New India Assurance Co. Ltd. Vs Md. Akbar Ali and Another

Court: Calcutta High Court

Date of Decision: Nov. 17, 2003

Acts Referred: Motor Vehicles Act, 1988 â€" Section 147

Citation: (2004) 3 ACC 303

Hon'ble Judges: Sadhan Kumar Gupta, J; Aloke Chakrabarti, J

Bench: Division Bench

Judgement

Sadhan Kumar Gupta, J.
This appeal has been preferred against the judgment dated 20.1.2002 passed by the learned M.A.C. Tribunal,

9th Court, Alipur in M.A.C. Case No. 92 of 1998. The fact of the case is that on 11.6.1996 at about 2.30 p.m. near Triveni Sheet Glass Factory,

Decherla Village, District West Godabari, Andhra Pradesh, the vehicle bearing No. WMO/5934 which was coming to Calcutta from Hyderabad

met with an Accident. Due to the failure of the brake it dashed against a stationary truck and as a result of that the driver lost control and again

dashed against a big roadside tree and ultimately the vehicle in question fell down on the drain. As a result of that, the claimant, being the driver of

the vehicle, sustained severe injuries on his person and ultimately his leg was amputated making him permanently disabled. The petitioner has filed

the present claim application praying for compensation to the extent of Rs. 6,00,000/-. The case was contested by the O.P. New India Assurance

Co. The learned Tribunal after perusal of the evidence and other materials on record came to the finding that the claimant was entitled to get Rs.

5,43,000/- from both the O.Ps, Being ggrieved and dissatisfied with the said finding of the learned Tribunal, present appeal has been preferred by

the O.P. Insurance Company.

2. The learned Counsel for the appellant Insurance Company mainly argued that as the victim was the driver of the offending vehicle, his case is not

covered by the insurance agreement in view of the provisions laid down u/s 147 of the Motor Vehicles Act. Mr. D.K. Das, learned Counsel for

the appellant relied on the judgment in the case of United India Insurance Co. Ltd. v. Smt. Draupadi Devi reported in 2001 (1) T.A.C. 467, and

New India Assurance Co. Ltd. Vs. Asha Rani and Others, . Mr. Banik, learned Counsel for the respondent on the other hand relied on the

judgment in the case of Ramji Hiralal Porte v. Premabai Pattel, reported in 1998 (2) A.J.R. 492; Oriental Fire and Genl Ins. Co. Ltd. and Another

Vs. Josheda alias Joshoda Bala Ghanta and Another, ; The Oriental Fire and General Insurance Co. Ltd., Agra and Another Vs. Dhanno and

Others, ; New India Assurance Co. Ltd. Vs. Anokhilal and Others, ; United India Insurance Co. Ltd. Vs. Angammal and Others, ; Kishori v.

Gulabkhan reported in 1988 A.C.J. 860, K.K. Jain and Another Vs. Smt. Masroor Anwar and Others, ; National Insurance Co. Ltd. Vs. Gonti

Eliza David and others, ; Oriental Fire and General Insurance Company Ltd. and Another Vs. Ram Sunder Dubey and Others, ; Mandulova

Satyanarayana Vs. Bodiredoy Lokeshwari and others, ; and National Insurance Co. Ltd. v. Smt. Urmila Devi reported in 2003(2) T.A.C. 31.

3. We have considered all those decisions as cited by the learned Advocates for both the sides. Learned Advocate for the O.R Insurance Co.

argued that in view of the provisions of Section 147 of the Motor Vehicles Act the insurer is not liable to pay compensation in respect of injury or

death of the driver of the offending vehicle. Section 14 of the Motor Vehicles Act provides that a policy shall not be required to cover liability in

respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily

injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen''s

Compensation Act, 1923, in respect of death or bodily injury to any such employee who is engaged in driving the vehicle. But if we look into the

provisions of Section 167 of the Motor Vehicles Act then it will appear that it has been clearly stated therein to the effect ""Option regarding claims

for compensation in certain cases-Notwithstanding anything contained in Workmen''s Compensation Act, 1923, where the death of, or bodily

injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen''s Compensation Act, 1923 (8 of 1923),

the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but

not under both."" This section has allowed the claimant to prefer his claim in either of the two Forums viz., M.A.C.C. Tribunal or the Workmen''s

Compensation Commissioner, but not in the two Forums at a time. In this case, the claimant has preferred the Motor Accident Claims Tribunal as

his forum and, as such, we find that there is nothing wrong in it. Moreover, if we look into the insurance policy then also it will appear that the said

policy covered the legal liabilities of the owner to the persons employed in connection with the operation and/or maintaining and/or unloading of

motor vehicles and a separate sum as premium was paid for the said purpose. Therefore, on facts it appears that in the present case, the driver,

being an employee under the owner for operation of the vehicle, is covered by the Insurance Agreement itself.

