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Court : Himachal Pradesh

Decided On : Jul-21-1999

Reported in : 2000ACJ842

Judge : D. Raju, C.J. and; Lokeshwar Singh Panta, J.

Appeal No. : F.A.O. (MVA) No. 43 of 1992

Appellant : Santo Devi and anr.

Respondent : Guru Nanak Lime and Marble Industry and ors.

Advocate for Def. : Bhupinder Singh and; R.L. Sood, Advs.

Advocate for Pet/Ap. : Kuldip Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Lokeshwar Singh Panta, J.

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed by the claimants-appellants against the judgment and award dated 7.9.1991 of Motor Accidents Claims Tribunal-I, Sirmour District at Nahan in MACP No. 18-N/2/89 where-under the petition for claiming compensation of Rs. 1,20,000 filed by the claimants for the death of Fatia in the accident came to be dismissed.

2. The undisputed facts are that one Fatia on 14.4.1989 was travelling in truck bearing registration No. UTL 5064 as labourer and the said truck was coming from Herbertpur to Shiva-Banur for lifting of lime stones. When the truck reached near a place known as Kotali-Bheend it could not be controlled by its driver and fell into a khud at about 2 p.m. in which Fatia died. The claimants who alleged that they are the widow and minor sons of Fatia filed the claim petition against the respondent owner of the vehicle in question, driver of the vehicle and the New India Assurance Co. Ltd. with whom the truck in question was insured claiming an amount of compensation of Rs. 1,20,000 on account of the death of Fatia in the accident on the ground that the accident took place due to rash and negligent driving of the truck by its driver. It was stated in the claim petition that Fatia at the time of his death was 32 years of age and was earning Rs. 800 as wages and also had agriculture income. Respondents owner and driver of the vehicle after service appeared before the Tribunal and were given opportunity to file their written statements, but the same being not filed were further given opportunity subject to payment of costs, but on 28.5.1990 none appeared for them, they were ordered to be proceeded against ex parte and their defence if any, was also ordered to be struck off by the Tribunal below. The insurer respondent No. 4 herein filed its written statement wherein it was pleaded that the claimants are not the legal representatives of deceased Fatia, that there was collusion between the respondents owner and driver of the vehicle in question and claimants; that the claimants were not dependent upon the deceased; that the income of the labourer would be Rs. 300 per month on the basis of minimum wages prevalent and, therefore, the deceased was not earning Rs. 800 per month as claimed by the claimants.

3. On the pleadings of the parties the following issues were framed on 28.5.1990 by the Tribunal below:

(1) Whether death of Fatia was caused due to rash and negligent driving of the truck No. UTL 5064 by respondent No. 2 belonging to respondent No. 1, as alleged? OPP

(2) Whether the petitioner is entitled to any compensation, if so, to what amount? OPP

(3) Whether the petition is liable to be dismissed as claimed by respondent No. 3 in its written statement? OPR

(4) Relief.

The parties went to trial on the settled issues and led their oral and documentary evidence.

4. On appraisal of entire evidence on record the Tribunal below returned finding on issue No. 1 partly in favour of the claimants to the extent that Fatia died in the accident involving truck No. UTL 5064 but it was held that the claimants have filed the proof that it was driven by respondent driver. Against issue No. 2 the Tribunal held that the claimants were not the legal representatives of Fatia and consequently, no claim was awarded in their favour resulting in dismissal of the claim petition. The claimants feeling dissatisfied and aggrieved against the judgment and award of the Tribunal below have filed the present appeal challenging the correctness, validity and legality of the award.

5. Mr. Kuldip Singh, learned counsel for the claimants, vehemently contended that the award of the Tribunal below suffers from legal error on the ground that the plea whether the claimants were the legal heirs of deceased Fatia raised by the insurer was not available to it under Section 96 (2) (a) and (b) of the Motor Vehicles Act, 1939 or Section 149 of the Motor Vehicles Act, 1988. The learned counsel next contended that in the claim petition it is not necessary that insurance company should be made party necessary for adjudication of the claim petition and in Section 110-C (2-A) of the Motor Vehicles Act, 1939 where in the course of enquiry, the Claims Tribunal is satisfied that it may, for reasons to be recorded by it in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceedings and the insurer so impleaded, shall thereupon have 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. According to the learned counsel no such permission was sought by the insurance company nor

any reason has been given by the Tribunal below in the judgment impugned in this appeal, to permit the insurer to raise the defences not open to it under the provisions of Section 96(2)(a) and (b) of 1939 Act.

