S. Ramanathan seek enhancement of the compensation.

22. I note that compensation in sum of Rs. 2,34,000/- has been granted to the dependents of the deceased P.S. Ramanathan by the Tribunal.

23. Deceased was aged 44 years at the time of the accident. He was survived by a widow, 2 minor children, aged 15 years and 12 years. Deceased was employed as a photographer. He was employed as cameraman (Grade-I) with Madras Doordarshan Kendra. The last drawn salary of the deceased was Rs. 2,147/- p.m.

24. Tribunal has taken monthly income of the deceased as Rs. 2,147/-. Deducting 1/3rd towards personal spending of the deceased, loss of dependence worked out to the family is Rs. 1500/- p.m.

25. Multiplier of 13 has been applied. Thus, total loss of dependency to the family assessed by the Tribunal is Rs. 2,34,000/-. (Rs. 1500 x 12 x 13).

26. A perusal of the award together with evidence led by the claimants shows that while determining loss of dependency, the Tribunal erred in ignoring the prospects of future increase in the income of the deceased.

27. In order to establish future prospects of the deceased, claimants examined Shri R. Logananda, Deputy Director (Admn.), Doordarshan Kendra, Madras, PW-11. Said witness brought service record of the deceased. (Ex.PW-11/2.) On the basis of said record, witness deposed that had the deceased lived, he would have been promoted to the post of Video Executive and would have drawn a salary of Rs. 3,650.50 p.m. at the time of his retirement.

28. I see no reason to disbelieve the testimony of PW-11.

29. Ample evidence was produced before the Tribunal to show the salary which the deceased would have drawn from time to time but it was not taken into consideration by the Tribunal while calculating compensation which is contrary to the judgment of the Supreme Court in the decision reported as Smt. Sarla Dixit and another Vs. Balwant Yadav and others, .

30. Therefore, I take that the salary of the deceased would have been Rs. 3,650/- p.m. at the time of his retirement. Mean average income of the deceased comes to Rs. 2,898/- p.m. (Rs. 2147 + Rs. 3650 ? 2).

31. Deducting 1/3rd towards personal spending of the deceased, loss of dependence comes to Rs. 1,932/- p.m.

32. I maintain the multiplier 13 applied by the Tribunal. I note the decision reported as Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, in which Supreme Court applied multiplier 15 in case of deceased aged 41 years.

33. Applying multiplier 13, total loss of dependence comes to Rs. 3,01,392/-. (Rs. 1932 x 12 x 13).

34. Noting that no compensation was awarded to the claimants towards loss of consortium, loss of love and affection and funeral expenses, I award conventional damages in sum of Rs. 17,000/-. Thus, the total compensation payable comes to Rs. 3,18,392/-.

35. Tribunal has awarded compensation in sum of Rs. 2,34,000/-. Thus, compensation stands enhanced by a sum of Rs. 84,392/-.

36. CM No. 1730/1989 in FAO. No. 53/89 is disposed of as under:

(i) Compensation is enhanced by a sum of Rs. 84,392/-.

(ii) Enhanced compensation be paid together with interest @ 9% p.a. from date of claim petition till realization. (cross objections were filed in the year 1989.

Between the years 1989 to 2007 interest rates have fluctuated between 14% p.a. to 5.5% p.a.)

(iii) Apportionment of enhanced compensation be as per the award.

37. Vide CM No. 28/1989 in FAO No. 52/1989 injured Sunil Kumar has challenged the compensation awarded to him. He is dissatisfied by the quantum of the compensation.

38. I note that the learned Tribunal has awarded compensation in sum of Rs. 83,062.50 to the injured. Break up is as under:

(i) Medicinal Expenses : Rs. 125/-

(ii) X-Ray : Rs. 80/-

(iii) Conveyance Expenses : Rs. 5000/-

(iv) Special Diet : Rs. 2000/-

(v) Permanent Disability : Rs. 35,000/-

(vi) Pain & Suffering : Rs. 35,000/-

(vii) Loss of salary for laid off period : Rs. 5857.50

39. Injured Sunil Kumar was aged 26 years at the time of the accident. As a result of the accident, injured suffered right thigh fracture, fracture of right femur, head injury, injuries on right ear, right cheek, face, right side of neck, and fingers of both hands. There is evidence of three spells of hospitalization. There is evidence that he remained under treatment for a period of around 8 months. His right leg was shortened by ? inch. He suffered permanent disability to the extent of 45%.

40. A perusal of the award together with nature of injuries, period of treatment show that compensation awarded to injured Sunil is wanting in three areas namely, compensation for permanent disability, pain and suffering and loss of amenities of life. I note that no compensation under the latter head has been awarded by the Tribunal. Keeping in view the injuries sustained by Sunil Kumar and the permanently disability suffered by him, I consider it reasonable to award a further compensation in sum of Rs. 50,000/- to the injured, Sunil. It is directed that enhanced compensation be paid together with interest at 9% per annum from date of claim petition till date of realization.

41. Vide CM. No. 2563/1989 in FAO. No. 54/1989, injured, Gopal Singh seeks enhancement of compensation.

42. Learned Tribunal has awarded compensation under the following heads:

(i) Loss of salary for laid off period for 18 months .... Rs. 8100/-

(ii) Treatment Expenses .... Rs. 4210/-

(iii) Purchase of medicines .... Rs. 1500/-

(iv) Special Diet .... Rs. 4000/-

(v) Conveyance Expenses .... Rs. 1000/-

(vi) Permanent Disability .... Rs. 25,000/-

(vii) Pain & Suffering .... Rs. 20,000/-

(viii) Loss of future income .... Rs. 5,000/-

43. The total of aforenoted compensation comes to Rs. 68,810/-. However, while awarding total compensation, Tribunal failed to list compensation of Rs. 8100/- awarded under the head ''Loss of Salary for laid off period'' and thus wrongly awarded compensation in sum of Rs. 60,710/-.

44. Injured Gopal was aged 24 years and was working as a driver at the time of the accident. As a result of the said accident, he suffered head injury, fracture of right femur and humorous. His right leg remained under plaster for a period of 3 months. Due to mal-uniting of fracture, his right leg has shortened by half inch and he limps while walking. He suffered permanent disability to the extent of 40%.

45. I note that no compensation has been awarded under the head ''Loss of Amenities of Life''. Compensation under the said head is granted when life of an injured is significantly impaired by the injury. Considering that the injured limps while walking, I award further compensation in sum of Rs. 20,000/- to the injured.

46. I correct the award by listing the sum of Rs. 8100/- which due to a listing error was not granted by the Tribunal. Thus, compensation is enhanced by a sum of Rs. 28,100/-. Enhanced compensation be paid together with interest @ 9% p.a. from date of claim petition till date of realization.

47. FAO 52/189, FAO 53/89, FAO 54/89 and FAO 55/89 are dismissed.

48. CM No. 173/89 in FAO. No. 53/89 is allowed in terms of para 37 above. CM. No. 28/89 is allowed in terms of para 41 above and CM. No. 2563/89 is allowed in terms of para 47 above.

49. No costs.

50. LCR be returned.

