
(2011) 07 CHH CK 0075
In the Chhattisgarh High Court
Case No : M.A. No. 723 of 2003

National Insurance Co. Ltd., Bilaspur

APPELLANT

Vs

Ku. Parmeshwari and Others

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 19, Order 26 Rule 4
Motor Vehicles Act, 1988 — Section 149, 166

Citation : AIR 2011 Chh 153

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

Bench : Full Bench

Judgement

N.K. Agarwal, J.—Two appeals M.A. No. 723/2003 and M.A. No. 935/2003 have been preferred against the award dated 28-6-2003 passed by the 1st Additional Motor Accident Claims Tribunal, Mahasamund in Claim Case No. 30/2001, one by the National Insurance Company Limited challenging its liability for payment of compensation, the other is by the claimants seeking enhancement in the amount awarded by the Tribunal. Therefore, both the appeals are disposed of by the common award.

2. On 25-7-2001, Shyam Ram Nirmalkar, driver of bus bearing registration No. MBS/ 1493 was dashed by truck bearing registration No. A.S./01/6116 being driven by driver Umesh Rai in a rash and negligent manner as a result of which, Shyam Ram Nirmalkar died on spot.

3. As against Rs. 19,80,000/- claimed by legal representatives of deceased Shyam Ram Nirmalkar as compensation for the death of their bread earner by filing application u/s 166 of the Motor Vehicles Act, (briefly "the Act"), learned Tribunal has awarded a total sum of Rs. 3,91,000/- along with interest at the rate of 9% per annum from the date of application till its actual payment, holding the National Insurance Company Limited jointly and severally liable for its payment to the claimants, along with driver and owner of the offending truck.

4. In order to examine the correctness or otherwise of the amount of

compensation awarded by learned Tribunal, we have perused the record of the Tribunal.

5. Learned Tribunal on a close scrutiny of the evidence led assessed yearly income of the deceased as Rs. 36,000/-. After deducting 1/3rd of it towards personal and living expenses of the deceased and applying multiplier of 16 looking to the age of the deceased as 40 years, assessed the amount of compensation as Rs. 3,84,000/-. Learned Tribunal has further awarded a sum of Rs. 7,000/- on other heads and thus awarded a total sum of Rs. 3,91,000/- as compensation to the claimants.

6. In the absence of cogent and clinching evidence, the finding regarding yearly income of the deceased cannot be found fault with. Learned Tribunal has also not erred in deducting usual 1/3rd of the income of the deceased towards his personal and living expenses. The deceased was of the age of 40 years. Looking to the dicta of judgment of Supreme Court in case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, wherein multiplier of 15 is prescribed for the age group of 36 to 40 years, multiplier of 16 applied by learned Tribunal appears to be somewhat on higher side. Considering every aspect of the matter, in our opinion, the amount awarded is just and reasonable and there is no scope for enhancement.

7. The core question therefore involved for decision making in these appeals is whether in the facts and circumstances of the case, learned Tribunal has erred in fastening liability of payment of compensation upon the Insurance Company.

8. The main contention raised by Shri B. N. Nande, learned counsel for the Insurance Company is, learned Tribunal has grossly erred in rejecting application of Insurance Company filed under Order 26, Rule 4 of CPC for issuance of commission for examination of officer/employee of D.T.O. Kamrup, Gauhati (West Zone) as according to him, the licence of the truck driver on investigation was found fake and by rejecting the application, learned Tribunal has deprived the appellant/Insurance Company to prove its defence and the award impugned deserves to be set aside on this count alone.

9. In order to appreciate the contention raised by Shri Nande, it would be appropriate to reproduce Order 16, Rule 19 and Order 26, Rule 4 of the CPC which read thus :

Order-16 Rule 19 -- No witness to be ordered to attend in person unless resident within certain limits.

No one shall be ordered to attend in person to give evidence unless he resides --

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than one hundred or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place

where the Court is situate) less than five hundred kilometers distance from the Court house :

Provided that where transport by air is available between the two places mentioned in this rule and the witness is paid the fare by air, he may be ordered to attend in person.

Order 26, Rule 4 -- Persons for whose examination commission may issue.

(1) Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of --

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) any person in the service of the Government who cannot in the opinion of the Court, attend without detriment to the public service :

Provided that where, under Rule 19 of Order XVI, a person cannot be ordered to attend a Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interests of justice :

Provided further that a commission for examination of such person on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

10. Under Rule 19 of Order 16 of CPC no one shall be ordered to attend a Court in person to give evidence unless he resides within the local limits of the Court's original jurisdiction. Under proviso to Rule 4 of Order 26 where under Rule 19 of Order 16, a person cannot be ordered to attend a Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interest of justice.

11. Now reverting to the facts of the present case, it is not in dispute that the Insurance Company has denied its liability in its written statement on the ground, the driver of the truck was not possessing valid and effective driving licence to drive the truck at the time of accident inasmuch as the driving licence No. 78212/1987/GHT said to be issued in his favour on investigation was found fake and therefore applied for issuance of commission for examination of officer/employee of District Transport Officer, Kamrup, Gauhati (West Zone) residing outside the Court's jurisdiction. Learned Tribunal has also not rejected application of Insurance Company on the ground that the evidence is not

essential in the interest of justice, therefore, learned Tribunal went wrong in rejecting application inasmuch under Order 26, Rule 4 of CPC it is mandatory to issue commission for examination as the witness was residing outside the Court's jurisdiction and cannot be ordered to attend the Court in person as per Order 16, Rule 19 of CPC. Further u/s 149 of the Act, the Insurance Company is entitled to defend an action on the ground that the owner of the vehicle in breach of specified conditions of policy allowed the driver to drive the vehicle who is not duly licensed or was not possessing valid and effective driving licence at the time of accident.

12. It is trite law that the Insurance Company must have under the law the opportunity to substantiate its contention that the licence of the respondent/driver is forged and fabricated.

13. Therefore, learned tribunal has erred in rejecting application of the Insurance Company for examination of the officer/employee of the D.T.O., Kamrup, Gauhati (West Zone) on commission.

14. For the reasons mentioned hereinabove, the appeal preferred by the claimants bearing M. A. No. 935/2003 is dismissed. The appeal preferred by the National Insurance Company Limited bearing M.A. No. 723/ 2003 is allowed in part. The part of the award impugned whereby liability of payment of compensation has been fastened upon the appellant/Insurance Company is set aside. The matter is remitted back to the Tribunal to first decide the application for issuance of Commission filed by the appellant/Insurance Company afresh in the light of the observations made hereinabove and after affording opportunity to lead additional evidence, if any, to the parties to proceed to decide the liability of the Insurance Company in accordance with law. Rest portion of the award shall remain intact.

15. The claimants are not required to refund the amount already received by them. Learned Tribunal shall pass appropriate order with regard to adjustment of the above amount at the time of passing of the award.

16. The record of the Tribunal be sent back forthwith.

17. Parties are directed to appear before the concerned Tribunal at Mahasamund on 1-8-2011.

18. No order as to costs.