6. Per contra Mr. R.L. Sood, learned counsel appearing on behalf of the insurer contended that the insurance company was made party in the claim proceedings at the initial stage by the claimants themselves and once the Tribunal below directed the respondent company to file reply and allowed to take the objection about the maintainability of the claim petition on the ground of the legal status of the claimants, it shall be presumed that the permission to raise such plea was granted by the Tribunal and no separate permission was called for in such circumstances. The learned counsel also contended that no negligence was proved by the claimants and the claim petition has been filed by Special Power of Attorney on behalf of the claimants and at no stage the claimants have pleaded before the Tribunal below not to grant permission to the insurer to raise the plea at the trial stage of the claim petition and at this stage this plea is not open to the claimants to be raised in this appeal.

7. In order to appreciate the rival contentions of the learned counsel on either side, we have examined the material on record. It is not in dispute that the accident in the present case took place on 14.4.1989 at about 2 p.m. and the Motor Vehicles Act, 1988 came into force w.e.f. 1.7.1989 and, therefore, the provisions of the Motor Vehicles Act, 1939 will cover the controversies involved in the present appeal. Section 96 of 1939 Act deals with duty of insurers to satisfy judgments against persons insured in respect of third party risks and the insurer shall be entitled to defend the action on any of the grounds mentioned in Sub-clauses (a) to (c) of Sub-section (2) of Section 96. No doubt raising the defence of the locus standi of legal representatives of the deceased is not specifically mentioned in the provisions of Section 96 of the Act by the insurer, however, under Section 110-C which deals with procedure and powers of Claims Tribunals, Sub-section (2-A) which was introduced in Act No. 56 of 1969 w.e.f. 2.3.70, the Claims Tribunal on satisfaction in the course of enquiry may, for reasons to be recorded in writing, direct that the insurer may be liable in respect of such claim which shall be impleaded as a party to the proceedings and the insurer, so impleaded shall

thereupon have 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, where there is a 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.

8. The learned counsel for the claimants has placed reliance on British India General Insurance Co. Ltd. v. Captain Itbar Singh 1958-65 ACJ 1 (SC), in which their Lordships of the Supreme Court have held as under:

Apart from the statute an insurer has no right to be made a party to the action by the injured person against the insured causing the injury. Sub-section (2) of Section 96, however, gives him the right to be made a party to the suit and to defend it. The right, therefore, is created by statute and its content necessarily depends on the provisions of the statute. Sub-section (2) clearly provides that an insurer made a defendant to the action is not entitled to take any defence which is not specified in it. When the grounds of defence have been specified, they cannot be added to. The only manner of avoiding liability provided for in Sub-section (2) is through the defences therein mentioned. Therefore, when Sub-section (6) talks of avoiding liability in the manner provided in Sub-section (2), it necessarily refers to these defences. It cannot be said that in enacting Sub-section (2) the legislature was contemplating only those defences which were based on the conditions of the policy.

9. In National Insurance Co. Ltd. v. Kamarjahan 1995 ACJ 1150 (MP), a Division Bench of the Gwalior Bench while considering the applicability of Section 110-C (2-A) of 1939 Act held that the provisions of this section are attracted in both situations where insurer is already a party and where on being noticed it is made party during pendency of proceedings before Tribunal and the judgment proceeded to hold that permission to insurer to lead evidence or defence on all issues available to insured, the requirement of recording the reasons by the Tribunal is mandatory in nature.

10. In Oriental Fire & Genl. Ins. Co. Ltd. v. Rajendra Kaur 1989 ACJ 961 (Allahabad), the Division Bench had said that in certain contingencies mentioned

under Section 110-C (2-A) of 1939 Act, the insurance company will have a right to defend the claim even on grounds other than those mentioned in Section 96 (2). In the absence of the owner having kept away and when no objection at any stage was taken by the claimant that the grounds taken in the written statement of the insurer were not confined to the grounds available to it under Section 96(2)(b), and no objection raised when the claimant's witnesses were cross-examined by the insurer on the lines much beyond the scope o Section 96. It would, therefore, be quite fair to assume that although no orders had been recorded in writing by the Tribunal, it did allow the insurance company to contest the claim on the grounds which were available to the owner of the vehicle and it would be too late for the claimant to contend that rights of the insurer are confined to the grounds mentioned in Section 96 (2).

11. In Shankarayya v. United India Insurance Co. Ltd. 1998 ACJ 513 (SC), the Hon'ble Judges of the Apex Court while dealing with the provisions of Section 170 of the Motor Vehicles Act, 1988 which deals with impleading the insurer in certain cases which is pari materia to Section 110-C (2-A) (i) and (ii) held in para 4 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 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, the respondent No. 1, insurance company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal.

12. Undisputedly in the present case no permission was sought by the respondent insurance company from the Tribunal below nor any reasoned order has been passed by the Tribunal before granting permission to the insurer to raise defences other than those which are available to it under Section 96(2)(a) to (c). Under Section 110-A of the 1939 Act, the persons who are entitled to file an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 are classified as under:

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

(aa) by the owner of the property; or

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

(c) 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.

