
(2011) 08 CHH CK 0042
In the Chhattisgarh High Court
Case No : Misc. Appeal No. 432 of 2005

Jamuna Bai and Others

APPELLANT

Vs

Oriental Insurance Company and Another

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 147(2), 166

Citation : (2011) 4 MPHT 82

Hon'ble Judges : Rajeev Gupta, C.J.; N.K. Agarwal, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

N.K. Agarwal, J.—This is claimants' appeal seeking enhancement in the amount of compensation awarded by the 5th Additional Motor Accidents Claims Tribunal, Bilaspur (for short "the learned Tribunal") in Claim Case No. 22 of 2004 vide its award dated 8th September, 2004.

2. As against compensation of Rs. 5,34,000/- claimed by the claimants, i.e., unfortunate wife, parents and minor son of late Ganesh Yadav by filing claim application u/s 166 of the Motor Vehicles Act (henceforth "the Act"), the learned Tribunal has awarded a total sum of Rs. 50,000/- as compensation to the claimants for the death of late Ganesh Yadav.

3. The learned Tribunal, on a close scrutiny of the evidence led, held : unidentified truck dashed the scooter bearing registration No. M.P. 24-B/9137, being driven by deceased Ganesh Yadav at the time of accident, as a result of which, he died; as per the claim application, the above accident had occurred on account of rash and negligent driving by driver of unidentified truck, therefore, the owner and insurer of the scooter cannot be held liable; awarded Rs. 50,000/- along with interest at 9% per annum from the date of application till its actual payment holding claimants are entitled for above amount u/s 140 of the Motor Vehicles Act.

4. Shri Hemant Kesharwani, learned Counsel appearing for the Appellants would submit : the learned Tribunal has fallen in error in not assessing and in not awarding compensation by applying multiplier method.

5. On the other hand, Shri A.K. Athaley, leaned Counsel appearing for Respondent No. 1/Oriental Insurance Company Limited would submit : deceased Ganesh Yadav was not a third party and claim petition itself was not maintainable; as per the claimants pleading, accident had occurred due to negligence of driver of unidentified truck so also claim petition was not maintainable against the owner and insurer of the scooter, therefore, there is no need to interfere in the award passed the learned Tribunal.

6. We have heard learned Counsel appearing for the parties and perused the record of the Tribunal including award impugned.

7. As per case of the Appellants : when deceased Ganesh Yadav was going to his in-laws" house, near Darrabhata one unknown truck dashed him; he was taken to Government Hospital, Bilaspur, where he died on account of injuries sustained by him in the accident on 23-12-2001. Thus, the negligence pleaded was of the driver of unknown and unidentified truck. The claim preferred was u/s 166 of the Act.

8. In a proceedings u/s 166 of the Act, unless it is established that due to rash and negligent act on the part of the owner or driver of a vehicle death occurred, no compensation should be payable to the claimants.

9. The Supreme Court in the case of Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Others, , has held : proof of rashness and negligence on the part of the driver of the vehicle is sine qua non for maintaining an application u/s 166 of the Act. Where an accident occurs owing to rash and negligent driving by the driver of the vehicle, resulting in sufferance of injury or death by any third party, the driver would be liable to pay compensation therefor. Owner of the vehicle in terms of the Act also becomes liable under the 1988 Act. In the event vehicle is insured, which in the case of a third party, having regard to Section 147(2) of the Act is mandatory in character, the Insurance Company would statutorily be enjoined to indemnify the owner. The insurer, however, would be liable to reimburse the insured to the extent of the damages payable by the owner to the claimants subject of course to the limit of its liability as laid down in the Act or the contract of insurance.

10. In view of above, the claim petition filed u/s 166 of the Act against the owner and insurer of the scooter was not maintainable as according to the claimants themselves accident had occurred due to rash and negligent driving by the driver of unidentified truck.

So far as amount of Rs. 50,000/- awarded by the learned Tribunal u/s 140 of the Act is concerned, since Respondent No. 1/Oriental Insurance Company Limited has not challenged the above award by filing appeal, therefore, we refrain

ourselves from expressing any opinion on the correctness or otherwise of the above award.

11. For the reasons mentioned hereinabove, in our considered opinion, the appeal preferred by the Appellants/claimants for enhancement of compensation, being devoid of merit, is liable to be and is hereby dismissed.

12. No order as to costs.