(2022) 04 CHH CK 0056

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (C) No.538, 684 Of 2015

National Insurance Company Limited — APPELLANT

Vs

Seema Sarkar — RESPONDENT

Date of Decision : 22-04-2022

Acts Referred:

Central Motor Vehicles Rules, 1939 — Rule 9
Motor Vehicles Act, 1988 — Section 14(2)(a)

Citation : (2022) 04 CHH CK 0056

Hon'ble Judges : Arvind Singh Chandel, J

Bench : Single Bench

Advocate : Dashrath Gupta, Kunal Das, A.L. Singroul

Final Decision : Dismissed/Allowed

Judgement

1. Since the above mentioned appeals arise out of a common award, they are heard and decided together.

2. Vide appeals being Miscellaneous Appeal (C) No.538 of 2015 and Miscellaneous Appeal (C) No.684 of 2015, both the insurer and the claimants, respectively impugn the award dated 17.12.2014 passed by the 3rd Additional Motor Accidents Claims Tribunal, Bastar at Jagdalpur in Claim Case No.100 of 2013.

3. As per the claim petition preferred by the claimants, Vishwajeet Sarkar (deceased) by driving his motorcycle bearing registration No.CG 17 KD 6812 was going to Kondagaon to take hens for his shop. On the way, driver Sarvjeet Singh by driving a truck bearing registration No.CG 04 D 6983 rashly and negligently hit the motorcycle of Vishwajeet Sarkar as a result of which Vishwajeet Sarkar received grievous injuries and died on the spot. Claimants Smt. Seema Sarkar and 5 others filed a claim petition under Section 166 of the Motor Vehicles Act for a compensation of Rs.16,87,000 against the driver, owner and insurer of the truck.

4. The driver and owner of the truck, in their written statement, denied the claim and pleadings of the claim petition and stated that on the date of accident the truck was insured with the National Insurance Company Limited and, therefore, the insurer is liable to pay the compensation.

5. The insurer, in its written statement, denied the claim and pleadings of the claim petition and stated that the offending vehicle was registered as a tanker for carrying goods of dangerous and hazardous nature and, therefore, the driver of the offending vehicle should have been holder of a driving licence as per Section 14(2)(a) of the Motor Vehicles Act and Rule 9 of the Central Motor Vehicles Rules. On the date and time of the alleged accident, the driver was not a holder of a valid and effective driving licence. Thus, the owner has committed breach of the terms and conditions of the insurance policy.

6. The Tribunal, after recording evidence of the parties, awarded a compensation of Rs.6,42,000 in favour of the claimants along with interest @ 9% per annum from the date of filing of the claim petition till realisation of the compensation.

7. Being aggrieved by the impugned award, the insurer has preferred Miscellaneous Appeal (C) No.538 of 2015 on the ground that the insurer by leading evidence has proved that on the date of accident in the driving licence of the driver of the offending vehicle there was no endorsement for driving the vehicle which is meant for carrying hazardous and dangerous goods and thus, the driver was not entitled to drive the offending tanker. Hence, the driver had no valid and effective driving licence to drive the tanker. Therefore, the owner has committed breach of the terms and conditions of the insurance policy. Thus, the insurer is not liable to pay the compensation. The Tribunal has wrongly fastened the liability of compensation upon the insurer.

8. Seeking enhancement in the amount of compensation, the claimants have preferred Miscellaneous Appeal (C) No.684 of 2015.

9. Learned Counsel appearing for claimants Smt. Seema Sarkar and 5 others submitted that the Tribunal has wrongly assessed the income of the deceased as Rs.4,000 per month. The Tribunal has also failed to see that the accident took place in the year 2013 and for that year the minimum wages fixed by the State Government was Rs.172 per day. The Tribunal has also not considered the future prospects of the deceased’s income. It was further argued that the Tribunal has also not awarded sufficient amount towards funeral expenses, loss of love and affection, loss of consortium and loss of estate. Hence, the compensation deserves to be enhanced. Reliance was placed on 2020 (3) TAC 6 (SC) (United India Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur, (2009) 6 SCC 121 (Sarla Verma v. Delhi Transport Corporation), (2017) 16 SCC 680 (National Insurance Company Limited v. Pranay Sethi).

10. Learned Counsel appearing for the National Insurance Company Limited opposed the above arguments and submitted that from the evidence adduced by the insurance company and the material available on record, it is well established

that the driver of the offending vehicle tanker had no valid and effective driving licence to drive the offending vehicle as in view of Section 14(2)(a) of the Motor Vehicles Act there was no renewal of the driving licence of the driver. Therefore, the Tribunal ought to have exonerated the insurance company from the liability of compensation.