4. So far as the present case is concerned, it appears that the claim application was filed before the Tribunal u/s 163A read with Section 166 of the

Motor Vehicles Act. In assessing the amount of compensation the Tribunal has applied the Second Schedule of the Act. Clause 5 of the said

Second Schedule reads as follows:

Disability in non-fatal Accidents-

The following compensation shall be payable in case of disability to the victim arising out of non-fatal Accidents: Loss of income, if any, for actual

period of disablement not exceeding fifty-two weeks.

PLUS either of the following-

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the multiplier

applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total

disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/permanent partial disablement and percentage of loss of earning capacity shall be as per

Schedule I under Workmen''s Compensation Act, 1923.

5. It appears from the said Clause 5 it has been provided therein that in case of permanent partial disablement, the claimant will be entitled to

compensation and percentage of loss of earning capacity shall be as per the schedule as mentioned under Workmen''s Compensation Act, 1923. It

appears from the evidence on record that the claimant has adduced evidence in support of his claim of injury. The medical certificate as issued by

the doctor has opined that the claimant has sustained permanent disablement to the extent of 80%. On perusal of Schedule I under the Workmen''s

Compensation Act we find that the case of amputation of one leg below the right hip with stump of 4Ã¯Â¿Â½ as has occurred in the case of the present

victims, 80% is the loss of earning capacity. The Tribunal also took the loss of earning capacity of the petitioner to the extent of 80% on the basis

of the medical opinion as well as per Schedule 1 of the Workmen''s Compensation Act, 1923. The Tribunal discussed the evidence regarding the

monthly income of the claimant on the basis of the available evidence and he came to the conclusion that the monthly income of the claimant was

about Rs. 2,500/- and, as such, the annual income of the claimant was Rs. 2,500 x 12: 30,000/-. The claimant was within the age group of 25 to

30 and, as such, the learned Tribunal has rightly taken the multiplier of 18 to be applied in connection with this case. On the basis of all those things

the total amount of compensation awarded to the petitioner was Rs. 30,000 x 18: Rs. 5,40,000/-. It was pointed out at the time of hearing that

although 80% was the disability but the learned Tribunal considered the disability to be 100% which is not permissible. But if we look into the

nature of the injury as sustained by the claimant then it will appear that as a result of the Accident the petitioner"s left leg was amputated above the

knee. As such, it is clear that the petitioner is now not in a position to perform his duty as a driver of a motor vehicle any further. It means that as a

result of the Accident he was totally deprived of his earning capacity to which he was entitled prior to the Accident. As such, in our opinion it

should be treated that the nature of the injury as sustained by the claimant as a result of the Accident completely disabled his earning capacity and,

as such, we are of opinion that the learned Tribunal is perfectly justified in holding that as a result of the injury the petitioner was totally disabled

and lost his full earning capacity. So, we fully agree with the finding of the learned Tribunal that in arriving at a decision regarding the compensation

amount to be awarded in favour of the claimant, his total income which he was earning prior to the Accident should be taken into consideration. In

view of the matter, we find nothing wrong in arriving at a decision by the learned Tribunal to the effect that the claimant is entitled to get

compensation to the extent of Rs. 5,40,000/- from the O.Ps.

6. Argument had been advanced referring to Indian Motor Tariff, but in view of the specific provisions as have been discussed hereinabove, we do

not feel it necessary to discuss the provisions of the said India Motor Tariff nor we are of opinion that its application is necessary so far as the

present case is concerned.

7. In view of the above discussion, we are of opinion that there is no scope for interference in the judgment passed by the learned Tribunal and, as

such, we think that it should be confirmed. In the result the appeal fails. Judgment passed by the learned Tribunal is confirmed.

8. Send back the Lower Court record along with the copy of the judgment to the Court below at once. The Insurance Company is directed to

comply with the direction of the Tribunal within six weeks, failing which the claimant will be entitled to realise the amount as per law. The claimant

is permitted to withdraw the amount which is lying in deposit.

9. Xerox certified copy, if applied for, may be handed over to the parties on urgent basis.

Alok Chakrabarti, J.

I Agree.