(2004) 11 CHH CK 0006

In the Chhattisgarh High Court

Case No : Misc. Appeal No. 681 of 1994

National Insurance Company Limited — APPELLANT

Vs

K. Suryanarayan and Others — RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 170

Citation : (2004) 11 CHH CK 0006

Hon'ble Judges : L.C. Bhadoo, J;Fakhruddin, J

Bench : Full Bench

Advocate : Sanjay K. Agrawal, for the Appellant; Sharmila Singhai, for the Respondent

Final Decision : Allowed

Judgement

1. Heard finally. The Insurance company has preferred this appeal against the award dated 7-5-1994 passed by the Claims Tribunal, Durg in Claim Case No. 14/93.

2. Brief facts of the case are that on 21-11-1992 at about 9.35 in the night when claimant K. Suryanarayan was going on his bicycle from Purani Bhilai to Charoda, a truck bearing Regd. No. M.K.R. 1331, which was coming from Raipur and being driven rashly and negligently, dashed the claimant as a result of which, he suffered injuries. The claimant was immediately taken to District Hospital Durg and since his condition was serious, he was hospitalized at Hospital of Sector 9, Bhilai. He remained in the hospital from 21-11-1992 to 8-12-1992. In the said accident, the claimant suffered injuries on his head. He remained unconscious for 8 days. He was operated upon and even after discharge from the hospital, he was getting treatment of his head injuries. The respondent no. 2 herein is the registered owner of the truck and the appellant is the insurer of the truck. The claimant filed a claim case claiming compensation to the tune of Rs. 1,58,500/-. The appellant-Insurance company admitted that the truck in question was insured with it from 27-4-1992 to 26-4-1993.

3. The Tribunal found that at the time of accident, the truck was being driven rashly and negligently by the Driver of the truck and the liability was fastened on the owner as well as the insurer. The Tribunal awarded Rs. 1,11,063/- jointly and severally with an interest at the rate of 12% per annum from the date of filing of the application till the final payment. The interim compensation of Rs. 12,000/- which was paid earlier, was directed to be adjusted.

4. The Insurance company has preferred this appeal on the ground that the amount awarded is excessive, It contended that there is no basis for arriving at the conclusion that the age of the claimant was 30 years. He further contended that the Tribunal has arrived at a conclusion that there was loss of Rs. 110/- per month without there being any evidence. It is further contended that the award of Rs. 8,500/- for the salary for 5 months during which the claimant was medically unfit, could not have been granted. It is further contended that Rs. 12,000/- should not have been awarded for operation.

5. Learned counsel appearing for respondent No. 1 contended that so far as appeal preferred by the Insurance Company is concerned, since permission has not been obtained by the insurance company, it was not open for the appellant/ insurance company to challenge the impugned award.

6. Reliance is placed on a decision of the Hon''ble Apex Court in the matter of Jagdish Prasad Pandey v. Darshan Singh and another, (2002) 9 SCC 527 . The Hon''ble Apex Court in para 4 of the judgment has held that:

the Insurance Company has no right to file the appeal. Reference was made u/s 170 of the Motor Vehicles Act, 1988 which reads as under:--

170. Impleading insurer in certain cases.--Where in the course of any inquiry, the Claims Tribunal is satisfied that--

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a parity to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that arc available to the persons against whom the claim has been made.

The Apex Court further held that :

The Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal, Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had rejoined Respondent No. 1, Insurance Company in the claim petition but that was done with a view to thrust the statutory liability on the Insurance Company on account of the contract of insurance. That was not an order of the Court itself permitting the Insurance Company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently, it must be held that on the facts of the present case, Respondent 1, Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal.

7. We have even otherwise gone through the records of the case. The Claims Tribunal has awarded compensation to the tune of Rs. 1,11,063/-. So far as amount of Rs. 8,500/- salary of five months, is concerned, that has been rightly granted. He is entitled for the amount. We have also considered the findings of the Tribunal recorded in paras 10 and 11 of the impugned award. The amount, which has been awarded, is just and proper. However, in the opinion of this Court, the rate of interest on the amount is on higher side. It should have been 9%. Therefore, the rate of interest is reduced to 9% from the 12% per annum.

8. The appeal stands allowed to this extent. Counsel fee as per scale,

