

(2011) 01 CHH CK 0025
In the Chhattisgarh High Court
Case No : M.A. (C) No. 1575 of 2009

Iffco Tokio General Insurance Co. Ltd.	APPELLANT
Vs	
Smt. Subhni and Others	RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 149(2), 163, 165

Citation : (2012) ACJ 1048 : AIR 2011 Chh 115

Hon'ble Judges : Prashant Kumar Mishra, J; I.M. Quddusi, J

Bench : Full Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—This appeal has been filed by the Insurance Company against impugned award dated 7-3-2009 passed by the First Additional Motor Accident Claims Tribunal, Ambikapur, Surguja (C.G.) in Claim Case No. 34/2006 whereby the Insurance Company has been directed to pay the compensation to the claimants and recover the said amount from the owner of the vehicle in question.

2. Brief facts of the case as per the version of the claimant are that on 7-11-2005 deceased Siyaram had gone to do labour works in the tractor of the owner/respondent No. 3 namely Shivram Ghasia. At about 7.30 p.m. the deceased along with others was returning from Santipara Batauli to contrarai by tractor bearing Regn. No. 13-A/6841 and trolley No. 13-A/6842 after unloading the bricks from the said tractor. On the way near thrasher machine at Aamroad Sitapur, respondent No. 2 who was driving the said tractor drove the vehicle rashly into a field, due to which the deceased fell down from the tractor and was run over by the rear wheel of the tractor, as a result of which he died on the spot. The widow of the deceased being legal representative has made claim to the tune of Rs. 8,45,000/- on various heads.

3. The learned Claims Tribunal has held that the offending tractor trolley was involved in the accident in which deceased has died; respondents 2 and 3 have

breached the policy conditions and the driver of the vehicle was not having valid and effective driving license at the time of accident. It has further held that respondents 4 and 5 are parents of the deceased and they being legal representatives are also entitled to get compensation. Thus it has awarded Rs. 4,64,472/- as compensation, which the claimant as also respondents 4 and 5 are entitled to receive from the appellant as well as respondents 2 and 3 jointly or severally. However, the appellant insurance company was directed to first deposit the amount under award and then recover the same from the owner of the vehicle.

4. Mr. Yashwant Singh Thakur, learned counsel for the appellant submits that the deceased was travelling in the vehicle in question as a labourer and therefore, he cannot be treated as third party and thus, the Tribunal has erred in passing the direction regarding pay and recovery.

5. On the other hand, Mr. Manoj Paranjpe, learned counsel for respondents 4 and 5 supports the impugned award.

6. We have heard learned counsel for the parties and have also gone through the records of the Tribunal as also the findings given in the impugned award.

7. Hon'ble the Supreme Court in the matter of National Insurance Co. Ltd. Vs. Swaran Singh and Others, has held as under :

107. We may however, hasten to add that the Tribunal and the Court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of issuance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the Insurance Company shall be entitled to realize the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefore against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.

110. (x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with subsection (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has

been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner u/s 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required, by sub-section (3) of Section 163 of the Act the insured fails to deposit the amount awarded in favour of the insurer within 30 days from the date of announcement of the award by the Tribunal.

However, present is not the case of third party, rather it is the case where the deceased was engaged in the said vehicle as a labour and was allowed to sit and travel in the vehicle and as such, his status in the said vehicle was of gratuitous passenger and as per Section 147 of the Act the gratuitous passengers sitting in a goods vehicle are not required to be covered under the statutory policy. Further, the Tribunal has held that the owner and driver have breached the policy conditions and the driver of the vehicle was not having valid and effective driving license. Therefore, the impugned award of the Tribunal directing the Insurance Company to first pay the compensation to claimants and thereafter recover from the owner, is erroneous.

8. In the result, we allow this appeal, set aside the impugned award dated 7-3-2009 passed by the Tribunal in claim case No. 34/ 2006 so far as it relates to fastening of liability on the appellant-Insurance Company and hold that the Appellant Insurance Company is not liable to pay compensation to the claimants and the same shall be paid by the owner of the vehicle in question. In case any amount deposited by the appellant Insurance Company has been withdrawn by the claimants, it will be open for it to recover the same from the owner of the vehicle. However, if the amount, so deposited, has not been withdrawn so far, the Insurance Company shall be allowed to withdraw the same. Rest of the conditions and findings of the impugned award are hereby confirmed. It is made clear that the claimant is entitled to execute the award against the owner of the vehicle. No order as to costs.