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In the Chhattisgarh High Court

Case No : M.A. (C) No. 1627 of 2008

Iffco Tokio General Insurance Co. Ltd. APPELLANT

Vs

Geeta Bai and Others RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 146, 147, 149, 163A, 165

Citation : (2012) ACJ 41 : (2012) 2 TAC 670

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.K. Agarwal, J.—The instant appeal has been preferred by the appellant against the order dated 3.7.2008, passed by the Sixth Additional Motor Accidents Claims Tribunal, Bilaspur (for short ''the Tribunal'') in Claim Case No. 89 of 2006, awarding compensation of Rs. 3,00,000 in favour of the claimants and as against the appellant insurance company and the owner of the vehicle jointly and severally. Brief facts of the case according to the appellant are that on 14.5.2006, Ajay Kumar (since deceased) while coming towards Bilaspur from Nagradih along with his friend Vinod Kumar on the motor cycle bearing registration No. CG 10-EA 8694, lost his balance and collided with divider as a result of which Ajay Kumar succumbed to the injuries sustained in the said accident.

2. The claimants preferred an application before the Tribunal u/s 163A of the Motor Vehicles Act, claiming compensation to the tune of Rs. 12,95,000 for the death of deceased in the said accident.

3. The Tribunal, on a close scrutiny of evidence led, material placed and submissions made by the parties, awarded a sum of Rs. 3,00,000 in favour of the claimants and as against the non-applicant No. 1, respondent No. 5 exonerating the insurance company from its liability to pay compensation to the claimants.

However, the insurance company was directed to first pay the amount to the claimants and then to recover it from the owner of the vehicle along with interest at the rate of 9 per cent per annum from the date of application till its payment.

4. Learned counsel appearing for the appellant would contend that the claim has been preferred by the legal representative of the deceased u/s 163A of the Act. The deceased was driving the motor cycle, therefore, the deceased, not being a third party, the claim petition itself was not maintainable in the eyes of law and the learned Tribunal has wrongly passed the award awarding Rs. 3,00,000 as compensation against the appellant.

5. I have heard the learned counsel appearing for the appellant and also perused the records of the Tribunal.

6. Chapter XI of the Motor Vehicles Act, 1988 deals with insurance of motor vehicle against third party risks. By section 146 of the Act, it was made necessary for the user of a motor vehicle in public place to have a policy of insurance against third party risks. Section 147 describes the requirements of policies and limits of liability of such statutory policies. Section 149 mandates the insurers to satisfy judgment and awards against persons insured in respect of third party risks. Section 163A provides special provision as to payment of compensation on structured formula basis. Section 165 empowers the State Government to constitute one or more Motor Accidents Claims Tribunals to adjudicate upon claims for compensation in respect of accidents involving the death of or bodily injury to, persons arising out of the use of the motor vehicles or damages to any property of a third party so arising or both. A brief analysis of the above provisions would reveal that the Claims Tribunals have been constituted for the purpose of adjudicating upon the claims for compensation in respect of accident involving the death of or bodily injury to a third party arising out of the use of motor vehicle.

7. Hon''ble Supreme Court in the case of Oriental Insurance Co. Ltd. Vs. Rajni Devi and Others, , has held that section 163A of the Motor Vehicles Act, 1988 cannot be said to have any application in regard to an accident wherein the owner of the motor vehicle himself is involved. It was further held that the liability u/s 163A of the Act is only on the owner of the vehicle since a person cannot be both, a claimant as also a recipient, the heirs of the deceased could not have maintained a claim in terms of section 163A of the Act.

8. Undisputedly, the deceased was not the owner of the motor cycle in question. The deceased cannot be held to be an employee of the owner of the motor cycle although he was authorised to drive the said vehicle by its real owner and, therefore, he would step into the shoes of the owner of the motor cycle.

9. In a case wherein the victim died or where he was permanently disabled due to the accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be, as provided u/s 163A of the Act. But if it is

proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him as held by Hon''ble Supreme Court in the case of Ningamma and Another Vs. United India Insurance Co. Ltd.,

10. Accordingly, the claimants who are the legal representatives of the deceased have stepped into the shoes of owner of the motor cycle could not have claimed compensation u/s 163A of the Act and the learned Tribunal went wrong in awarding compensation to them.

11. At this stage, I have perused the policy of insurance filed by the appellant insurance company. Under the policy, the appellant had undertaken the risk of the owner-driver of the vehicle to the extent of Rs. 1,00,000 by taking a premium of Rs. 50 therefor.

12. Although section 147 of the Act does not require an insurance company to assume risk for the death of or bodily injury to the owner of the vehicle but the appellant insurance company has assumed the risk of owner by entering into a special contract with the owner of the vehicle by charging additional premium of Rs. 50 therefor and, therefore, the appellant insurance company certainly owes a liability towards legal representatives of the deceased owner to the extent of Rs. 1,00,000. I hold accordingly. For the foregoing, the appeal is allowed in part. The award is modified to the extent that the appellant insurance company is liable for payment of compensation to the claimants only to the extent of Rs. 1,00,000. The above amount of compensation shall carry interest at the rate of 9 per cent per annum from the date of application. The appellant insurance company is granted three months'' time for payment of above compensation.

