(2008) 11 DEL CK 0117

In the Delhi High Court

Case No : MAC App. No. 466 of 2008 and CM No. 12015 of 2008

United India Insurance Co. Ltd. APPELLANT

Vs

Smt. Dhanvesh and Others RESPONDENT

Date of Decision : 05-11-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 140(2), 149, 149(2), 165(1)

Citation : (2008) 11 DEL CK 0117

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : A.K. De, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Appellant-Insurance Company has filed the present appeal u/s 173 of Motor Vehicles Act (for short as "Act") against the award dated 12th May, 2008 passed by Sh.A.S. Jayachandra, Judge, MACT, Delhi.

2. The brief facts of this case are that on 15th October, 2005, deceased Balbeer Singh and one Chandra Shekhar were coming back from Suman Petrol Pump, Vaishali, on their scooter bearing No. UP-14-A-8337. When they reached at the back side of Vaishali, Sector-I, they were hit by a Uno Car bearing No. DL-8CB-9820 which was driven by respondent No. 7 who is also the owner of the car, in a rash and negligent manner. Balbeer Singh received fatal injuries and subsequently he died.

3. Respondent No. 1 in its written statement has admitted the factum of accident and has further stated that the car in question is insured with appellant.

4. The appellant in its written statement has admitted the factum of the insurance but has taken certain legal preliminary objections.

5. Vide impugned judgment, an award for a sum of Rs. 5,44,000/- was passed in favour of the claimants and against the appellant. Further, the claimants were

entitled to interest @ 7.5% p.a. from the date of the petition till realisation.

6. It is contended by the learned Counsel for appellant that the Tribunal has erred in taking the monthly income of the deceased to be Rs. 5,000/- on the principle of increase in minimum wages and the inflation rates, even though the Tribunal has held that minimum wages of Rs. 3,165/- p.m. are to be taken as the monthly income and there was no documentary evidence about the income of the deceased.

7. Further, the scooterist had himself come from the wrong side, so he was 50% negligent for causing the accident by coming from a wrong direction. Thus, the Tribunal has erred in holding only 15% negligence on the part of the scooterist.

8. Other argument advanced by learned Counsel for the appellant is that the accident has taken place within the territorial jurisdiction of State of U.P., so the Tribunal at Delhi had no jurisdiction to entertain this claim petition.

9. The compensation awarded by the Tribunal is highly excessive and thus, liable to be set aside.

10. In the present appeal, the Appellant has challenged the award on the ground that it is excessive and the Tribunal had no jurisdiction.

11. Admittedly, no permission u/s 170 of the Act was obtained by the appellant from the Tribunal nor any application u/s 170 of the Act was filed.

12. 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.

13. 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."

14. 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.

15. In a recent decision of this Court in United India Insurance Co. Vs. Bimla Devi and Others, it has been observed that;

Motor vehicle accident claim is a tortuous claim directed against tortfeasors who are the insured/owner and the driver of the vehicle, the insurer comes in to the picture as a result of the statutory liability created under the Motor Vehicles Act. The legislature intended and has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section

140(2) of the Act or where the condition enshrined in Section 170 is satisfied.

Right of appeal is a creature of statute. The Parliament, while enacting Sub-section (2) of Section 149 only specified some of the defences which are based on conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not fall under Sub-section (2) of Section 149 cannot be taken as a defence by the insurer. Had it been the intention of the Parliament to include the breach of other conditions of the policy as a defence, it could have easily provided for "any breach of conditions of insurance policy" in Sub-section (2) of Section 149. But it is not the case, since the legislator has enumerated specifically the grounds of defences available to the insurer. If the insurer is permitted to take any other defence other than those specified in Sub-section (2) of Section 149, it would mean we are adding more defences in the statue which is neither found in the Act nor was intended to be included.

16. 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.

17. 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.

18. Here, the Appellant has filed the present appeal challenging the award on quantum. Admittedly, no

permission u/s 170 of the Act has been obtained by the appellant from the Tribunal.

19. Since no permission u/s 170 of the Act has been obtained, the Appellant i.e. Insurance Company, being the insurer of offending vehicle is thus barred from raising plea with regard to quantum and merits of the claim, in the present proceedings during the course of appeal.

20. Appellant in its appeal has also taken objection regarding jurisdiction of the Tribunal.

21. In this respect, Section 166 of the Act which is relevant is reproduced here as under;

166. Application for compensation

(1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under Sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) xx xx xx (4) xx xx xx

22. In the present case, the accident took place in Vaishali, U.P. whereas, the respondent No. 7 i.e. owner and driver of the offending vehicle is residing in Rohini, Delhi.

23. The residence of respondent No. 7 would confer jurisdiction upon the Tribunal, within whose local limits respondent No. 7 resides and therefore, the Tribunal has rightly exercised its territorial jurisdiction in the present case.

24. This plea of the counsel for appellant is also liable to be rejected on the ground that this defence was nowhere pleaded in the written statement filed, by the appellant before the Tribunal.

25. In view of the above discussion, I do not find any infirmity or illegality in the impugned judgment passed by the Tribunal. The compensation awarded by the Tribunal is just, fair and equitable.

26. Accordingly, the present appeal filed by the Appellant is hereby dismissed with the costs of Rs. 10,000/-.

27. Appellant is directed to deposit the costs of Rs. 10,000/- by way of a cross-cheque in the name of Registrar General of this Court within four weeks from today.

28. List on 8th December, 2008 for compliance.

29. Trial Court record be sent back.