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Court : Delhi

Decided On : Sep-10-1993

Reported in : I(1994)ACC197; 1994ACJ485; 53(1994)DLT102

Judge : P.K. Bahri, J.

Acts : Evidence Act

Appeal No. : First Appeal No. 85 of 1981

Appellant : Khazano Devi

Respondent : Moti Lal and ors.

Advocate for Pet/Ap. : O.P .Goyal,; Lalita Kohli,; G.K. Sharma and;

Judgement :

P.K. Bahn, J.

(1) By this order, I shall disposed of the Fao 85/81 filed by the claimants and the cross-objections (C.M.3003/89) filed by the owner of the truck in question.

(2) Vide award dated October 17, 1980, the Motor Accidents Claims Tribunal had awarded compensation of Rs. 64,260.00 to the claimants and the amount is directed to be recoverable from all the respondents jointly and severally but the liability of the respondent. Insurance Company, was limited to Rs. 50,000.00 .

(3) The facts of the case, in brief, are that on June 5, 1974, at about 3.30 P.M. the deceased Om Prakash Gupta, was proceeding on a cycle on Ring Road towards Ashok Vihar when a truck No. Dig 2897 which was being driven by respondent No. 1 and was owned by respondent Balram, and which truck was insured with respondent No. 3, M/s. New India Assurance Company Limited, came at a fast speed and had struck the cyclist from the back which not only damaged the cycle but also resulted in fatal injuries to the deceased. The deceased was aged about 41 years.

(4) The first question to be decided is whether the tribunal is right legally in holding that the accident was as a result of rash and negligent driving of the said vehicle by the respondent No. 1, the driver. Two eye witnesses were examined by the claimants to prove this fact. It is significant to mention that the driver of the said truck had not been examined as a witness to rebut the statement of the said two eye witnesses. It may be that those two eye witnesses had not made themselves available to the police in the police case but that would not be a ground to reject their solemn testimony given before the Tribunal when it is not shown that they were having any motive to make any false statement against the respondents. I, hence, endorse the finding of the Tribunal in this regard that the accident had occurred due to rash and negligent driving of the said truck by the respondent No. 1.

(5) The deceased was functioning as a teacher at the time of his death and it was set up by the claimants that he was earning Rs.200.00 per month from private tuitions besides getting the regular salary from the school. PW-5, an official from the school, was examined to prove that at the time of the death, the teacher was drawing a salary of Rs.963.00 per month. The widow of the deceased had appeared in witness box and had made a statement that his salary income was being supplemented by the deceased by having tuitions. However, the claimants had not cared to examine either the students to whom the tuitions were imparted by the deceased or the parents of the said students. Mere bald statement of the widow of the deceased that in fact the teacher was having some income from tuitions as well cannot be given any importance. It is also not shown that the deceased had any permission from the school for imparting tuitions privately.

(6) Be as it may, the Tribunal was right in holding that the monthly income of the deceased was about Rs. 963.00 . The Tribunal, however, has held that only Rs.600.00 per month could have been spent by the deceased on the up keeping of his family members dependent upon him. The claimants/legal heirs of the deceased were his widow and four children and his aged parents. His father was aged about 78 years and his mother was aged about 70 years. It is not possible to hold that he must have been spending Rs. 363.00 for his own needs when he had such a large family to support. Keeping in view these facts, I hold that he must have been spending about Rs. 800.00 per month for meeting the needs of his family members.

(7) It is true that the age of the retirement of the teacher in the private school would have been 60 years but the fact cannot be lost sight of that even after retirement, a teacher is in a position to earn by imparting tuitions or taking coaching classes, so his earning capacity would have continued to be in existence as long as he would have remained healthy and fit. There is a longevity in the family as is apparent that his parents were quite old and even otherwise, nowadays in India, the longevity has reached about an average 70 years, so the Tribunal was not right in applying the multiplier of only 12 years in the present case. The multiplier of 29 years was applicable in this case. Applying the said multiplier, the amount of compensation would be Rs. 2,78,400.00 .

(8) Another question which arises for decision is whether the Tribunal was right in holding that the liability of the Insurance Company is limited to Rs. 50,000.00 . In the written statement filed by the Insurance Company, a definite plea has been taken that the liability of the Insurance Company is limited to Rs. 50,000/ The owner of the vehicle was examined by the Insurance Company as RW-1 but he did not produce the original insurance cover, rather he stated that despite his best efforts, he was not able to trace the same. It is true that the Insurance Company initially had not filed the carbon copy of the insurance policy Along with the written statement, but it produced the copy (Ex. RW2/1) which is proved through the testimony of RW-2.

(9) The learned Counsel for the appellant has vehemently argued that this document has not been proved in accordance with law inasmuch as no witness has been examined by the Insurance Company in whose presence the insurance documents might have been executed. If we peruse the document RW2/1, we find that it is a carbon copy, which bears signatures of some of the officials of the Insurance Company. It is now settled law that rules of the Evidence Act are not applicable to the proceedings before the Motor Accidents Claim Tribunal (see L.D. Sugar Mills v. Pt. Ram Sarup, 0065/1956 : (1957)ILLJ17SC).

