(2014) 02 CHH CK 0039

In the Chhattisgarh High Court

Case No : M.A. Nos. 95 and 1379/2005

Ganeshram APPELLANT

Vs

Arjun
 New India Assurance Co. Ltd. Vs Sahas Rao Sonwane RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Citation : (2014) 3 MPJR 47

Hon'ble Judges : Pritinker Diwaker, J

Bench : Single Bench

Advocate : S.K. Agrawal, Anand Gupta and K.K. Dewangan, Advcoates, Advocate for the Appellant; Amlya Kant Tiwari and Ashok Patil, Advocate for the Respondent

Judgement

Pritinker Diwaker, J.

1. As theses two appeals arise out of the same accident which occurred on 12.5.2003, they are being disposed of by this common order. Facts of the case in brief are that on 12.5.2003 when 24-25 passengers were travelling in a bus bearing registration No. CG-04/ZA-0946, it dashed against a stationary truck bearing registration No. OR/15-D-1449 on account of which one Keshav Ram died whereas other passengers sustained injuries.

2. MA No. 95/2005 (Claim Case No. 83/2003): In this case, injured Sahas Rao Sonwane filed a claim case claiming compensation of Rs. 4,50,000 as he suffered head injury resulting in paralytic attack and other complications. By the award impugned, the Tribunal awarded a compensation of Rs. 80,000 to the claimant. Claimant has not filed any appeal and the present appeal has been filed by the Insurance Company on the following grounds:

(i) Bus in question in which the injured was travelling was registered as school bus whereas the vehicle was being used as a passenger vehicle for transporting the Baratis and thus there was breach of insurance policy and that being so the liability could not have been fastened on the Insurance Company.

(ii) Without relying on the statement of Mathew - the witness of the Insurance Company, the award has been passed though said Mathew has stated that the vehicle in question was school bus and was being used as passenger vehicle.

(iii) Statement of Smt. Rani Dubey - Principal of the school has not been considered by the Tribunal.

3. Opposing the submissions made on behalf of the appellant/Insurance Company, it has been argued by Shri Amiya Kant Tiwari, counsel for respondent No. 1 as under.

(i) Offending vehicle was insured as passenger carrying commercial vehicle and as per the insurance policy, the insurer had received premium covering the risk of 14 passengers.

(ii) Breach of policy conditions as alleged, has not been proved by the Insurance Company by leading cogent evidence and none of the officers of the RTO has been examined.

(iii) Statement of Mathew - the witness of Insurance Company and that of Smt. Rani Dubey - Principal of the school, has been correctly appreciated by the Tribunal.

4. MA No. 1379/2005 (Claim Case No. 53/2004): In this case, the claimants are the father, mother, widow and two minor children of deceased Keshav Ram who died in a road accident dated 12.5.2003. They filed a claim case inter alia pleading that at the time of death the deceased was aged about 26 years, was working as electronic and his annual income was Rs. 54,000 and therefore they claimed a compensation of Rs. 9,74,000.

5. The Tribunal however assessed the annual income of the deceased as Rs. 15,000 and after deducting 1/3rd of the same towards his personal and living expenses, the annual loss of dependency was worked out by the Tribunal as Rs. 10,000 which he was contributing to the dependents. Further, looking to the fact that at the time of death the deceased was aged about 26 years, the Tribunal applied the multiplier of 18 and thus worked out the total loss of dependency as Rs. 1,80,000. Tribunal also awarded Rs. 19,500 under the conventional heads like loss of consortium, funeral expenses, loss of assets and love and affection.

6. This appeal is filed on the following grounds:

(i) Tribunal has erred in law in exonerating the Insurance Company of its liability to satisfy the claim and shifting the same on the owner.

(ii) Monthly income of the deceased was pleaded and proved as Rs. 4,500 and thus there was no occasion for the Tribunal to reduce the said income.

(iii) Tribunal has deducted 1/3rd of his income towards personal and living expenses of the deceased whereas considering the number of dependents (five in number) and as per the law laid down in the matter of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , 1/3rd deduction made by the Tribunal while assessing loss of dependency is erroneous and in fact it should have been 1/4th in stead of 1/3rd.

(iv) On other conventional heads also the compensation awarded by the Tribunal is very much on the lower side.

7. As far as MA No. 97/2005 filed by the Insurance Company is concerned, the vehicle in question was registered as passenger carrying commercial vehicle and as per the insurance policy, the insurer had covered the risk of 14 passengers. Once the vehicle was registered as passenger carrying commercial vehicle and the risk of 14 passengers was covered by the Insurance Company, the Tribunal appears to have been fully justified in holding the Insurance Company liable to satisfy the claim. Likewise, the Tribunal has duly appreciated the statement of the witness of Insurance Company and principal of the school. Merely the fact that the vehicle was registered in the name of the school does not mean that the same cannot be used for other purposes especially when in the insurance policy the same was recorded as passenger carrying commercial vehicle and risk of 14 passengers was duly covered in the policy. Thus the Tribunal was justified in fixing the liability on the Insurance Company to satisfy the claim and that being so this appeal appears to be without substance and is hereby dismissed.

8. As regard MA No. 1379/2005, even in the absence of any proof with respect to the income of the deceased, taking the notional income as Rs. 36,000 per annum which was prevailing at the relevant time, it can safely be said that the deceased was having the annual income of Rs. 36,000 and if keeping in view the number of dependents and following the guidelines of Apex Court in the case of Sarla Verma (Supra) 1/4th of it is deducted towards his personal and living expenses, the annual loss of dependency comes to Rs. 27,000 which he was contributing to the claimants. Likewise, following the decision in Sarla Verma (Supra), the multiplier of 18 applied by the Tribunal is not proper and it is substituted by 17. On applying the multiplier of 17, the total loss of dependency comes to Rs. 4,59,000. Similarly, while, awarding compensation on conventional heads the Tribunal appears to have been unjustified and accordingly the amount on these heads is enhanced as under:

(i) Loss of consortium enhanced to Rs. 15,000 from Rs. 5,000

(ii) Loss of estate enhanced to Rs. 10,000 from Rs. 2,500

(iii) Funeral expenses enhanced to Rs. 10,000 from Rs. 2,000

(iv) Love and affection to claimants No. 4 and 5 enhanced to Rs. 20,000 from Rs. 10,000

9. Total compensation for which the claimants are entitled comes to Rs. 5,14,000. Since the Tribunal has already awarded a compensation of Rs. 2,00,000, the same needs to be deducted and doing so the enhanced

compensation awardable to the claimants is calculated Rs. 3,14,000 which would carry the interest of 6% per annum from the date of application.

10. Next question to be decided now is whether the Tribunal was justified in exonerating the Insurance Company of its liability to satisfy the claim and then fixing the same on the owner? In the appeal filed by Insurance Company (MA No. 95/2005), liability of the Insurance Company has been fastened in the same accident and on the basis of same policy whereas in the award under challenge in the present appeal the Insurance Company has been exonerated of its liability. Reason assigned by the Tribunal for doing so is that as per the evidence, about 24-25 passengers were travelling in the vehicle in question whereas the insurance policy was covering the risk of only 14 passengers.

11. This Court fails to understand as to on what basis the Insurance Company can be exonerated. The fact remains that as per the insurance policy, the vehicle in question was insured as passenger carrying commercial vehicle covering the risk of 14 passengers, it is the insurance company which is liable to satisfy the claim. Accordingly, MA No. 95/2005 is dismissed whereas MA No. 1397/2005 is allowed in part modifying the award to the extent indicated above.