

Court No. - 20

Case :- FIRST APPEAL FROM ORDER No. - 10 of 2019

Appellant :- Abdul Hamid Alias Phakkari And Another

Respondent :- Smt. Chand Bibi And Another

Counsel for Appellant :- Manzar Ali Khan, Adnan Ahmad

Counsel for Respondent :- Nirmal Singh Yadav, Tarun Kumar Misra

Hon'ble Manjive Shukla, J.

1. Heard Sri Adnan Ahmad, learned counsel appearing for the appellants and Sri Tarun Kumar Misra, learned counsel appearing for the Respondent No.2 i.e. Insurance Company.

2. Appellants have filed this First Appeal From Order challenging therein the order dated 28.9.2018 passed by the Motor Accident Claims Tribunal/First Additional District Judge, Lucknow in Claim Petition No. 119 of 2011, Abdul Hamid and another Vs. Smt. Chand Bibi and another.

3. Facts of the case, in brief, are that deceased (Shadab) was a helper and was travelling in Mini Truck (D.C.M.) bearing Registration No.UP30-T-0941. The aforesaid truck met with an accident and as a result of the said accident Shadab died. After the aforesaid accident, claim petition was filed by the claimants before the Motor Accident Claims Tribunal/Ist Additional District Judge, Lucknow which was registered as Claim Petition No.119 of 2011. The Tribunal has considered the entire matter and has recorded finding that the accident took place on 2.7.2010 and as a result of accident, Shadab died but the Tribunal has rejected the claim only on the ground that there was no negligence on the part of truck driver and accordingly, claimants have been denied the compensation admissible under the provisions of Motor Vehicles Act, 1988.

4. Learned counsel appearing for the appellants instead of contesting this appeal on merits has confined his prayer only to the extent that once Motor Accident Claims Tribunal found that the accident of D.C.M. took place on 2.7.2010 and Shadab died out of said accident, at least claimants are entitled for the payment under

'no fault liability' clause as contemplated under Section 140 of the Motor Vehicles Act, 1988. It has further been contended by the learned counsel appearing for the appellants that at the time of accident, Section 140 of the Motor Vehicles Act, 1988 provided for payment of Rs.50,000/- as compensation under 'no fault liability' clause but later on, Motor Vehicles Act has been amended and as per amended Section 164 of Motor Vehicles Act, 1988, now compensation under 'no fault liability' clause is Rs.5 Lakh.

5. Learned counsel appearing for the appellants in support of his submissions has relied on judgment and order dated 10th March, 2009 passed by the High Court of Punjab and Haryana at Chandigarh in F.A.F.O. No.1461 of 1994 whereby High Court directed for payment of Rs.50,000/- as compensation under Section 140 of Motor Vehicles Act, 1988. Later on, when the aforesaid judgment was put to challenge before the Hon'ble Supreme Court in SLP(C) No.19719 of 2009, the Hon'ble Supreme Court vide order dated 11.10.2022 directed for payment of Rs.5 Lakh as compensation under 'no fault liability' clause contained in amended Section 164 of Motor Vehicles Act, 1988.

6. Learned counsel appearing for the appellants has thus contended that his case is identical to the aforesaid case decided by the Punjab and Haryana High Court upheld by the Hon'ble Supreme Court and accordingly, the present appellants are also entitled for payment of Rs.5 Lakh under 'no fault liability' clause contained in Section 164 of Motor Vehicles Act.

7. It has also been brought to the notice of this court that the Calcutta High Court has decided the case of **Urmila Halder vs. New India Assurance Co. Ltd. and others, 2018 SCC Online Cal 11751** wherein same view has been taken and it has been held that accident may have taken place before the amendment in Section 164 of the Motor Vehicles Act but if the First Appeal against the Claim Petition is being decided, then 'no fault liability' clause contained in Section 164 shall be invoked at the time of decision by the court and accordingly, claimants would be liable for payment of Rs.5 Lakh as compensation under 'no fault liability' clause. The aforesaid judgment rendered by the Calcutta High Court has been upheld by the Hon'ble Supreme Court as the Special Leave Petition filed against the said judgment bearing SLP (C) No.6260 of 2019 (The New India Assurance Co. Ltd. vs. Urmila Halder) has been dismissed vide order dated 8th February, 2024.

8. Learned counsel appearing for the Respondent No.2 i.e.

Insurance Company though has tried to defend the order passed by the Motor Accident Claims Tribunal but ultimately could not dispute the aforesaid judgments rendered by the Punjab and Haryana High Court, Calcutta High Court and the Hon'ble Supreme Court.

