(2025) 02 JH CK 1246

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 412 Of 2016

Branch Manager, Oriental Insurance Company Limited	APPELLANT
Vs	
Lilmuni Orain	RESPONDENT

Date of Decision : 18-02-2025

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2025) 02 JH CK 1246

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Alok Lal, Suraj Deo Munda, Arvind Kumar Lall

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

As far as M. A. No. 335 of 2016 is concerned, it has been preferred for enhancement of compensation amount.

It is argued that learned Tribunal awarded Rs.1,00,000/- lumpsum under the conventional head as well as under the head of future prospect which should have been separately awarded.

Learned counsel on behalf of Insurance Company and the owner of vehicle have not disputed these factual assertions.

I find merit in the appeal for enhancement, as loss of earning under the head of future prospect has not been separately computed.

Taking monthly income of Rs.3000/-, 1/4 deduction as personal and living expense of the deceased, multiplier of 17 as the deceased was aged 28 years at the time of accident and loss of income under future prospect 40%, the final compensation amount will work as under: -

Annual Income = Rs.3000/- X 12

Rs.36,000/-

Future Prospect Rs.36,000/- X 40%

Rs.14,400/-

After adding annual income and future prospect

Rs.36,000 + Rs.14,400 =Rs.50,400/-

Deduction (1/4th as total nos. of dependants are 3)

Rs.50,400 X 1/4 =Rs.12,600/-

After deduction

Rs.50,400 - Rs.12,600 = Rs.37,800/-

Multiplier of 17 taking the age of the deceased to be 28 as per post-mortem report

Rs. 6,42,600/-

Conventional Head

Rs.84,000/-

Total Compensation

Rs. 6,42,600 +Rs.84,000 =Rs.7,26,600/-

M. A. No. 335 of 2016 is allowed. Interlocutory Application, if any, is disposed of.

M. A. No. 412 of 2016

The Insurance Company is in appeal against the award of compensation in which liability has been fixed on the Insurance Company for paying compensation of Rs.5,59,000/- awarded under Section 166 of the Motor Vehicle Act with interest of 6% per annum.

2. As per the case of the claimant, on 23.06.2009 the deceased- Sarawjit Oraon was coming on a tractor bearing Registration No. JH 08A-4514 after unloading stone chips when he met with an accident due to rash and negligent driving by the driver, as a result the tractor overturned and fell in the river.

3. Learned Tribunal recorded a finding that the accident took place due to rash and negligent driving of the tractor by its driver, and further held that at the time of accident, the deceased was not travelling as a gratuitous passenger, as he was a labour, who was returning after unloading the stone chips.

4. Judgment and award has been impugned on the ground that the offending vehicle was under insurance cover of act-only policy in which the liability is limited. In the F.I.R (Exhibit 1), it has come that there were several persons travelling on the same tractor and, therefore, the learned Tribunal was in error to

hold that he was a labour and not a gratuitous passenger travelling on a vehicle. The act-only policy does not cover the occupants in any vehicle. Further, the deceased left behind four dependents for which the applicable deduction on living and personal expenses shall be 1/3rd and not 1/4th as taken by the Tribunal. It is also argued that, since the tractor was being used for commercial purpose, therefore, permit was also required which was not produced by the owner before the Tribunal. Reliance is placed in National Insurance Company Ltd. Vs. Balakrishnan and Anr. AIR 2013 SC (Civil) 436 wherein the policy was act-only policy and therefore, the Insurance Company was held to be not liable to compensate for the death of the occupant/pillion rider of the vehicle. Principle that in cases of "act-only policy", the Insurance Company is liable to indemnify the owner of the vehicle for the death or injury to the occupant of the vehicle, has been reiterated in Jagtar Singh Vs. Sanjeev Kumar & Ors. (Civil Appeal No. 7546 of 2013 and 6943 of 2015).

5. It is submitted by learned counsel on behalf of the owner of the vehicle (Respondent No.5) that it is factually incorrect to assert that the policy was only Act policy which will be evident from Exhibit 5. The policy specifically states that it was Miscellaneous Class D vehicles liability only Policy which covered legal liability to employees-IMT-29 for which premium of Rs.25/- was also paid. Further, A.W.1, A.W.2 and A.W.3 have consistently stated that the deceased was returning after unloading the stone chips. There has not been any cross-examination of A.W.2 and A.W.3 on this point which will amount to admission of the statement made in examination-in-chief. With regard to requirement of permit, it is submitted that under the Jharkhand Motor Vehicle Rules, there is no requirement of permits so far as tractors are concerned.

6. Having considered the submission advanced on behalf of both sides, and perusal of the insurance policy (Exhibit 5), it cannot be said that it was "act-only policy" as extra premium was paid to cover the risk to the employees. Oral evidence that the deceased was returning after unloading the stone chips has come up consistently, and has remained uncontroverted in the cross-examination. F.I.R. is not a substantive piece of evidence, as such it cannot be placed on a higher pedestal than the statement made before the Tribunal on oath. Therefore, the Insurance Company cannot escape liability on this count.

Under the circumstance, the Insurance Company is directed to make payment of Rs.7,26,600/- with interest @ 6% from the date of filing of the claim application, within a month of the order, which shall be disbursed to the claimants by the Tribunal on terms fixed by it.

M. A. No. 412 of 2016 stands dismissed.

Statutory amount be remitted to the Tribunal for disbursement to the claimants. Interlocutory Application, if any, is disposed of.

