(2021) 06 JH CK 0013

In the Jharkhand High Court

Case No : Miscellaneous Application No. 7, 8, 9, 53, 54, 56 Of 2009

Dasrath Ganjhu And Others APPELLANT

Vs

Md. Mustaqu Ahmad And Others RESPONDENT

Date of Decision : 11-06-2021

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2021) 06 JH CK 0013

Hon'ble Judges : Ananda Sen, J

Bench : Single Bench

Advocate : Ashutosh Anand, D.C. Ghose

Final Decision : Dismissed/Allowed

Judgement

,,

Ananda Sen, J",,

M.A. No.53 of 2009, M.A. No.54 of 2009 & M.A. No.56 of 2009",,

1. These appeals have been preferred by the Oriental Insurance Company Limited against the judgment dated 27th September, 2008 passed by the",,

Motor Vehicle Accidents Claims Tribunal, Ranchi in Compensation",,

Case No.285 of 2003, 286 of 2003 and 287 of 2003.",,

2. Three sets of claim cases were filed by the respective claimants under Section 166 of the Motor Vehicles Act for grant of compensation.,,

Applicants Dasrath Ganjhu and others filed Compensation Case No.286 of 2003 on account of death of Pegna Ganjhu. Said Dasrath Ganjhu and,,

others also filed Compensation Case No.287 of 2003 on account of death of Ratni Devi. Applicants Ranthuwa Ganjhu and others filed Compensation,,

Case No.285 of 2003 on account of death of Thepa Ganjhu. All the three deceased victims had died on 26.01.2001, in an accident involving truck",,

bearing registration No. BEN 7131. As all the three persons died arising out of the same accident, all these three compensation cases were decided",,

together vide a common judgment and award dated 27th September, 2008, passed by the Motor Vehicle Accidents Claims Tribunal, Ranchi. Appellant,",,

in these three appeals, is the Insurer of the vehicle, which is involved in the accident.",,

3. Counsel appearing on behalf of the Insurance Company submitted that the vehicle was a goods carrying commercial vehicle and admittedly, the",,

deceased were travelling on the vehicle as passengers. It is submitted that no extra premium was paid by the owner for giving coverage to the,,

passengers travelling in goods carrying vehicle, thereby violating the terms and conditions of the policy. He submits that since there was violation of",,

the terms and conditions of the policy, the Insurance Company should not be saddled with the liability to pay compensation, which exclusively rests",,

upon the owner of the vehicle. He submits that admittedly, the deceased were not the owners of the goods nor labourers as the truck in question was",,

loaded with bauxite when the accident took place and these passengers were sitting over the bauxite.,,

4. Counsel appearing on behalf of the owner submits that the deceased were travelling along with their goods, i.e., tomatoes and they were intending",,

to sell the same in the market and thus, it can be said that the deceased were owner of the goods and that being so, it is the Insurance Company, who",,

has to pay the compensation amount. He submits that the deceased had paid fare to the driver, which substantiates the case of the owner.",,

5. Counsel appearing on behalf of the claimants submitted that they have filed separate appeals for enhancement of the amount of compensation,,

awarded to them, which have been heard by this Court along with these appeals. He submits that the Insurance Company cannot be said to be",,

aggrieved by the award as the tribunal has held at page 12 of the judgment that the opposite party No.2, i.e., the Insurance Company is not liable to",,

indemnify the owner in all three compensation cases. He further submits that right to recover full amount from the owner has been granted to the,,

Insurance Company, thus, according to him, these appeals by the Insurance Company are not maintainable.",,

