(2023) 03 CHH CK 0077

In the Chhattisgarh High Court

Case No : MAC No.635, 819 Of 2016

Indrani APPELLANT

Vs

Chetan RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Citation : (2023) 03 CHH CK 0077

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Amit Sahu, Sudhir Verma, S. S. Marhas

Final Decision : Partly Allowed/Allowed

Judgement

1. Since both the appeals arise out of same claim case number, they are being heard together and are disposed of by this common order.

2. MAC No.635/2016 has been preferred by the appellants/claimants against the award dated 14.03.2016 passed by the MACT, Bemetara in Claim Case No.30/2015, whereby the claim of the appellants/claimants was partly allowed and they were held entitled to the tune of Rs.27,10,728/- with 6% interest p.a., against which MAC No.635/2016 has been filed for enhancement of the compensation amount, whereas MAC No.819/2016 has been preferred by the non applicant No.2, the owner of the offending vehicle, challenging the award, whereby liability has been fastened upon her to pay compensation amount to the claimants, whereas the respondent insurance company has been exonerated from paying the compensation amount.

3. Brief facts of the case are that on 29.05.2014, the deceased Yugal Kishore, who was a driver, had gone to Ambikapur in 407 Vehicle No.CG07JC8274 along with conductor Hemant @ Golu to supply chicken and on their return when they reached to Navagarh-Bemetara Road, Near Village Jhal at 10 pm, the non applicant No.1 while driving offending vehicle tanker bearing No.CG07-C0704 rashly and negligently dashed the vehicle of the deceased and dragged the same

to some distance, as a result of which Hemant died on the spot, whereas Yugal Kishore was admitted at Apollo Hospital and was hospitalized from 30.05.2014 to 04.06.2014 but lastly died during treatment.

4. Learned counsel for the appellants in MAC No.635/2016 submits that the compensation awarded by the Tribunal is on the lower side and needs to be enhanced suitably. Likewise, the amount awarded for funeral expenses, loss of love and affection is also on very meager side and the same needs to be enhanced. The learned Tribunal has committed error while exonerating the insurance company from paying compensation. Therefore, the appeal may kindly be allowed and the compensation amount may suitably be enhanced on various heads in addition to the amount already awarded in favour of the appellants. Learned counsel has placed his reliance on the judgment rendered by the Supreme Court in the matter of National Insurance Company Limited vs Pranay Sethi and others (2017) 16 SCC 680.

5. Learned counsel for the appellant in MAC No.819/2016 submits that the learned Tribunal has erred in exonerating the respondent Insurance company. The Insurance Company did not prove the fact that the owner and driver breached the conditions of insurance policy. It also did not examine any witnesses in its support. The learned Tribunal without any documentary evidence wrongly gave finding that the income of the driver was Rs.10,000/- per month. The appellant had produced certificate of attending one day refresher course training programme on safe road transportation of dangerous and hazardous goods (Annexure-A/10), which was valid from 19.01.2014 to 18.01.2015, whereas the incident took place on 29.05.2014, but the same has not been taken into consideration. The learned Tribunal has wrongly exonerated the insurance company from paying compensation, whereas the appellant has submitted all valid and reliable documents from Annexure-A/1 to A/7, but the same has not been taken into consideration. He further submits that in Claim Case No.29/2015, which arose by the same accident, there was also no documentary evidence available regarding the income of the deceased, but despite the said fact, the income of the deceased has been applied as notional income, but in the present case the learned Tribunal has wrongly considered the income of the deceased as Rs.10,000/- per month. Therefore, the liability to pay compensation should be fastened upon the respondent insurance company and not upon the appellant. Learned counsel has placed his reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of Kurvan Ansari alias Kurvan Ali and another vs Shyam Kishore Murmu and another (2022) 1 SCC 317 and in the matter of United India Insurance Co Ltd vs A Verlaxmi and others 2013 Law Suit (Chh) 452 rendered by this Court.

6. Learned counsel for the respondent insurance company supports the impugned award and submits that the learned Tribunal has rightly exonerated the insurance company from paying compensation amount to the claimants. He further submits that in case the liability to pay compensation is not saddled upon

the insurance company, direction may not be issued to pay and recover. Learned counsel has placed his reliance on the judgment rendered by the Supreme Court in the matter of Balu Krishna Chavan vs The Reliance General Insurance Company Ltd. and others 2022 LiveLaw (SC) 932.

7. Heard learned counsel for the parties and perused the material available on record.

8. The learned Tribunal based on the pleading of both the parties framed issues and regarding the breach of policy conditions, Issue No.3 was framed as under:-

“3. क्या बीमा शर्तो का उल्लंघन हुआ है ? ____ प्रमाणित”

Before the learned Tribunal, the respondent insurance company filed particular of driving licence (Ex-D/9), which shows that the driver was entitled for driving the transport vehicle. The non applicant No.1 filed documents/permits Ex-D/5 & D/6, which were issued by the Ministry of Commerce and Industry, Petroleum Explosives Safety Organization (PESO), Raipur, but the aforesaid documents have not been rebutted by the respondent insurance company.

