(1989) 11 P&H CK 0082

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 918 of 1983 and Cross Objection No. 31-CII of 1984

United India Insurance Company Ltd. — APPELLANT

Vs

Gurdev Singh and Others — RESPONDENT

Date of Decision : 01-11-1989

Acts Referred:
Motor Vehicles Act, 1939 — Section 110A, 110C(2A)

Citation : (1990) ACJ 946 : (1990) 97 PLR 320

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : R.M. Suri, for the Appellant; Hemant Kumar, for the Respondent Nos. 1 and 2, Jagjit Mohan Singh Bhalla, for the Respondent No. 3 and Balbir Singh, for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—The challenge in appeal here is by the Insurance Company and is to the quantum of compensation awarded to the claimants.

2. On September 11, 1980, at about 3 P.M. when Didar Singh a 16 years old student, was returning home from school, the truck HRE-1265, came behind at a T-Junction in Mohali and knocked him down. Didar Singh died as a result of the injuries sustained by him, in this accident It was the finding of the Tribunal that the truck- driver was wholly to blame for the accident as it had been caused by his rash and negligent driving. A sum of Rs. 50,000/- was awarded as compensation to the parents of Didar Singh deceased.

3. At the very out-set, Mr. Hemant Kumar, counsel for the claimants, raised the objection that it was not open to the Insurance Company to seek to question the quantum of compensation payable to the claimants. The argument being that the only defences open to an insurance Company were those as set-out in Section 96(2) of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act").

4. it is indeed well-settled that an insurer who is made party to proceedings for recovery of compensation can resist the claim only on grounds mentioned in sub-section (2) of Section 96 of the Act and it is not open to it to raise ang other plea. The Tribunal is, how- ever, empowered u/s HOC (2-A) of the Act to permit an insurer to contest the claim on all grounds as are available to the person against whom the claim has been made.

5. In the present case, it will be seen that both the driver and the owner of the offending truck were proceeded against ex parte and on the request of the Insurance Company, it was permitted to take over their defence too. This being so, it stands to reason that with an appeal being a continuation of the proceedings before the Tribunal, the position of the insurers, as regards the defence is open to it, must remain the same in appeal too, as they were before the Tribunal. It follows, therefore, that when once the Insurance Company has been permitted in terms of Section 110-C(2-A) of the Act to takeover the defence of the claim on all grounds available to the persons against whom the claim has been made, it can also, in appeal, take up the same grounds in defence. No bar can thus be placed upon the Insurance Company, in the instant case, in seeking to question the quantum of compensation awarded to the claimants.

6. Faced with this situation, counsel for the claimants sought to contend that the Tribunal, in permitting the Insurance Company to take over the defence of the claim, on behalf of the Driver and the owner of the offending truck had not, in its order, given any reasons for doing so and therefore, this order should not be allowed to stand, In dealing with this contention it would be pertinent to note that it is for the first time in appeal that such an objection has been raised. The stage for raising such a plea was clearly when such permission was granted by the Tribunal. The permission having been granted and the matter having been adjudicated by the Tribunal, there is clearly no warrant for denying to the Insurance Company now the right to question the quantum of compensation awarded to the claimants.

7. Coming now to the matter on merits, the evidence on record shows that Didar Singh deceased was about 16 years of age at the time of his death. He was a student of IXth Class and had be lived, he would have passed out from school in another year and after another 3 or 4 years of college education, he should have been qualified for gainful employment. Both the parents of the deceased are teachers and it is, therefore, reasonable to assume that they would both have been interested to ensure good education for their son and what is more, they were also capable of providing him the necessary facilities for it.

8. Keeping in view our social norms, parents do have a legitimate expectation of financial support from their children, particularly in their old age when their children are gainfully employed. The extent of such monetary assistance must, of course, depend upon the circumstances of the parents and the deceased child and also upon other surrounding circumstances. As observed by the Full Bench in

Bimla Devi etc. v. National Insurance Co. and Anr. (1988-2) 94 P. L. R. 301. ''The jurisdiction of the Tribunal under the Motor Vehicles Act to award just compensation is very wide and comprehensive. However, the element of speculation cannot be ruled out The determination of compensation would turn upon the particular facts of health, the age of the victim, his out-look in life, the interest which the parents were taking in the child and the totality of circumstances tending to show whether the victim had a predominantly happy life or a life of misery or an insipid life Apart from this, it has also to be taken into consideration whether the child was subject to risks of illness, disease, accident and death. His education and up-keep would have been a substantial burden to the parents for many years if he had lived He might or might not have turned out a useful youngman. He would have earned nothing till about the age of 16 years. He might, not have aided his father at all. He might have proved a mere expense. We cannot adequately speculate one way or the other......"

9. Seen in the context of these observations, the compensations awarded clearly warrants no interference in appeal. As mentioned earlier, the deceased was 16 years of age at the time of his death and he was a good student. With his parents being teachers, he had before him every opportunity for further education, which, it is reasonable to assume could have qualified him for a good carrier in life. The parents would no doubt have had upon themselves the expenses of paying for his education and providing for him for the next couple of years There are also, the normal risks of everyday life like illness and expense. Taking an over all view, however, of the circumstances and the situation of the claimants and the deceased, the amount awarded can, by on means, be held to be unreasonable or excessive. The Award of the Tribunal is accordingly hereby up-held and affirmed and this appeal is thus dismissed with costs. Counsel fee Rs. 500/-.