(2009) 06 CHH CK 0027

In the Chhattisgarh High Court

National Insurance Company Ltd. APPELLANT

Vs

Dashrath Pandey and Others RESPONDENT

Date of Decision : 16-06-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 166, 170, 173

Citation : (2009) 3 CGLJ 114 : (2009) 4 MPHT 52

Hon'ble Judges : Rajeev Gupta, C.J;Sunil Kumar Sinha, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—By allowing I.A. No. 02/2009, the documents filed along with this application are taken on record.

2. Learned Counsel for the appellant is heard on I. A. No. 01/2009, an application for condonation of the delay in filing the appeal.

3. On due consideration of the submissions of learned Counsel for the appellant and the grounds taken in the application, we are satisfied that the appellant/ Insurance Company has succeeded in showing sufficient cause for the delay in filing the appeal.

4. I.A. No. 01/2009, therefore, is allowed and the delay in filing the appeal is hereby condoned.

5. Shri B.N. Nande, learned Counsel for the appellant is heard on admission.

6. This is insurer''s appeal against the award dated 10-9-2008, passed by the Ninth Additional Motor Accidents Claims Tribunal, Bilaspur (for short "the Tribunal") in Motor Accident Claim Case No. 75/2008.

7. Respondent No. 1 Dashrath Pandey and respondent No. 2 Naveen Pandey, unfortunate husband and son of deceased Sarojani @ Saroj Pandey claimed compensation of Rs. 7,28,000/- by filing a claim petition u/s 166 of the Motor

Vehicles Act (for short ''the Act'') for his death in the motor accident on 25-9-2007.

8. The Tribunal on a close scrutiny of the evidence led by the parties held that deceased Sarojani @ Saroj Pandey died on account of the injuries sustained by her in the motor accident on 27-9-2007; the accident occurred due to rash and negligent driving of the driver of the offending vehicle Bus; as the offending vehicle Bus on the date of the accident was insured with the National Insurance Company Limited, the Insurance Company was liable to pay compensation to the claimants.

9. The Tribunal assessed the income of the deceased at Rs. 3,000/- per month and Rs. 36,000/- per annum. By deducting l/3rd of Rs. 36,000/- towards the personal expenses of the deceased, the claimants'' dependency was assessed at Rs. 24,000/- per annum. By multiplying the annual dependency of Rs. 24,000/- with the multiplier of 13, the compensation was worked out to Rs. 3,12,000/-. By awarding a further sum of Rs. 15,000/- under other permissible heads, the Tribunal awarded a total sum of Rs. 3,27,000/- as compensation to the claimants for the death of deceased Sarojani @ Saroj Pandey in the motor accident. The Tribunal further directed payment of interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

10. Shri B.N. Nande, learned Counsel for the appellant fairly and frankly conceded that the appellant/Insurance Company in this appeal is challenging only quantum of compensation awarded by the Tribunal.

11. The application filed by the appellant/Insurance Company u/s 170 of the Act for grant of permission to contest the claim on all available defences was dismissed by the Tribunal vide order dated 27-8-2008 on the ground that the owner and driver of the Bus were contesting the claim petition and there was no material to indicate any collusion between them and the claimants.

12. The Apex Court while considering the permissibility of challenge to the quantum of compensation by the Insurance Company in the absence of permission u/s 170 of the Act in the case of National Insurance Co. Ltd. v. Nicolletta Rohtagi and Ors. reported in 2003 (3) T.A.C. 293 (SC), observed in Paras 31 and 32 as under:

31. We have already held that unless the conditions precedent specified in Section 170 of 1988 Act is satisfied, Insurance Company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not, implead the Insurance Company to contest the claim in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case,

where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in Sub-section (2) of Section 149 of 1988 Act. But such application for permission has to be bonafide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res Integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

32. For the reasons, our answer to the question is that even if no appeal is preferred u/s 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle.

13. Now reverting to the present case, admittedly the Tribunal did not grant permission u/s 170 of the Act to the appellant/Insurance Company to contest the claim on all available defences. On a perusal of the order dated 27-8-2008 whereby the Tribunal rejected the appellant''s application u/s 170 of the Act, we are satisfied that the appellant''s application was rightly rejected by the Tribunal as the owner and driver of the offending vehicle Bus were contesting the claim and there was no material to indicate any collusion between the owner and driver of the Bus and the claimants.

14. In view of the above quoted dictum of the Apex Court in the case of National Insurance Co. Ltd. v. Nicolletta Rohtagi and Ors. (supra), the appellant/Insurance Company cannot be permitted to challenge the quantum of compensation in this appeal as permission u/s 170 of the Act was not granted by the Tribunal.

15. As no other ground is pressed into service in this appeal, we are left with no other option, but to dismiss the appeal.

16. The appeal, therefore, is dismissed summarily.