9. This Court in the matter of Verlaxmi (supra) held in paras 13 & 14 as under:-

“13. It is true that respondent driver was holding licence to drive heavy goods vehicle/tanker from 25.7.1997 and it has been renewed from time to time and the accident had occurred on 9.4.2008, thus, he was driving the heavy goods vehicle for the last more than 10 years. It is not the case of the appellant insurance company that accident had taken place on account of the fact that there was no endorsement to drive such a vehicle. The endorsement neither increases the efficiency of the driver, nor in its absence, the efficiency of the driver is likely to be reduced in any manner whatsoever. It only certifies additionally that driver is authorised to drive a goods carriage carrying goods of dangerous of hazardous nature. For driving such a vehicle, no further expertise or driving skill is required. This could be said to be a lapse on the part of the driver but this lapse was not responsible for the cause of the accident.

14. Even without the endorsement as contemplated under sub-rule (3), the driving skill of the respondent No.3 had not reduced. By taking the endorsement from the Licensing Authority, the nature of vehicle or the kind of vehicle which the driver would be driving would not have changed, it would have remained the same. Thus, taking of the endorsement for the Licensing Authority was for some other purpose and not for giving him further certificate for driving the tanker, as he was already holding a valid licence for driving it. Precisely this is what has been said in National Insurance Co, Ltd. V. Swaran Singh, 2004 ACJ 1. It has been held so (para 102):

“(iii) ...... To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the manner of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.” It has further been held as under:

“(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply ‘the rule of main purpose’ and the concept of ‘fundamental breach’ to allow defences available to the insured under section 149 (2) of the Act.”

10. Applying the aforesaid principle in the present case as well, it is unambiguous that in the case in hand also, the driver had possessed the transport licence to drive the transport vehicles and also petroleum product transport licence (Ex-D/5).The documents/permits submitted by the non applicant No.1 were also not rebutted by the insurance company. Even otherwise, it is not the case of the insurance company that the accident took place on account of the fact that there was no endorsement to drive such a vehicle. The endorsement neither increases the efficiency of the driver, nor in its absence, the efficiency of the driver is likely to be reduced in any manner whatsoever. It only certifies additionally that driver is authorised to drive a goods carriage carrying goods of dangerous of hazardous nature. For driving such a vehicle, no further expertise or driving skill is required. It is also pertinent to mention here that the documents filed by the non applicant No.1 were also not rebutted by the respondent insurance company, therefore, this Court is of the view that the Tribunal has wrongly found that the vehicle was driven in breach of policy conditions, as such this finding is not sustainable. Therefore, the insurance company is liable to pay compensation to the claimants instead of non applicant No.2.

11. Now the question which falls for consideration before this Court is as to whether the compensation of Rs.27,10,728/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case or not.

12. The learned Claims Tribunal calculated the income of the deceased as Rs.10,000/-. The appellant proved this fact that the deceased was working as driver, as the owner of the deceased namely Sunil Yadav admitted this fact that he was giving Rs.8,600/- per month to the deceased and Rs.150/- per day as allowance, as such the learned Tribunal has rightly calculated the income of the deceased as Rs.10,000/- per month and Rs.1,20,000/- per year. Since the deceased was below 40 years of age, his salary would have been enhanced by 50% in future, as such the income of the deceased has rightly been calculated as Rs.1,80,000/- per year. The deceased at the time of accident was about 26 years old, as such multiplier of 17 has rightly been applied to the multiplicand as per Sarla Verma (Smt) and others vs Delhi Transport Corporation and another (2009)

6 SCC 121.

The deceased was having four dependents upon him, as such 1/5th deduction towards his personal expenses has rightly been applied. Apart from it, Rs.1,52,728 towards medical expenses, Rs.25,000/- towards loss of consortium, Rs.25,000/- towards loss of love and affection for non applicant No.2, daughter of the deceased and Rs.15,000 – 15,000/- each for parents, Rs.10,000/- towards funeral expenses and Rs.20,000/- for mental pain were also awarded. Thus, the total compensation of Rs.27,10,728/- has rightly been calculated, however, the compensation awarded on conventional heads i.e. loss of consortium and loss of love and affection can safely be enhanced. The claimants would be entitled to the enhanced compensation as under:-

Head

Amount Awarded

Amount Enhanced

Medical Expenses

Rs.1,52,728/-

Loss of income

Rs.24,48,000/-

Loss of consortium

Rs.25,000/-

Rs.1, 00,000

Loss of love and affection

Rs.55,000/-

Rs.1,20,000/- (Rs.40,000/-

each dependent)

Mental Pain

Rs.20,000/-

Funeral Expenses

Rs.10,000/-

Total

Rs.27,10,728/-

Thus, the claimants are entitled to the total amount of compensation of Rs.28,50,728/- (Rs.1,52,728/- + 24,48,000/- + 1,00,000/- + 1,20,000/- + 20,000/- + 10,000/- = Rs.28,50,728/-). Since the claimants have already been awarded Rs.27,10,728/-, as such after deducting the said amount, the claimants are entitled for enhanced amount of Rs.1,40,000/- (Rs.28,50,728/- – Rs.27,10,728). This additional amount of compensation shall carry interest @ 6% per annum from the date of filing of claim petition before the Tribunal till realization of enhanced compensation amount in favour of the claimants. The amount of compensation as awarded by the Tribunal as well as the enhanced amount of compensation shall be paid by the respondent insurance company to the claimants. The amount received by the claimants, if any, shall be adjusted in the enhanced sum.

13. In the result, MAC No.819/2016 is allowed, whereas MAC No.635/2016 is allowed in part and the award impugned stands modified to the extent indicated hereinabove. No order as to cost (s).