(2013) 11 JH CK 0082

In the Jharkhand High Court

Case No : M.A. No. 138 of 2006

National Insurance Company Ltd. APPELLANT

Vs

Dhanu Sao and Others RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2014) 1 AJR 213

Hon'ble Judges : Dhrub Narayan Upadhyay, J

Bench : Single Bench

Advocate : Maniesh Kumar, for the Appellant; Rajiv Ranjan for the Respondent No. 5, for the Respondent

Final Decision : Disposed Off

Judgement

Dhrub Narayan Upadhyay, J.—Present appeal has been preferred by the appellant-National Insurance Company Ltd. against the Judgment and Award dated 23.12.2005 passed by learned Additional District Judge, F.T.C.-II-cum-Motor Accident Claims Tribunal, Bermo at Tenughat in connection with Claim Case No. 37 of 2003/08 of 2005, whereby and whereunder, the respondents No. 1 to 4/claimants have been directed to be paid Rs. 1,24,700/- with interest 8.5% from the date of filing of the claim application i.e. 5.5.2003, failing compliance of the order within couple of months, the appellant-insurance company will have to pay interest @ 12% per annum. The facts in brief is that on 1.3.2003 deceased Dugru Sao who was having a grocery shop was traveling on a dumper bearing No. MH34A-1190 which started its journey from Hosir to Lalpania. Due to rash and negligent act of the driver, the vehicle met with an accident in which said Dugru Sao sustained injuries and died in the hospital during treatment.

2. Learned Tribunal after considering the evidence on record pleased to pass impugned judgment and award in favour of the claimants.

3. Learned counsel appearing for the appellant has submitted that the deceased was admittedly a gratuitous passenger and therefore the legal heirs and

representatives of the deceased are not entitled for any compensation in lieu of death of said Dugru Sao from the insurance company because insured has violated the terms and conditions of the policy.

4. The respondent No. 5, who happens to be owner of offending vehicle has put his appearance before this Court. It is submitted that the vehicle belonging to this respondent never met with an accident nor deceased Dugru Sao was a passenger on the said vehicle at the relevant point of time. Further, the vehicle was insured at the relevant point of time and therefore, if any, compensation amount is directed to be paid i.e. to be paid by the insurance company.

5. I have gone through the impugned judgment from which it appears that R-5 has not led any evidence in support of his contention before the court below. On the other hand, the claimants/respondents has furnished certified copy of F.I.R., charge-sheet, postmortem report which have been marked as exhibits 1, 2 and 3 respectively. The finding of the court below that the deceased Dugru Sao died due to plying of said dumper No. MH34A-1190 is not under challenge by the appellant insurance company, rather the appellant has challenged the impugned judgment and award only on the ground that the deceased was gratuitous passenger and therefore, the insurance company cannot be held liable to pay any compensation.

6. Considering all these aspects, the impugned award is modified to the extent that the awarded compensation amount with interest as indicated in the impugned judgment shall be paid by the respondent No. 5, owner of the vehicle within three months from the date of this judgment after deducting Rs. 1,00,000/- which the appellant has already paid to the claimants in view of the order dated 13.2.2008 passed by this Court while disposing of I.A. No. 577 of 2008 and said sum of Rs. 1,00,000/- shall be paid by the R-5 to the appellant insurance company.

7. With these observations and modification in the impugned judgment and award, this appeal stands disposed of. The appellant shall be entitled to withdraw the statutory amount of Rs. 25,000/- deposited by it at the time of presenting the appeal.