(10) Learned counsel for the appellant, however, has referred to a judgment of the Single Judge of this Court Mahinder Singh v. Manju Sawhney & Ors., 1986 A.C.J. 446 where the learned Judge, while dealing with the peculiar facts of the said case, had come to the conclusion that the copy of the Insurance Policy produced in that case was not properly proved. In this judgment also, the judgment of the Supreme Court was noticed which had laid down the law that strict rules of The Evidence Act are not applicable to such proceedings before the Tribunal, yet the learned Judge, keeping in view the peculiar facts of the said case, gave a finding that the copy of the Insurance Policy in that case was not genuine. The facts of each case have to be examined in order to decide whether a particular copy of Insurance Policy has been properly proved or not or whether there exist any suspicious circumstances in a particular case which show that perhaps the copy produced is not a genuine one.

(11) Similar type of case came up for consideration before another Single Judge of this Court in Geeta Devi & Ors. v. Amrik Singh & Ors., A.I.R. 1990 A.C.J. 484 where again a carbon copy of the Insurance Policy was proved when original was not produced by the insured. The judgment in case of Mahinder Singh (supra) was noticed and was distinguished on facts and holding that as the provisions of the Evidence Act are not strictly applicable, production of the carbon copy of the Insurance Policy by the Insurance Company was held to be duly proved documents.

(12) In the present case, no doubt the Insurance Company was negligent in not producing this copy of the Insurance Policy Along with the written statement or

even before the conclusion of the evidence of the claimants, but once the copy of the Insurance Policy had been produced and proved by the testimony of RW-2, it was incumbent upon the claimants to have brought some material on the record to show that in fact this is not a genuine carbon copy of the said insurance policy which had been issued in favor of the owner of the vehicle/respondent No. 2.

(13) So, in this case, I would hold that this copy of the insurance policy is properly proved and must be taken into consideration, although at the time when it was sought to be proved through the testimony of respondent No. 2, the claimants had objected to its production but it was not clarified in that objection as to on what ground the objection was being raised.

(14) The learned Counsel for the claimants has vehemently argued that the bare perusal of the policy shows that it was a public risk conversed policy and a premium of Rs. 125.00 had been paid and the same is not a policy issued for the purposes of 'Act Only'. He has contended that as soon as any policy which is not 'Act Only' policy is issued and premium which is more than requisite for getting the 'Act Only' policy is paid, the liability of the Insurance Company must be deemed to be unlimited. He has referred to the case of New India Assurance Company v. Pushpa Kakkar, 1992 Raj LR 340 where it was held that a premium, as required against the third party risk policy, has been paid which was in excess of the premium fixed for 'Act Only' policy and there was nothing on record to show either by oral or documentary evidence that in spite of payment of additional premium as against the premium fixed for Act only policy, the liability of the insurance company could not have been unlimited liability for third party risk but only what is claimed to be the strict liability. The very perusal of the judgment shows that perhaps, in that case the policy did not indicate that it was having any restricted liability of the insurance company.

(15) In National Insurance Company Limited v. Jugal Kishore, 1988 A.C.J. 270, similar type of contention, which is being raised before me by the counsel for the claimant, was raised and in para 6 of the judgment that contention was noticed but the Supreme Court held that it was difficult to accept such a contention.

(16) So, mere fact that higher premium had been paid than requisite for Act only policy would not lead to any inference that unrestricted liability had been taken by the insurance company by issuing the policy. It is a matter of contract between the insured and the insurance company as to whether the restricted liability policy is being issued or the policy is being issued of unrestricted liability. The judgment of the Supreme Court was followed by a Single Bench of this Court in the case of Geeta Devi (supra).

(17) The counsel for the claimant has also referred to a judgment of Single Bench of this Court in case of Lisha Sehgal & Ors. v. Chhota & Ors., 1985 A.C.J. 515. I have gone through this judgment and find that it does not support the contention raised before me by learned Counsel for the claimants in this regard. In the said case, no plea was taken in the written statement jointly filed by the insurance company and the insured that any restricted liability policy had been taken. The learned Judge has noticed that as to what is an Act only policy and what other types of policies can be taken for covering various types of risks but there is no opinion expressed that if a public risk policy is taken and the premium is paid, the said policy has to be termed as unrestricted liability policy, even though in the policy it is restricted liability, as mentioned. In view of the above discussion, I hold that the Tribunal was right in holding that the Insurance Company's liability is restricted to Rs. 50,000.00 .

(18) In view of the above discussion, I dismiss the cross-objections and allow the appeal partially and modify the award to the extent that I award compensation of Rs. 2,78,400.00 with the direction that the increased amount of the compensation shall be paid Along with interest at the rate of 12% per annum from the date of the claim petition till payment. The increased amount be also distributed among the claimants in the same ratio in which the original compensation had been distributed.