A plain reading of Clause (b) of Section 110-A or Clause (c) would establish that the claimants in the case of the death must be legal representatives of the deceased. Under Section 110-B of 1939 Act a duty is cast upon the Tribunal on receipt of the application for compensation made under Section 110-A to hold an inquiry into the claim and make an award determining the amount of compensation which appears to it just and specifying the person or persons to whom the compensation shall be paid. On plain reading of the provisions of Sections 110-A and 110-B, it is the legal duty of the Tribunal to first determine as to who are the claimants before it and whether they are the legal representatives of the deceased or not since the lis must be legal lis and not a bogus claim by the persons who are not entitled to the amount of compensation not being the legal representatives of the deceased and allowing the claim of the persons who are not found to be legally entitled to the compensation would amount to abuse of the process of the court and it is the duty of the court/ Tribunal to prevent miscarriage of justice to the parties. In the case on hand, even if the plea raised by the insurer was not available to it, it was the duty of the Tribunal too to determine the status of the claim judiciously and once it has come to its notice that the present claimants are

not the legal representatives of the deceased, the Tribunal has rightly determined this issue in order to prevent the abuse of process of the court or to prevent miscarriage of justice to deprive the genuine legal representatives of the deceased to claim the compensation amount on account of the death of the deceased.

13. Now we may deal with the factual position of the case whereby it could be held that the claimants are not found to be the legal representatives of the deceased on whose behalf their Special Power of Attorney Amar Singh filed the claim petition seeking for the compensation.

14. In original claim petition there were three claimants out of whom one was Santo Devi, widow of deceased Fatia and other two were his minor sons. We may notice certain facts which are very astonishing to refer to arising out of the present controversy.

15. The claim petition appears to have been filed under the signature of one Amar Singh who has claimed himself to be the Special Power of Attorney of claimant Santo Devi, wife of late Fatia and who got Special Power of Attorney, Exh. PW-l/A, executed in his favour at Paonta Sahib on 25.9.1989. Admittedly, all the parties in these proceedings belonged to village Dimau, Tehsil Chakarata, District Dehra-dun (U.P.) and the accident had occurred within the territorial jurisdiction of the Motor Accidents Claims Tribunal, Nahan and it is in these circumstances that the claim petition was filed at Nahan. The power of attorney is thumb marked by executant Santo Devi and it was drafted by one Mr. I.S. Chauhan, Advocate, Paonta. The Special Power of Attorney was attested by Notary Mr. Radha Krishan Madan, Advocate, Paonta Sahib and the parties were identified before the Notary by Mr. I.S. Chauhan, Advocate. The Notary attested the Special Power of Attorney on the same day and in the certificate annexed on the opposite side of the document the Notary has not made the endorsement that the document was read over to the executant in vernacular which she accepted to be true.

16. It is pertinent to notice here that the claim petition was also filed by the said attorney under his signature on 25.9.1989 itself which has not been got thumb marked from claimant Santo Devi who was present at Paonta Sahib for executing the Special Power of Attorney on the same day and the claim petition was filed by

the special attorney through his counsel Mr. I.S. Chauhan who settled the Special Power of Attorney of Amar Singh. If the claimant Santo Devi was physically present at Paonta Sahib for executing the Special Power of Attorney in favour of Amar Singh, it is unthinkable as to why claimant Santo Devi could not put her thumb impression on her claim petition on her behalf and on behalf of her minor sons claimants being their natural guardian. If the genuineness of the Special Power of Attorney is found to be correct, the same has been given by Santo Devi to Amar Singh on her own behalf and not on behalf of other minor claimants. The amended claim petition was filed by the Special Power of Attorney on 8.3.1990 in which his signatures with naked eyes are found to be in decent English whereas in the original claim petition dated 25.9.1989 the signatures of the Special Power of Attorney are in Hindi. All these facts would go to show that the self-claimed Special Power of Attorney Amar Singh has not been prosecuting the case of the true legal representatives of deceased Fatia.

17. Now we may deal with the other evidence on record. It has come in the evidence of PW Amar Singh, so-called Special Power of Attorney of the claimants that he is Rajput by caste whereas the deceased was Harijan. He has claimed in his cross-examination that Santo Devi calls him brother. It has been categorically stated by him that in the village of the claimants there are 10-12 houses of the Harijan community and those houses are of close relations of deceased Fatia. He has also admitted that claimant Santo Devi has her cousin. It has also been admitted by him that the claimant Santo Devi came to Paonta Sahib and met the lawyer and she also put her signature on the claim petition. Putting of signature on the claim petition by Santo Devi claimant is not found correct from the bare perusal of the claim petition which was filed by Special Power of Attorney PW Amar Singh purporting to having been signed by him. He has also categorically admitted that after the death of Fatia he is looking after the land of the deceased. From the evidence on record Vakalatnama was also signed on the same day by the Attorney but it was not thumb marked by claimant Santo Devi. No relationship has been proved on record by the Special Power of Attorney with the claimants except his bald statement that claimant Santo Devi calls him brother which in our view appears to be not correct because they are belonging to different communities. In order to establish the relationship of legal heirs of the deceased, it was the duty of

