
(2001) 07 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1864 of 2001

United India Insurance Company Ltd.

APPELLANT

Vs

Pinki Walia

RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 110

Citation : (2003) ACJ 1083 : (2001) 4 RCR(Civil) 809

Hon'ble Judges : S.S. Sudhalkar, J;A.K. Goel, J

Bench : Division Bench

Advocate : Ravinder Arora, for the Appellant; R.S. Mamli, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sudhalkar, J.—The Insurance Company is challenging the award of the Tribunal. The claim petition was filed by the widow and daughter of deceased Ajit Singh who died in the motor accident.

2. Learned counsel for the appellant argued that there was a collusion between the respondents-claimants and the driver and owner of the vehicle. According to the learned Counsel, the vehicle number mentioned in the FIR is 640 while the vehicle number insured with the appellant is 040. Only because of the vehicle number being differently recorded in the FIR, the evidence of the respondents-claimants cannot be discarded. Learned counsel for the appellant states that the witnesses have deposed regarding the number of the vehicle being 040 and not 640. Even then it has to be seen that the FIR has been lodged on the first information and that has to be by one person only and not by more than one. In such a case, it will not be proper to throw out the evidence only because of the wrong number mentioned in the FIR. Moreover, the vehicle involved in the accident is a Matador. We questioned the learned Counsel for the appellant as to whether any evidence has been placed on record to show that vehicle number 640 is also a Matador. He replied that no such evidence is led. The Tribunal after considering the evidence, held that the vehicle involved is "Matador" bearing No.

040 and we do not find any infirmity in the finding of the Tribunal.

3. Learned counsel for the appellant argued that the income of the deceased has not been assessed properly. According to him, the basis of assessing the income should be the pay scale of Rs. 950-1800/-. The income assessed by the Tribunal is Rs. 3000/- per month! Learned counsel for the appellant has relied upon the copies of depositions before the Tribunal which he has shown to us. He has relied on the deposition of PW2 who was Senior Assistant, PHC Sahnewal, Ludhiana. He has stated that the scale of the deceased was Rs. 950-1800/- but he has also stated that the salary of the deceased was about Rs. 3500/- to Rs. 4000/- per month. When the basic pay scale was of Rs. 950-1800/- the finding of the Tribunal that he was earning Rs. 3000/- per month cannot be said to be erroneous. We do not find any infirmity in the finding arrived at by the Tribunal.

4. Learned counsel for the appellant Insurance Company has argued that the Tribunal has erred in awarding interest at the rate of 12% per annum. He has relied on the case of Kaushnuma Begum and Ors. v. New India Assurance Co. Ltd. and Ors., reported in 2001 ACJ 428. It has been observed by their Lordships as under :-

"23. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf. Earlier, 12 per cent was found to be the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9 per cent on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9 per cent per annum from the date of the claim made by the appellants. The amount of Rs. 50,000 paid by the Insurance Company u/s 140 shall be deducted from the principal amount as on the date of its payment and interest shall be recalculated on the balance amount of the principal sum from such date."

5. However, it can be seen that in the said case, no compensation was awarded by the Tribunal, holding that the accident had not taken place because of the rash and negligence driving of the driver. Aggrieved by the said rejection, the claimant moved the High Court. The Division Bench of the High Court dismissed the appeal with a very short order. It is reproduced in the judgment and is reproduced hereunder :-

"Heard the learned Counsel for the appellant. Finding has been recorded that the jeep overturned and there were no negligence or rashness of the driver. Hence, Rs. 50,000/- has been awarded as compensation which is the minimum amount. There is no error in the order. Dismissed."

6. The claimants filed appeal before the Supreme Court. The Supreme Court allowed the appeal and awarded compensation of Rs. 1,80,000/- and on the

amount of compensation, the rate of interest was fixed as above. It can, therefore, be seen that the award was made by the Supreme Court for the first time except Rs. 50,000/- awarded by High Court for liability for the no fault. This judgment was delivered on 3.1.2001.

7. On 13.3.2001, in judgment in the case of Rathi Menon v. Union of India was pronounced [reported as 2001(2) T.A.C. 250 (SC)], wherein the interest was awarded at the rate of 12% from 27.6.1997. (The said date is mentioned as the date of the order passed by the Railways Claim Tribunal. However, from para No. 7 of the Judgment, it appears to be the date of filing of the petitions before the Tribunal). In that case, the Tribunal awarded total amount of Rs. 6.00 lacs to the claimants. In appeal, the Division Bench of the High Court substantially slashed down the compensation awarded to the claimant. The Supreme Court set-aside the judgment of the High Court and directed the amount to be paid, as awarded by the Claims Tribunal, with 12% interest.