9. I have considered the submissions advanced by the learned counsels appearing for the parties and I find that once the factum of accident and death arising out of accident has been accepted by the Motor Accident Claims Tribunal, there cannot be any reason to deny the compensation to the claimants under 'no fault liability' clause.

10. The only issue which remains to be considered by this court is whether claimants are entitled for compensation under 'no fault liability' clause as provided in the Motor Vehicles Act, 1988 at the time of accident or the amended provision of the Motor Vehicles Act, 1988 which came into existence after the date of accident can be utilized for granting compensation to the claimants. The aforesaid issue is no more *res integra* as the said issue has already been decided by the judgment dated 10th March, 2009 passed by the High Court of Punjab and Haryana at Chandigarh in F.A.F.O. No.1461 of 1994 and the said judgment has also been upheld by the Hon'ble Supreme Court. The issue has also been elaborately dealt with by the Calcutta High Court vide its judgment dated 9th August, 2018 rendered in the case of *Urmila Halder (supra)*. The aforesaid judgment has also been upheld by the Hon'ble Supreme Court as SLP (C) No.6260 of 2019 filed against the said judgment has been dismissed vide order dated 8th February, 2024. The order passed by the Hon'ble Supreme Court dated 8th February, 2024 is extracted as under:-

"Heard learned counsel for the parties.

2. Leave granted.

3. The appellant-Insurance Company is aggrieved by the judgment dated 09 thAugust, 2018, passed by the Division Bench of the High Court of Calcutta by which the compensation awarded by the Motor Accident Claims Tribunal, Sealdah, vide judgment dated 17thDecember, 2008, has been enhanced from ₹1,14,500/- (Rupees One Lakh Fourteen Thousand Five Hundred) to ₹5,00,000/- (Rupees Five Lakhs)

4. The short point for consideration before this Court is whether the amendment in Section 163-A of the Motor Vehicles Act, 1988, which came into effect by a Gazette Notification on 22nd May, 2018, would relate to an accident which had occurred prior to the said date.

5. Learned counsel for the appellant submits that the law which was amended would come into force prospectively, which is a normal rule of interpretation and there being no retrospectivity indicated in the amendment itself, the same has to be construed in a harmonious manner giving effect to each and every word.

6. Reliance was placed on the last line of the notification, which indicates that the said amendment would come into force from the date of publication in the official Gazette, which is 22nd May, 2018. It was submitted that as the accident had occurred on 11th December, 2004, the benefit of such amendment could not be granted to the respondent. In support of this contention, learned counsel referred to and relied upon various decisions of this Court in Padma Srinivasan Vs. Premier Insurance Company Limited, [(1982) 1 SCC 613]; Shyam Sunder and Others vs. Ram Kumar and Another, [(2001) 8 SCC 24]; Nasiruddin and Others Vs. Sita Ram Agarwal, [(2003) 2 SCC 577] and Panchi Devi Vs. State of Rajasthan and Others, [(2009) 2 SCC 589].

7. It was further contended that the present case is covered by the policy under which the payment is made and the same crystallized on the date the same was entered into and subsequent developments would not alter the rights and liabilities of the parties. Thus, the contention was that the appellant would not be liable to pay any further than what it was obliged to pay under the Act prior to coming of the amendment on 22nd May, 2018.

8. Learned counsel for the respondent submitted that the High Court has rightly taken a view that it is merely a procedural amendment which has to be given retrospective effect and it is nothing substantive so as to affect the merits of the issue.

9. Having considered the matter, we do not find any reason to interfere with the judgment impugned. With regard to the judgments of this Court relied upon by learned counsel for the appellant, having gone through the same we find that they are distinguishable from the facts of the present case and thus, the ratio of those cases would not apply in the present case.

10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on to the claimant in the absence of any specific bar to the same. In the present case, the liability of the appellant-Insurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to ₹5,00,000/- (Rupees Five Lakhs). As 50% of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks.

11. The appeal is dismissed in the above terms. Pending application(s), if any, shall stand disposed of."

11. In view of aforesaid facts and legal pronouncements and also that learned counsel appearing for the Insurance Company could not dispute the aforesaid legal position, this First Appeal is allowed. Respondent No.2 is directed to pay Rs.5 Lakh along with simple interest at the rate of 7% per annum from the date of filing of claim petition till the date of payment to the claimants, within four months from today.

Order Date :- 21.3.2024

Salim