(2023) 03 CHH CK 0096

In the Chhattisgarh High Court

Case No : MAC No. 980 Of 2015?

Branch Manager, National Insurance Company Limited — APPELLANT

Vs

Gayatri Dev — RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173
Indian Penal Code, 1860 — Section 279, 304A, 337

Citation : (2023) 03 CHH CK 0096

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : B.N. Nande, Ramsajiwan Jaiswal, Akhtar Hussain, J.K. Saxena

Final Decision : Dismissed

Judgement

1. Appellant/Insurance company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the award dated 21.01.2015 passed by 4th Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Claim Case No. 114/2013 awarding the total compensation of Rs.5,66,000/- to the claimants fastening liability jointly and severally upon the appellant/insurance company along with respondents No.5 & 6, driver and owner of the vehicle respectively.

2. As per claim petition, on 14.12.2012 deceased Indraram was going from Jashpur to Bilaspur by bus bearing Registration No. 14-A-2788. At around 3:00 A.M., Near Khokhra Fatak Railway Crossing, respondent No. 5 who was driving the said bus in a rash and negligent manner, hit the truck bearing Registration No. C.G.-13-Z.C.-0403 from behind, due to which the passengers sitting in the bus including the deceased Indraram (husband of the Claimant No.1/respondent No.1- Gayatri Devi) sustained grievous injuries and the deceased was immediately referred to CIMS Hospital, Bilaspur, where he died during treatment on 15.12.2012. The said accident was reported to the Police Station- Janjgir, on which Crime No. 1539/2013 punishable under Sections 304-A, 279, 337 of the Indian Penal Code was registered against respondent No.5 (driver). Deceased

Indraram Gond used to earn 8,000/- - 9,000/- per month. Due to driving of the bus in rash and negligent manner by respondent No.5, the casual death of Indraram Gond occurred. Hence, due to the death of Indraram Gond, a claim petition under Section 166 of the Motor Vehicles Act for compensation of Rs.40,00,000/- was filed by the claimants.

3. After evaluating the evidence available on record, the Tribunal has awarded the compensation of Rs.5,66,000/- along with interest @ 6% per annum in favour of the respondents/claimants. Hence, this appeal has been filed by the appellant/insurance company seeking exoneration on the ground of breach of terms and conditions of the insurance policy.

4. Learned counsel for the appellant/insurance company submits that the impugned award is contrary to the facts and law applicable to the case. Due to non-certification of permit, fitness, insurance policy and driving license, appellant is not liable to pay compensation to the claimants. It is further submitted that at the time of accident, respondent No.5 (Driver) did not have a valid and effective driving license to drive the said vehicle, the respondent No. 5 has committed a willful breach of the terms of the insurance. Respondent No.5 has driven the said vehicle without valid and effective permit and fitness at the time of accident. The accident is the result of contributory negligence of both the vehicles. For all these reasons, the Tribunal was not justified in fastening the liability on the insurance company whereas it ought to have been fastened upon the driver and owner of the vehicle. Alternatively, it is submitted that the compensation awarded by the Tribunal is without any reliable evidence, it is too excessive and as such deserves to be reduced suitably. Reliance has been placed on the judgment rendered by Hon'ble Supreme Court in the matter of Pappu and others Vs. Vinod Kumar Lamba and another reported in AIR 2018 SC 592.

5. On the other hand, learned counsel for respondents No. 1 to 3 & 5 supported the impugned award.

6. Heard counsel for the parties and perused the material available on record.

7. Main allegation of the appellant is that the driver and owner have breached the condition of Insurance Company and in this regard, learned Claims Tribunal framed Issue No.2 which is as under:-

8. Insurance company examined one witness namely Uttam Kumar Sahu (NAW-2) and he stated that he demanded particulars of licence of driver of vehicle but RTO, Bilaspur did not give any particulars and said that without original licence they cannot give any particulars of licence. He has proved the RTO report Ext. D-2 which reads as under:-

9. J.K. Verma (NAW-1) stated in his evidence that on the date of accident, driver of vehicle was not in possession of valid and effective licence, permit and fitness certificate were also not produced by owner and driver, that is why Insurance Company is not liable to pay compensation. In cross-examination, he admitted

this fact that he sent notice to owner but he did not file the copy of notice in this case. Learned Claims Tribunal found that both the witnesses did not prove this fact that driver did not possess the effective and valid licence and it is well settled principles of law that for the purpose of exoneration, it is the responsibility of Insurance Company to prove the breach of conditions of insurance policy. However, in this case the Insurance Company failed to prove this fact that driver did not possess valid and effective driving licence or there was any breach of term or condition of the insurance policy on the part of driver or owner. Therefore, the finding recorded by the learned Claims Tribunal against issue No.2 is based on proper appreciation of oral and documentary evidence which calls for no interference by this Court.

10. As regards the quantum of compensation, for want of any specific oral and documentary evidence as to the income of the deceased on notional basis as Rs.3,000/- and further considering the age of the deceased, the number of dependants, after making ¼ deduction towards personal and living expenses and applying multiplier of 18 assessed the total loss of dependency at Rs.4,86,000/-. This apart, the Tribunal awarded Rs. 10,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of estate, Rs.10,000/-each to claimants No. 2 to 4 towards loss of love and affection and Rs.10,000/- each to non-applicants No.5 & 6 (parents of the deceased) towards loss of filial consortium. Thus, the Tribunal awarded a total compensation of Rs.5,66,000/- cannot be said to be excessive or exorbitant in the given facts and circumstances of the case and the judgment of the Hon'ble Supreme Court in Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

11. On the basis of aforesaid discussion, this Court finds no merit in this appeal. Accordingly, the appeal being without any substance is hereby dismissed.

