(2018) 02 CHH CK 0243

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (C) No. 411 Of 2012

New India Assurance Co. Ltd. APPELLANT

Vs

Rajesh Panda And Ors RESPONDENT

Date of Decision : 13-02-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2018) 02 CHH CK 0243

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Sourabh Sharma, Basant Jokarkar

Final Decision : Allowed

Judgement

P. Sam Koshy, J

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurer against the award dated 13.01.2012 passed by the Ist

Additional Motor Accident Claims Tribunal, Durg (in short, the Tribunal) in Claim Case No.136/2010. Vide the said impugned award, the Tribunal in a

death case has awarded compensation of Rs.2,26,000/- along with interest @ 6 percent per annum from the date of application.

2. The only point of issue which has been raised by the insurance company is that one of the brothers of the claimant No.1, Ashwani Kumar Panda

had filed a separate claim application before the Claims Tribunal at Sambalpur (Odisha) where the case was registered as MAC No.240 of 2007 in

respect of the same accident and death of their father Antaryami Panda who died an accidental death on 26.10.2007. The said claim application at

Sambalpur got decided before the Lok Adalat at Sambalpur by way of compromise entered into between the parties on 21.01.2011 for an amount of

Rs.90,000/- and the insurance company has already honoured the compromise, by paying the entire amount agreed before the Lok Adalat by way of

payment voucher dated 18.04.2011.

3. Subsequently, for the same accident, the remaining legal heirs of the deceased Antaryami Panda (respondents No.1 to 3) have filed a fresh

application before the Claims Tribunal at Durg which was registered as Claim Case No.136 of 2010. The said claim application stood decided by the

impugned award under challenge in the present appeal.

4. Learned counsel for the appellant submits that the claimants are not entitled for two separate claims for the death of the same person before two

different Claims Tribunal and therefore, the Tribunal ought to have rejected the claim application.

5. However, a perusal of record would show that the insurance company had not taken any such plea before the Tribunal nor was any document

produced to establish this aspect before the Tribunal. This ground is being raised for the first time while filing of the appeal and the appellant has also

moved an application under Order 41 Rule 27 CPC to take this additional facts on record as an evidence.

6. Though the insurance company has not led any evidence to substantiate their contention before the Tribunal, but it is not disputed by the

respondents that their brother had not filed a claim application at Sambalpur and which stood decided on 21.01.2001 in a compromise arrived at

between the parties before the Lok Adalat at Sambalpur.

7. Under such circumstances, this court has no hesitation in reaching to the conclusion that there cannot be two claim applications filed before two

separate Claims Tribunal for compensation on the death of the same person.

8. Under the given facts and circumstances, this court is of the opinion that ends of justice would meet if the amount of compensation which has been

awarded by the Tribunal is adjusted to the extent the claim was awarded to the brother of the present claimants i.e. the amount compromised before

the Lok Adalat at Sambalpur for Rs.90,000/-.

9. Thus, it is held that out of total award of Rs.2,26,000/- as awarded in the impugned award, Rs.90,000/- which has already been paid by the

insurance company, has to be adjusted against claim application which stood decided by the Claims Tribunal at Sambalpur in Claim Case No.240 of

2007.

10. As a consequence, the claimants herein shall be entitled for only an amount of Rs.1,36,000/- with interest as awarded by the Tribunal instead of

Rs.2,26,000/- as Rs.90,000/- has already been paid by the insurance company to one of the brothers of claimants herein.

11. The appeal of the insurance company thus stands allowed in part.

