Subodh Sharma Vs. Satendra Singh

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Court : Madhya Pradesh

Decided On : Mar-12-2008

Reported in : 2009ACJ1027; 2008(2)MPHT361

Judge : Arun Mishra, J.

Appellant : Subodh Sharma

Respondent : Satendra Singh

Disposition : Appeal allowed

Judgement :
ORDER

Arun Mishra, J.

1. The appeal has been preferred by the claimant aggrieved by award dated 29-8-2003 passed in Claim Case No. 70/02 passed by IIIrd Motor Accident Claims Tribunal, Fast Track Court, Dabra, District Gwalior. Claimant preferred the claim petition as against the respondent claiming compensation on account of personal injuries sustained in an accident dated 20-3-2001 caused by motorcycle (MP-07 K/0009) driven by respondent. For the treatment of injuries the claimant remained admitted for 10 days in the hospital at Dabra, consequently, he claimed compensation of Rs. 5,00,000. The claimant was doing the work of contractor, he has spent a sum of Rs. 20,000/- in the treatment, his age was 42 years at the time

of accident. The respondent in the reply contended that excessive compensation was claimed, simple injuries were caused, in order to avoid the harassment the guilt was admitted in criminal case, claim petition is liable to be dismissed. The Tribunal has determined the compensation at Rs. 7,000/- on account of personal injuries sustained in the accident, however, declined to grant it on the basis of decision in Commissioner, Coal Mines Welfare Organisation, Dhanbad v. Parma Nand Thakur 1985 ACJ 290, and the Tribunal has held relying upon the aforesaid decision that as the vehicle was not insured, claim petition was not maintainable before the Tribunal. I have heard learned Counsel for appellant.

2. The view taken by the Tribunal cannot be said to be legally sustainable one, Section 166 of Motor Vehicles Act, 1988 deals with filing of application for compensation. It is nowhere imperative under the Act that vehicle should be insured in order to claim entitlement to invoke the provision of the Act of 1988. In case vehicle is insured, insurer has to make indemnification. The defences available to the insurer are provided under Section 149 of the Act and for enlarging defences provision of Section 170 has to be invoked by the insurer. Section 165 of Motor Vehicles Act, 1988 provides for establishment of Motor Accident Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of use of motor vehicles, or damages to any property of a third party so arising, or both. Explanation to Sub-section (1) of Section 165 makes it clear that claims for compensation in respect of accident includes claims for compensation under Section 140 and Section 163A of the Act. Section 165(1) alongwith its Explanation is quoted below:

165. Claims Tribunal.- (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accident Claims Tribunals (hereinafter in this Chapter referred to as 'Claims Tribunal') for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation:- For the removal of doubts, it is hereby declared that the expression, 'claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles' includes claims for compensation under Section 140 (and Section 163A).

Section 166 deals with application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made by person, who has sustained the injury, or by the owner of the property, or where death has resulted from the accident, by all or any of the legal representatives of the deceased, or by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be. Sub-section (2) of Section 166 provides the place where it can be moved.

Section 168 provides for award of the Claims Tribunal. On receipt of an application for compensation made under Section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an enquiry into the claim or, as the case may be, each of the claims and subject to the provisions of Section 162 may make an award determining the amount of compensation. Section 168, Sub-section (1) is quoted below:

168. Award of the Claims Tribunal.- On receipt of an application for compensation made under Section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an enquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the persons or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under Section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

Section 170 of the Act provides impleading insurer in certain cases. Section 170 is quoted below:

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 failed 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.

3. It is apparent from reading of Section 170 that in case there is collusion between the person making the claim and the person against whom the claim is made or the person against whom the claim is made has failed to contest the claim, the Claims Tribunal may order impleadment of insurer as party to the proceedings. Even in the absence of insurer being party to the proceedings in case vehicle is insured, insured can recover the amount from the insurer under the contract of insurance and insurer cannot escape the liability to make indemnification in a case where there is no violation of policy.

4. The provisions contained in Section 168 of the Act provides that notice shall be issued to the insurer, it has to be construed in the context that where there is insurance such notice is required to be issued not otherwise. In the case of exigencies provided under Section 170, permission can be granted to contest the case on all the grounds and impleadment of insurer can be made at any stage of proceedings. A conjoint reading of provisions of Sections 165, 168 and 170 of the

Motor Vehicles, 1988 makes it clear that insurer need to be impleaded in case there is an insurance or there is collusion or owner or driver have failed to contest the claim, but Section 168 cannot be read so as to restrict claims with respect to vehicles which have been insured, that interpretation will render the efficacy of Sections 165 and 166, which provides application can be filed for claiming compensation arising out of accident of the nature specified in Sub-section (1) of Section 165 may be made before the Claims Tribunals. In my considered opinion, the application can be made before the Motor Accident Claims Tribunal in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both even if vehicle is not insured. There is no room for accepting the interpretation made by Patna High Court in Commissioner, Coal Mines Welfare Organisation, Dhanbad v. Parma Nand Thakur (supra). I with utmost respect disagree with the opinion expressed in the aforesaid decision.

5. The object of Motor Vehicles Act is to provide remedy and machinery for quick justice in cases arising out of motor accident as provided in Section 165(1) of the Act. Insurer is impleaded in case there is an insurance and even in the case of breach, liability is fastened upon the insurer vis-a-vis to third party as the question of breach is inter se the owner and insurer and insurer can be given liberty to recover the amount from the owner as held by the Apex Court in Pramod Kumar Agrawal and Anr. v. Mushtari Begum (Smt.) and Ors. : AIR 2004 SC4360 . It is nowhere imperative in the Act, there has to be insurance of the vehicle before an application under Section 166 or Section 140 or Section 163A of Motor Vehicles Act is entertained. Insurance of vehicle is not sine qua non to entertain an application under the Act of 1988.

6. In view of aforesaid, the decision rendered by the Tribunal cannot be said to be legally sustainable, same is liable to be set aside and it is held that application can be entertained by the Tribunal even if vehicle is not insured. Quantum of compensation determined by the Tribunal has not been assailed as such the compensation determined by the Tribunal of Rs. 7,000/- is awarded to the claimant alongwith interest at the rate of 7% per annum from the date of filing of claim petition till realization. Resultantly, the appeal is allowed to the aforesaid extent,

compensation of Rs. 7,000/- is awarded to the claimant alongwith interest at the rate of 7% per annum from the date of filing of claim petition till realization. No costs.