8. In view of the above mentioned judgments, it is required to be considered as to which of the said judgments should be followed.

9. The judgment of three Judges of the Supreme Court in the case of United India Insurance Company Ltd v. Narendra Pandurang Kadam and Ors., reported as 1995(1) TAC 621 has given the reasons as to why the interest has to be awarded. In paragraph 8 of the said judgment, it has been observed as under :-

"8. Ideally a claim should be settled as soon as it is made. Because of the delay in settlement of the claim by legal process or otherwise interest may be awarded but such interest cannot be from a date earlier than the date of the claim. The language of Section 110-CC is clear that the interest can be awarded by the Court or Tribunal at such rate as it thinks fit but the interest cannot be made payable from a date earlier than the date of the claim. The contention of the appellant on this point appears to be prima facie correct."

10. In that case, compensation was enhanced with interest at the rate of 12% per annum from the date of accident till payment.

11. In the case of R.K. Tandon v. Om Parkash and Anr., reported as 2000(1) TAC 212, it has been held by a Bench of two Judges of the Supreme Court as under :-

"3. The Tribunal had awarded interest at the rate of 6 per annum from the date of the award but the High Court choose to curb it to 3 per cent per annum. In the first place, we do not appreciate the reasoning of the High Court to reduce the rate of interest. We also see no justification by the Courts below of not having awarded interest, whatever be its rate, from the date of the application. The way inflation has galloped in the past two decades and the value of the rupee eroded, we see no justification why interest at the rate of 12 per cent per annum was not awardable in the instant matter. We, therefore, order that the interest on the sums modifyingly awarded by us, shall be payable from the date of application itself and at the rate of 12 per cent."

12. In the present case, the interest has already been awarded at the rate of 12%. It is not for the first time, as in the case of Kaushnuma Begum and others (supra), this Court is making the award. Moreover, in the case of Rathi Menon (supra) which has been delivered two months after the judgment of Kaushnuma Begum (supra), the interest has been awarded at the rate of 12% per annum.

13. Therefore, the argument of learned Counsel for the appellant that the interest awarded by the Tribunal should be reduced, is not accepted, We are not by this judgment awarding the interest, but only confirming the rate of interest as awarded by the Tribunal. (We express no opinion as to if an interest is awarded at a lower rate it should be enhanced to 12%).

14. The learned Counsel for the appellant further argued that because of the delay, which has been caused in this case, the interest cannot be awarded at the rate of 12% per annum. However, so far as the delay is concerned, the beneficiaries of the delay in such case are the tortfeasors. They kept the custody of the amount with them for a long period. It is not proper to hold that the benefit of the delay should go to the tortfeasors. In the Division Bench judgment of the Gujarat High Court in Bhanuprasad Maganlal Bhatnagar Vs. Pravin Tapubhai Naik and Others, it has been observed as follows :-

"The principle underlying the aforesaid provision is self-evident. In the eye of law, the compensation would be payable to the third party on the very date of the accident. However, when the liability is disputed by the other side, it has to be determined by a competent Court. In an ideal state of affairs, one would expect it to be settled within a couple of months, but there is an inordinate time distance between what is ideal and what is real. Till the dispute is settled by the Court which in the present state of affairs takes considerable time (in the present case it has taken about seven years) the third party who is sought to be protected would be virtually altogether deprived of the benefit of the sum assured. If the liability to pay costs and interest were not thrown on the shoulders of the insurer."

It is also observed in that said judgment as under :-

".....Insurance Company, which is liable to pay the insured amount immediately would secure the benefit of the user of the said sum for the period during which the litigation remains pending in the Court. In other words, the insurer does earn interest on the amount which is payable at once but is paid after a lapse of years, thus, it is the insurer who benefits by the delay occasioned in the Court. And it is, therefore, but just and proper that the insurer is saddled with the liability to this extent and is obliged to discharge the burden in respect of the item of interest."

Therefore, it is for the Insurance Company to pay the amount and if it is made to pay the interest, there is nothing wrong in it. No further argument has been advanced.

In view of the aforesaid reasons, we do not find that the award of the Tribunal requires any interference.

This appeal is, therefore, dismissed.

15. Appeal dismissed.