the claimants to have produced some record from the panchayat showing the relationship of the claimants with the deceased or in the absence of documentary evidence, some Pradhan of the village panchayat could have been examined. So much so, even claimant Santo Devi herself has not stepped into the witness-box to state her relationship with the deceased. The Tribunal has noticed in his award that after hearing the arguments the case was adjourned and a letter was written on the address of claimant Santo Devi given in the claim petition by the office of the Tribunal on which the report of the postal authorities received was that no person of that name was living in that village. The Tribunal directed claimant Santo Devi to come and be present in person and one lady appeared on 22.8.1991 who was identified by Mr. I.S. Chauhan, Advocate, who was representing the claimant in the claim petition and who settled the Special Power of Attorney in the name of Amar Singh and identified the executant before the Notary Advocate. It also appears very strange that no other member of the village of Fatia apart from the Special Power of Attorney has been examined by the claimants. It has come in the oral evidence of PW Amar Singh that claimant Santo Devi was fit to move about, see and speak and she has come to Paonta Sahib to appoint him as her Attorney and if his statement is to be accepted, it was for the claimants to prove on record that they are the real legal representatives of deceased Fatia and are entitled for claiming the amount of compensation for his death. The claimants ought to have produced on record documentary evidence in the form of ration card, record of pariwar register maintained by the Panchayat or inclusion of name of claimant Santo Devi in the voter list, etc., but nothing has been done by the claimants to prove to the satisfaction of the Tribunal that they are the true legal representatives of deceased Fatia who are entitled to compensation amount.

18. From cumulative considerations of the factors noticed above, the Tribunal below has rightly concluded that the claimants have miserably failed to prove their relationship with deceased Fatia and holding them not entitled to any compensation for the death of Fatia. We agree with the findings of the Tribunal below and in our considered view, we find no fault with the said findings which calls for any interference in this appeal.

19. The learned counsel for claimants-appellants next contended that in column No. 19 of the claim petition the relationship of the claimants with the deceased have been mentioned as wife and son and in reply to the claim petition, the insurer has only stated that the contents of paras 18 to 20 of the claim petition are wrong and denied for want of knowledge and that if the specific relationship of the deceased with the claimants given in the claim petition has not been specifically denied the averments shall have to be considered having been admitted. In support of this submission he has relied upon the judgment of the Apex Court in Jahuri Sah v. Dwarika Prasad Jhunjhunwala AIR 1967 SC 109. We have read the relevant para of the judgment. In the case before the Hon'ble Apex Court it was found that in neither of the two written statements filed on behalf of the defendants the assertion of facts by the plaintiffs in the plaint that Shankarlal had been given in adoption to Sreelal had not been specifically denied and instead what was stated in both the written statements was that defendants had no knowledge about the allegations made in para 1 of the plaint. The judgment proceeded to hold that bearing in mind Order VIII, Rule 5, Civil Procedure Code provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleadings of the defendant shall be taken to be admitted, to say that a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of the existence of that fact, not even an implied denial. There cannot be any quarrel so far as the legal position of law settled by the Apex Court on the issue of specific admission or denial of the assertion by the parties are concerned.

20. In the case on hand the insurer against the averments made in paras 18 to 20 of the claim petition has also stated that the claimants be put to strict proof meaning thereby that it was the legal duty of the claimants to have proved their relations with the deceased. The insurer has taken categorical assertion in para 9 of the preliminary objection that the claimants are not the legal heirs of the alleged deceased Fatia nor they were dependent on the deceased. In the teeth of this specific averment made in the preliminary objection, it cannot be held that the assertion made by the claimants in para 9 of the claim petition has not been specifically denied by the insurer as alleged by the learned counsel appearing for the claimants. The submissions so raised cannot be accepted. The appeal has to

be dismissed on the sole ground that the claimants were not-found entitled to file the claim petition claiming the amount of compensation for the death of Fatia being not found to be his legal heirs as they have miserably failed to establish their relationship with Fatia in the capacity of legal representatives. We do not feel it necessary and appropriate to consider the other submissions of the learned counsel for the claimants that due to the negligence of the driver of the vehicle, the accident had occurred in which Fatia had died and, therefore, the claimants are entitled for compensation to be determined by this court on the evidence already adduced by the parties before the Tribunal below.

21. For the aforesaid reasons and discussion the appeal merits dismissal and is accordingly dismissed. However, in the peculiar facts and circumstances of the case we leave the parties to bear their own costs.

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