
(2014) 01 CHH CK 0005
In the Chhattisgarh High Court
Case No : M.A. No. 644/2003

New India Assurance Company Limited	APPELLANT
Vs	
Dulari Bai	RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A, 166

Citation : (2014) 5 MPHT 73 : (2014) 1 MPJR 49

Hon'ble Judges : Pritinker Diwaker, J

Bench : Single Bench

Advocate : Shivendu Pandya, Advocate for the Appellant; R.S. Patel, Advocate for the Respondent

Final Decision : Allowed

Judgement

Pritinker Diwaker, J.

1. Claim case was filed by the respondents/claimants before the Tribunal alleging that on 4.3.2001 while deceased Suresh Kumar Ganjir was driving his motorcycle bearing registration No. MP 62/0117 along with Girdhar and Jagat who were sitting as pillion riders, at the Mugalodi turning the vehicle got out of control and met with an accident resulting in the instantaneous death of Suresh Kumar Ganjir and causing grievous injuries to two pillion drivers namely Giridhar and Jagat. Respondents/claimants filed a claim petition u/s 163-A of the Motor Vehicle Act, (for short the "MV Act") claiming compensation of Rs. 44,42,000/- whereas two separate claim cases were also filed by the injured namely Giridhar and Jagat.

2. By the impugned award dated 24.4.2003 the learned claims tribunal decided all the three cases together and in the present case awarded compensation of Rs. 6,61,480/-. However, after deducting 25% of Rs. 6,61,480/- which comes to Rs. 1,65,370/- towards the contributory negligence of the deceased the Tribunal awarded a total sum of Rs. 4,96,110/- in favour to the claimants.

3. Aggrieved with the impugned award the insurance company has preferred this appeal on following grounds:

(i) Claim case filed by the claimants u/s 163-A of the MV Act was not maintainable because the annual income of the deceased was Rs. 93,948/- i.e. much more to Rs. 40,000/- per annum as provided in the second schedule of Section 163-A of the MV Act.

(ii) The vehicle in question was being driven by deceased Suresh Kumar Ganjir and as no separate premium was paid by the deceased for covering his risk, the Tribunal could not have awarded any amount to the claimants.

4. Learned counsel for the appellant/insurance company submits that in view of the decision of the Supreme Court in the matter of Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, , the Tribunal could not have decided the case as maximum limit which has been prescribed in the second schedule is Rs. 40,000/- whereas as per the claim of the claimants the annual income of the deceased was Rs. 93,948/-. He further submits that no separate premium covering the risk of the owner-cum-driver was paid and therefore the Tribunal has erred in law in fixing the liability of the Insurance Company. He submits that the finding recorded by the Tribunal in paragraph 13 of the impugned award that a separate premium was paid by the deceased is not correct.

5. On the other hand, supporting the impugned award it has been argued by counsel for the respondents/claimants that a separate premium of Rs. 88/- was paid by the deceased, may be under the head "own damages" but the column "own damages" would also cover the risk of owner-cum-driver. He submits that once the Tribunal has adjudicated the matter filed u/s 163-A of the MV Act, the same cannot be set aside and the Insurance Company is liable to satisfy the claim. He submits that the objection regarding maintainability of the claim petition u/s 163-A of the MV Act was not raised before the Tribunal and therefore the same cannot be raised before this Court.

6. Heard counsel for the parties and perused the documents on record.

7. From Section 163-A of the M.V. Act and second schedule appended to it, it is apparent that a person can only file the claim petition u/s 163-A of the M.V. Act provided his annual income is less than Rs. 40,000/-. However, in the present case the annual income of the deceased was Rs. 93,948/- and therefore at the first instance itself the Tribunal should have either returned the claim case to the claimants or directed the claimants to file the same u/s 166 of the M.V. Act. In the present case, the Tribunal has proceeded to decide the case and awarded compensation of Rs. 4,96,110/- which is not permissible under the law and the Tribunal has acted beyond jurisdiction while passing the award impugned.

8. Tribunal has further erred in law in awarding the compensation to the claimants ignoring the fact that the vehicle in question was owned by deceased

Suresh Kumar Ganjir and it is he who was driving the same. It is a settled legal position that owner of the vehicle does not come in the category of third party and as no separate premium was paid covering the risk of owner-cum-driver, Tribunal could not have awarded the compensation to claimants on account of accidental death of the deceased.

9. Considering the facts and circumstance of the case and the law enunciated by the Apex Court, this Court is of the considered opinion that the award impugned being contrary to law cannot be allowed to stand. Accordingly, the appeal is allowed and the award under challenge is hereby set aside.