6. Be it noted that, I have also heard the appeals filed by the claimants praying for enhancement of the compensation amount and the judgment/order",,

dealing with those appeals are being passed, separately, in the later part.",,

7. After hearing the parties and going through the records, I find that the death arising out of the motor accident is admitted in this case. The Tribunal,",,

after assessing the various aspects, had granted compensation to the claimants of each cases and has held that the deceased were gratuitous",,

passengers and, thus, Insurance Company is not liable to indemnify the owner and not liable to pay compensation to the claimants, rather, it is the",,

owner, who has to pay, but, since scheme of compensation is a beneficial legislation, the Insurance Company was directed to recover the amount in",,

full from the owner of the vehicle in question. The aforesaid finding, which is supported by evidence and materials on record, has not been challenged",,

by the owner of the vehicle. Counsel appearing on behalf of the owner of the vehicle, admits that the owner has not challenged the judgment of these",,

motor vehicle compensation cases. Further, from the record I find that the owner of the vehicle had left contesting the cases before the Tribunal. The",,

Tribunal has categorically held that the owner did not bring on record any material to suggest that he had paid premium for carrying passengers in the,,

offending vehicle bearing registration No. BEN 7131. Considering the aforesaid, the Tribunal concluded that there was violation of terms and",,

conditions of the policy as the vehicle was carrying gratuitous passengers.,,

8. Since no appeal has been preferred by the owner and there is a specific finding that the Insurance Company is not liable to indemnify the owner,,

and it has the right to recover the amount of compensation from the owner, I feel that the Insurance Company cannot be said to be aggrieved by the",,

impugned award. Thus, this Court feels that these appeals at the behest of the Insurance Company need not be entertained by this Court. The",,

Insurance Company is at liberty to recover the amount of compensation from the owner of the vehicle bearing registration No. BEN 7131.,,

9. These three appeals being M.A. No. 53 of 2009, M.A. No.54 of 2009 and M.A. No. 56 of 2009 are hereby dismissed.",,

M.A. No. 7 of 2009, M.A. No. 8 of 2009 & M.A. No.9 of 2009",,

10. These three appeals have been preferred by the claimants for enhancement of the amount of compensation awarded vide judgment and award,,

dated 27th September, 2008 passed by the Motor Vehicle Accidents Claims Tribunal, Ranchi in Compensation Case No.285 of 2003, 286 of 2003 and",,

287 of 2003.,,

11. I have heard the counsel for the parties and have gone through the records.,,

12. The claimants submit that the compensation assessed is on much lower side. Counsel for the claimants-appellants submits that the compensation,,

should be paid to the claimants keeping in view the judgment passed by the Honâ??ble Supreme Court in the case of National Insurance Company,,

Limited versus Pranay Sethi & Others reported in (2017) 16 SCC 680. He submits that if the principles laid down in the judgment of Pranay Sethi,,

(supra) are applied, claimants-appellants are entitled to get much more amount as compensation.",,

13. Counsel appearing on behalf of the Insurance Company submits that it has been held that they are not liable to indemnify the owner, as such they",,

are not opposing just and fair compensation that may be awarded to the claimants.,,

14. So far as the owner of the vehicle involved in the accident is concerned, counsel for the owner submits that there is nothing on record to suggest",,

that the deceased were earning any amount. He submits that the amount assessed and awarded by the Tribunal, to be paid to the claimants, is just and",,

fair, which needs no interference.",,

15. In Compensation Case No.285 of 2003, the deceased Thepa Ganjhu was aged about 45 years. It has been pleaded that he was earning Rs.3,000/-",,

Description of Enhancement,M.A. No. 7 of 2009,M.A. No.8 of 2009

Enhancement on account of future

prospect in terms of the principles

laid down in the case of Pranay

Sethi (supra)","25% of the assessed compensation

amount of Rs.2,30,400/- =

Rs.57,600/-","40% of the assessed compensation

amount of Rs.2,30,400/- =

Rs.92,160/-

Lump sum enhancement on account

of funeral expenses and loss of

estate","Rs.15,000/-","Rs.15,000/-

Total Enhancement,"Rs.57,600/- + Rs.15,000/- =

Rs.72,600/-","Rs.92,160/- + Rs.15,000/- =

Rs.1,07,160/-

