(2022) 03 JH CK 0022

In the Jharkhand High Court

Case No : Miscellaneous Application No. 121, 346 Of 2009

C. Subramani And Others APPELLANT

Vs

National Insurance Co. Ltd And Others RESPONDENT

Date of Decision : 10-03-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(31), 66

Citation : (2022) 03 JH CK 0022

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Atanu Banerjee, Alok Lal

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

1. M.A. No. 346 of 2009 has been preferred against the judgement and award of compensation in Compensation Case No. 36/2006 by the Additional District Judge-II-cum -MVACT at Chaibasa whereby and whereunder, a compensation of Rs.3 lakhs has been awarded in favour of the claimants and against the appellant (OP No.2) being the owner of the offending vehicle the boring truck number TDA 1417.

M.A. No.121 of 2009 has been preferred by the claimants for enhancement of the compensation. Both these appeals have been heard together and shall be disposed of by a common judgement.

2. M.A. No 346 of 2009 has been preferred by the owner of the offending vehicle mainly on the ground the vehicle was a drilling rig and not a transport vehicle. While deciding issue number 4 regarding the violation of the terms and condition of the policy by the insured, the learned Tribunal has erroneously decided that there was a breach of the terms of the insurance policy, since the vehicle was being plied without a valid permit. Under the circumstance the insurance company while being directed to pay the compensation amount to the claimant

has been given a right to recovery. It is argued on behalf of the appellant that the offending vehicle being a drilling rig was not a transport vehicle and permit is not issued for such vehicle in terms of Section 2(31) of the M.V. Act.

3. Section 66 of the M.V. Act necessitates permits for the use of motor vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods accept in accordance with the conditions of a permit granted or counter signed by a Regional or State Transport Authority or any prescribed authority. Section 2(31) defines permit as one issued by State or Regional Transport authority authorizing the use of motor vehicle as a transport vehicle. From the above definitions, it is apparent that Motor Vehicle Act draws a distinction between "Motor Vehicle" and "Transport Vehicle". The requirement of permit is confined to vehicles which are used for transport purposes. The matter for consideration is whether the offending vehicle which is a drilling rig, can be termed as a transport vehicle? The plain meaning of a transport vehicle is a vehicle which carries and transports goods or passengers. A vehicle which is a drilling rig, which is used for drilling deep borewells, cannot come within a meaning of transport vehicle and therefore it cannot be said that there was requirement of permit for its movement on public place/road. Under the circumstance, the finding of the Tribunal of breach of terms and conditions of the insurance policy on this count, is not sustainable and is accordingly set aside.

4. The learned Tribunal has returned a finding of fact on Issue Nos.2 and 3 that the deceased died in a motor vehicle accident due to a rash and negligent driving by the driver of deep boring Truck No. TDA 417. This finding is not under challenge.

5. It has been held by the learned Tribunal on the basis of Exhibit A which is the photocopy of the insurance policy that at the relevant time of accident, the offending vehicle was under the insurance cover of O.P. No.1. The insurance company has not denied the insurance policy. Under the circumstance, O.P. - National Insurance Company Ltd. shall be liable to pay the compensation amount.

6. With regard to the enhancement of compensation, as per the claim application, the deceased was having a monthly income of Rs.6000/-per month from the business of selling and steel aluminium vessels. The learned Tribunal awarded a compensation of Rs.3,00,000/- by taking the monthly income of Rs.3000/-, 32 years of age of the deceased and deducting 1/3rd on is personal living expenses. While accepting the monthly income of Rs.3000/- per month as assessed by the Tribunal, I find that the compensation has not been awarded as per the principles laid down in National Insurance Company Vs Pranay Sethi (2017) 16 SCC 680. Taking Rs. 3000/- as monthly income, 32 years the age and 8 legal dependants of the deceased, the final compensation amount shall work out as under :

Annual Income Rs.3,000x12

Rs 36,000/-

Annual dependency after deducting 1/5th on the living and personal expenses of the deceased

Rs 28,800/-

Taking multiplier of 16 considering the age of the deceased to be 32 years

Rs 28,800 x 16 = Rs 4,60,800

Future Prospect @ 40%

Rs 1,84,320

Conventional head

Rs 77,000

Total

Rs 9,06,440

The claimants shall therefore be entitled to compensation of Rs.9,06,440 with interest at the rate of 7.5% per annum on the compensation amount from the date of filing of claim application from the Insurance Company. The Insurance Company is accordingly directed to make payment of the compensation amount to the Tribunal within a month of this order. The Tribunal shall pay the compensation amount to the claimants in the manner given below:

A. 40% of the total compensation amount to be paid to Claimant no.1

B. 10% of the compensation amount to be paid to each of the Claimant nos.2 to 7 jointly with Claimant no.1.

C. In case of the claimants below 21years the amount to be fixed deposited till they attain the age of 21 years.

Both, M.A. No. 346 of 2009 and M.A. No.121 of 2009, are allowed as at above.