IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.1253 of 1994
Date of decision:14.01.2015

United India Insurance Company Ltd.

....Petitioner

Versus

Bhalle Ram & others

......Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: None for the petitioner.

Mr.Shrey Goel, Advocate, for respondent No.3.

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G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition, filed by the Insurance Company, is to the order dated 17.01.1994 (Annexure P4), passed by the Motor Accident Claims Tribunal, Jind (hereinafter, referred to as the 'Tribunal'), whereby respondent No.1 was awarded a sum of ₹25,000/- on account of no fault liability, envisaged under Section 140 of the Motor Vehicles Act, 1988 (for short, the 'Act'). The amount was to be paid within one month, failing which, the claimant was entitled to get interest @ 12% per annum from the date of filing of the application under Section 140 of the Act.

A perusal of the paperbook would go on to show that the claimant pleaded before the Tribunal that in an accident which took place on 05.04.1992, Sunita, his daughter died due to the negligent driving of the truck bearing No.HYR-7457, driven by respondent No.2 and ensured with the petitioner-Company. In the written statement filed, the Insurance Company took the plea that the driver did not have a valid license and there was no valid fitness certificate. Respondent No.3 was not the owner and therefore, the Company was not liable to pay any compensation. The insurance policy in favour of respondent No.3 was also denied. It was, however, admitted that the truck was ensured with the respondent-Company.

Initially, the matter was taken up before the Lok Adalat and a conditional order was passed on 31.10.1992 (Annexure P1) wherein it was agreed that the Insurance Company would pay a sum of ₹30,000/- to the claimant, subject to the verification of valid driving license and the insurance policy, for the death of Sunita, within one month, failing which, liability to pay interest @ 12% per annum would be there. However, on 30.11.1992, an application was submitted by the Insurance Company that the award being conditional, the driving license has not been found to be correct on verification. Accordingly, the Tribunal, vide order dated 16.11.1993, set aside the earlier award.

The claimant filed an application under Section 140 of the Act, claiming interim compensation on the principle of no fault liability, to the tune of ₹25,000/-. In the reply to the application, it was submitted that the vehicle in dispute was not being used for the purpose for which it was permitted. It was alleged that the driver did not have a valid driving license. But it was never denied, at any stage, that the vehicle was not involved in the accident. The Tribunal allowed the application, granting ₹25,000/-, rejecting the argument that the vehicle was not involved in the accident, noticing that from the statement made on 31.10.1992 by counsel and by the Branch Manager of the Company that there was no dispute regarding the accident. The Tribunal rightly held that for deciding the application under Section 140 of the Act, the validity of the driving license was not to be seen and granted the compensation.

Section 140 of the Act provides that where any death or permanent disablement of any person has resulted from an accident arising out of the motor vehicle, the owner of the vehicles shall or the owners of the vehicle shall, jointly and severally, be liable to pay compensation in respect of such death or disablement. The amount of compensation, at that point of time was ₹25,000/- on account of death. As per sub-clause (3), the necessity of any wrongful act or negligence of the owner was not to be pleaded and established and as per sub-clause (4), the claim for compensation under sub-clause (1) is not to be defeated on account of any wrongful act or neglect of a person in respect of whose death had been caused. Neither the quantum of compensation recoverable is to be reduced and the liability to pay compensation, otherwise by the owner of the vehicle could be reduced. However, the amount would be liable to be reduced from the amount of compensation payable under Section 163-A of the Act. The purpose of the section is, thus, to grant immediate succour to the aggrieved person and the issue of adequate compensation can be decided thereafter. The liability of the Insurance Company to pay under Section 140 of the Act, on account of no fault liability and the provisions of Sections 140, 141 & 144, have been considered by the Apex Court in ***Eashwarappa Maheshwarappa Vs. C.S.Gurushanthappa & another 2010 (4) CCC 34***. In the said case, the compensation had been denied by the Tribunal and the High Court and the contention raised before the Apex Court was that no fault compensation was payable. It was noticed that the accident had occurred while the car was being driven unauthorizedly and rashly, after consumption of liquor, by one of the claimants, who was injured and whereas, one of the occupants had lost his life. It was held that the provisions were to provide immediate succour to the injured or the heirs and the legal representatives of the deceased and has to be made at the threshold of the proceedings and could also be ordered to be paid at the end of the proceedings. Relevant observations read as under:

> "15. Seen in isolation the above provisions might appear harsh, unreasonable and arbitrary in as much as these create the liability of the vehicle(s) owner(s) even where the accident did not take place due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned but entirely due to the wrongful act, neglect or default of the person in respect of whose

death or permanent disablement the claim has been made but the above provisions must be seen along with certain provisions of Chapter XI. Section 146 forbids the use of the vehicle in a public place unless there is in force, in relation to the use of the vehicle, a policy of insurance complying with the provisions of that chapter. Section 147 contains the provisions that are commonly referred to as `Act only insurance'. The provisions of sections 146 and 147 are meant to create the large pool of money for making payments of no fault compensation. Thus the liability arising from section 140 would almost invariably be passed on to the insurer to be paid off from the vast fund created by virtue of sections 146 and 147 of the Act unless the owner of the vehicle causing accident is guilty of some flagrant violation of the law.

16. Seen thus, the provisions of chapter X together with sections 146 and 147 would appear to be in furtherance of the public policy that in case of death or permanent disablement of any person resulting from a motor accident a minimum amount must be paid to the injured or the heirs of the deceased, as the case may be, without any questions being asked and independently of the compensation on the principle of fault.

17. The provisions of section 140 are indeed intended to provide immediate succour to the injured or the heirs and legal representatives of the deceased. Hence, normally a claim under section 140 is made at the threshold of the proceeding and the payment of compensation under section 140 is directed to be made by an interim award of the Tribunal which may be adjusted if in the final award the claimants are held entitled to any larger amounts. But that does not mean, that in case a claim under section 140 was not made at the beginning of the proceedings due to the ignorance of the claimant or no direction to make payment of the compensation under section 140 was issued due to the over-sight of the Tribunal, the door would be permanently closed. Such a view would be contrary to the legal provisions and would be opposed to the public policy."

Accordingly, the claimants were held entitled to no fault compensation under Section 140 of the Act, along with interest. In the present case, as noticed in the application under Section 140 of the Act, it has not been denied that the accident has not taken place. The Insurance Company admitted to pay compensation at earlier stage. In such circumstances, the Tribunal was just in allowing the application under Section 140 of the Act.

Accordingly, no fault can be found in the well reasoned award passed by the Tribunal. Consequently, the present revision petition is hereby dismissed.

14.01.2015 (G.S.SANDHAWALIA)
sailesh JUDGE