

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 138 of 2000

Appellant :- National Insurance Company Ltd.

Respondent :- Ram Sagar Pandey And Others

Counsel for Appellant :- S.C.Gulati

Counsel for Respondent :- R.B. Chaubey, Amar Nath Singh, Mahendra Pratap Singh

Hon'ble Jaspreet Singh, J.

1. Heard Ms. Pooja Arora, learned counsel appearing under the authority of Sri S.C. Gulati, learned counsel for the appellant.
2. The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 relating to the year 2000 and is listed under the heading "these cases shall not be adjourned".
3. Despite the name of Sri Amar Nath Singh, Mahendra Pratap Singh and Sri R.B. Chaubey has been shown in the cause list as learned counsel for the respondents, none has put in appearance to argue the appeal, accordingly, the Court has heard the learned counsel for the appellant in their absence.
4. The learned counsel for the appellant has primarily assailed the impugned award dated 11.11.1993 passed in Claim Petition No. 128 of 1997 on the ground that there was a discrepancy in the driving license, inasmuch as, it was stated that the offending vehicle which is said to have caused the accident was driven by Sri Jethu Lal Chaurasiya, however, during the trial the claimant improved the case and stated that the vehicle was being driven by Sri Rajendra Prasad Mishra who had a valid and a subsisting driving license.
5. It is also urged that actually Sri Jethu Lal Chaurasiya did not have the driving license at all and in order shift the liability on the Insurance Company, the license of Sri Rajendra Prasad Mishra was introduced and this apparently indicates the malafides and therefore no liability can vest on the Insurance Company.
6. The other limb of the submission of the learned counsel for the appellant is that the appellant has been saddled with penal interest at the rate of 12 % annum and as such that needs to be reduced to at least 9% per annum.

7. The Court has heard the learned counsel for the appellant and also perused the material on record.

8. Apparently, what this Court finds is that in so far as the accident and the death is concern, there is no dispute between the parties. The dispute is also not on the quantum as awarded by the Tribunal. The only issue raised by the Insurance Company is regarding who is to service the said award and the issue of interest.

9. Having considered the submissions and from the perusal of the material on record, it is found that in so far as the owner of the vehicle namely Sri Jokharan Lal Chaurasia is concerned, he had filed his written statement and had taken a plea that the vehicle in question was duly insured and its driver Sri Rajendra Mishra was holding a valid and subsisting driving license, however, the owner did not enter into the witness box and Sri Rajendra Prasad Mishra was the only person on behalf of the defendants who appeared in the witness box and made his depositions stating that he was driving the vehicle in question on the date of the accident i.e. 05.08.1997. He had also filed a copy of the driving license which indicated that it was valid from 28.03.1996 till 22.09.1999 as such it covered the period of the accident which occurred on 05.08.1997.

10. There is no evidence on behalf of any of the defendants nor any evidence was led by the Insurance Company.

11. In light of the fact that the accident was amply proved including in light of the First Information Report and the charge sheet the fact that the driver was Sri Jethu Lal Chaurasiya and not Sri Rajendra Prasad Mishra pales into insignificance for the reason that Sri Rajendra Prasad Mishra entered into the witness box and admitted the fact that it was he who was driving the offending vehicle when the accident took place.

12. In light of the aforesaid, the findings recorded by the Tribunal on issue no. (iv) does not suffer from any error.

13. In so far as the second submission made by learned counsel for the appellant is concerned that also has no legs to stand, inasmuch as, it cannot be said that the rate of interest is penal in nature as the accident related to the year 1997 and the claim petition came to be decided on 11.11.1999.

14. Another way to look at the matter is that the Tribunal has not awarded the interest from the date of the petition rather has given a moratorium to the appellant that the interest shall be applicable at the rate of 12% per annum, two months after the

date of award dated 11.11.1999. Neither the rate of interest can be said to be penal nor the appellant can have any cause, inasmuch as, the interest which has been awarded for a period post the award which already given benefit to the Insurance Company.

15. Before parting, this Court notices that a large number of appeals arising out of motor accident claims cases are pending before this Court and many of them have been filed by the Insurance Companies. In light of the decisions rendered by the Apex Court, to name a few, ***National Insurance Company Ltd. v. Swaran Singh, (2004) 3 SCC 297, Sarla Verma Vs. Delhi Transport Corporation and another 2009 (6) SCC 121, National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680, Magma General Insurance Company Ltds. Vs. Nanu Ram 2018 SCC OnLine SC 1546, Sunita and others Vs. Rajasthan State Road Transport Corporation & another 2019 SCC OnLine SC 195 and Anita Sharma and others Vs. New India Assurance Company Limited and another (2021) SCC 171***, it would be seen that practically large portions of the debatable issues have been clarified by the Apex Court in the aforesaid judgments. The scope of contest is now in a narrow parameters. In this view of the matter, this Court is of the opinion that it is time that the Insurance Companies must undertake an exercise to periodically screen the pending appeals specially which have been filed on the issue of quantum and must take a conscious decision with help of their legal departments/counsel as to whether to pursue the appeals or to take appropriate measures so that the matters can be given a quietus, in light of the decisions and the position of law which have been clarified and settled by the Apex Court and the High Courts.

16. In this way, not only the precious time of Courts can be saved which can be utilized for other important matters but the claimants will also be able to get their dues expeditiously and the Insurance Company will also be able to save the collateral costs of increased payments towards interest.

17. Even though Lok Adalats are being held at frequent intervals yet there is no encouraging contribution from the Insurance Companies and it would be in the fitness of things that the Insurance Companies start taking a re-look and re-consider regarding pending appeals. Had the aforesaid exercise been taken the appeal should have been disposed of much earlier. To illustrate the point in question, the instant appeal is one such glaring example, which is being decided after about 23 years.

18. Considering the aforesaid, the appeal is dismissed with a cost of Rs. 5,000/- within a period of four weeks with the District Legal Aid Authority. The award dated 11.11.1993 passed in Claim Petition No. 128 of 1997 is affirmed. The statutory amount deposited before this Court shall be remitted to the Tribunal concerned to be released in favour of the claimants as well as the fact that any shortfall shall also be made good along with up to date interest to the claimants within a period of 60 days from the date a certified copy of this order is placed before the Authority concerned.

19. With the aforesaid, the appeal is ***dismissed***. The records shall be returned forthwith.

Order Date :- 23.11.2023

Asheesh