11. Learned Counsel appearing for the driver and the owner of the offending vehicle tanker opposed the arguments raised on behalf of the insurer. He submitted that at the time of accident, as observed by the Tribunal, the offending vehicle tanker was empty. Therefore, the Tribunal has rightly fastened the liability of compensation on the insurance company.

12. I have heard Learned Counsel appearing for the parties and perused the record of the Tribunal including the evidence adduced by the parties minutely.

13. From perusal of the evidence adduced by the claimants, it is well established that the deceased was doing a business of selling eggs, fish and chickens and he also possessed a shop for doing that business. According to the claimants, from the said business, the deceased was getting monthly income of Rs.8,000, but, in this regard, there is no conclusive evidence available on record on the basis of which it could be said that he was getting monthly income of Rs.8,000. Considering the fact that the accident is of the year 2013, further considering the deceased as unskilled labour and that the minimum wages fixed by the State Government for an unskilled labour in the year 2013 is Rs.155 per day, his monthly income comes to Rs.4650. In round figure, his monthly income can be assessed as Rs.5,000. Ordered accordingly.

14. As regards the multiplier, there is no dispute on the point that at the time of accident, the deceased was 28 years of age. Therefore, following the principles laid down by the Supreme Court in Sarla Verma case (supra), the Tribunal has rightly applied the multiplier of 17.

15. With regard to the future prospects, the Tribunal has not awarded any amount. As observed by the Supreme Court in Pranay Sethi case (supra), 40% of the established income of the deceased should have been added towards future prospects as he was below 40 years of age at the time of accident. Ordered accordingly.

16. The Tribunal has awarded Rs.5,000 under the head of loss of estate, Rs.20,000 under the head of loss of consortium and further awarded Rs.5,000 for funeral expenses, which are not in accordance with law laid down by the Supreme Court in Pranay Sethi case (supra). The award thereunder should be as follows: (i) under the head of loss of estate Rs.15,000, (ii) under the head of loss of spouse consortium Rs.40,000, (iii) under the head of loss of parental consortium Rs.40,000 x 3 = Rs.1,20,000 and (iv) under the head of funeral expenses Rs.15,000.

17. As discussed above, now, I shall re-calculate the compensation as follows:

Sl.

No.

Particulars

Amount

(Rs.)

(1)

Annual Income

Monthly income

Rs.5,000x12=

60,000

(2)

Future Prospects

40% of the established annual income needs to be added; Rs.60,000x40%

=

24,000

(3)

Total Annual Income after Addition of Future

Prospects

Rs.60,000+ Rs.24,000=

84,000

(4)

Deduction Towards Personal and Living Expenses

(¼ deduction from the

total annual income)

Rs.84,000x¼=

21,000

(5)

Remaining Amount after the Deduction Towards Personal and

Living Expenses

Rs.84,000– Rs.21,000 =

63,000

(6)

Multiplier Applicable is

17

(7)

Loss of Income comes

to

Rs.63,000x17=

10,71,000

(8)

Addition of Loss of

Estate

15,000

(9)

Addition of Funeral

Expenses

15,000

(10)

Addition of Spouse

Consortium

40,000

(11)

Addition of Parental

Consortium

Rs.40,000x3=

1,20,000

(12)

Total Compensation

12,61,000

Ordered accordingly.

18. As regards liability of the insurance company, there is no dispute on the point that the offending vehicle was insured with the insurance company. No evidence has been adduced by the insurance company that the offending vehicle was carrying any inflammable or explosive or hazardous goods at the time of accident. Rather, from the evidence available on record, it is established that at the time of accident, the offending vehicle tanker was returning in empty condition. Therefore, there was no need for any endorsement in the driving licence of the driver of the offending vehicle as argued by Learned Counsel for the insurance company. Thus, in my considered view, the insurance company has totally failed to establish that any breach of the insurance policy was committed by the owner of the offending vehicle. Therefore, the Tribunal has rightly fastened the liability of compensation on the insurance company.

19. For the reasons stated above, I do not find any substance in the appeal preferred by the insurance company and, therefore, Miscellaneous Appeal (C) No.538 of 2015 is dismissed.

20. Miscellaneous Appeal (C) No.684 of 2015 preferred by the claimants is allowed in part to the extent indicated above. The claimants are entitled to get total compensation of Rs.12,61,000 instead of Rs.6,42,000 awarded by the Tribunal. The compensation of Rs.12,61,000 shall be paid to the claimants along with interest @ 9% per annum from the date of filing of the claim petition before the Tribunal till final payment of the compensation. Rest of the impugned award shall remain intact.