
(2009) 07 DEL CK 0257

Delhi High Court

Case No: MAC.APP. 407 of 2006

National Insurance Co. Ltd.

APPELLANT

Vs

Shiela Avinashi and Others

RESPONDENT

Date of Decision: July 2, 2009

Acts Referred:

- Motor Vehicles Act, 1988 - Section 170

Hon'ble Judges: J.R. Midha, J

Bench: Single Bench

Advocate: S.L. Gupta, for the Appellant; Navneet Goyal, for R-1, for the Respondent

Judgement

J.R. Midha, J.

The accident dated 20th February, 1997 resulted in grievous injuries to the claimant/respondent No. 1 who filed the claim petition before the learned Tribunal.

2. The learned Tribunal passed an award for Rs. 1,61,000/- in favour of the claimant and against the appellant.

3. The appellant has urged the following grounds at the time of hearing of this appeal:

(i) The claimant has received a sum of Rs. 86,000/- from New India Insurance Company Limited under a mediclaim insurance policy and, therefore, the said amount should be deducted from the award passed by the learned Tribunal.

(ii) The driver of the offending vehicle was not holding a valid driving licence at the time of the accident and, therefore, the appellant is not liable to pay any compensation to the claimant.

4. The Learned Counsel for the claimant submits that the appellant has not taken over the defence u/s 170 of the Motor Vehicles Act before the learned Tribunal and, therefore, the appellant cannot challenge the quantum of compensation awarded

by the learned Tribunal. Reference in this regard be made to the judgments by the Apex Court in the cases of [National Insurance Co. Ltd., Chandigarh Vs. Nicolledda Rohtagi and Others](#), and [Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another](#), where it has been held that in the absence of defence as envisaged u/s 170 of the Motor Vehicles Act being taken over by the insurance company, the appeal filed by the insurance company is not maintainable. Following the aforesaid judgments, it is held that the appellant cannot challenge the quantum of compensation awarded by the learned Tribunal.

5. Without prejudice to the aforesaid objection, Learned Counsel for the claimant submits that the amount received by the claimant under a mediclaim policy cannot be deducted from the compensation payable under the Motor Vehicles Act. The Learned Counsel for the claimant refers to and relies upon the judgments in the case of [Madhya Pradesh State Road Trans. Corpn. and Another Vs. Priyank](#), and [Vrajesh Navnitlal Desai Vs. K. Bagyam and Another](#), in support of the above proposition. The Learned Counsel for the claimant also refers to and relies upon the Full Bench judgment of the Madhya Pradesh High Court in the case of [Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another](#), and two judgments of this Court in the cases of Dr. A.C. Mehra v. Behari Lal : 1998 ACJ 379 and [Oriental Insurance Co. Vs. K.P. Kapur and Others](#) .

6. Notwithstanding the bar of Section 170 of the Motor Vehicles Act, the appellant has no case on merits. Following the aforesaid judgments, the appellant's contention is rejected as a tort-feasor cannot take advantage of the claimant's contract with a third party in an action of injury caused by negligence and the amount received by the claimant on an accidental mediclaim insurance policy cannot be taken into account in reduction of damages because the claimant does not receive that amount because of the accident but because he had entered into a contract providing for the contingency.

7. With respect to the second ground of challenge that the driver of the offending vehicle was not holding a valid driving licence at the time of the accident, it is noted that the driver was holding a driving licence No. 32893/A2/95 - Ex.RW2/5. The appellant summoned the official from the Transport Authority who deposed with respect to a different licence number and admitted that there are number of authorities in Chennai.

8. The driving licence Ex-PW2/5 was not proved by the appellant to be fake and, therefore, the learned Tribunal held that the appellant failed to prove that the driver of the offending vehicle was holding a fake driving licence. There is no infirmity in the view taken by the learned Tribunal.

9. For all the aforesaid reasons, the appeal is dismissed.

10. All the pending applications also stand disposed of.

11. No costs.