(2024) 01 CHH CK 0037

In the Chhattisgarh High Court

Case No : MAC No. 579 Of 2017

Oriental Insurance Co. Ltd. — APPELLANT

Vs

Budhiyarinbai Sidar — RESPONDENT

Date of Decision : 08-01-2024

Acts Referred:

Code of Civil Procedure, 1908 — Order 41 Rule 22
Central Motor Vehicles Rules, 1989 — Rule 3
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2024) 01 CHH CK 0037

Hon'ble Judges : Sachin Singh Rajput, J

Bench : Single Bench

Advocate : R. N. Pusty, Basant Dewangan, Renu Kochar

Final Decision : Dismissed

Judgement

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short MV Act) has been filed by the appellant / insurance company, being aggrieved by the award dated 02.12.2016 passed in Claim Case No. 15/2016 by the 1th Additional Motor Accident Claims Tribunal, Sakti District Janjgir – Champa, (CG).

2. The respondent Nos. 1 to 6 / claimants have filed cross objection under Order 41 Rule 22 of the Civil Procedure Code, 1908. It shall be decided along with this appeal.

3. Facts of the case in brief is that the respondent Nos. 1 to 6 / claimants have filed an application under Section 166 of the M.V. Act claiming compensation to the tune of Rs. 45,00,000/- on account of death of deceased Teklal Sidar in an accident that took place on 25.01.2016 by rash and negligent driving of the offending vehicle Bus bearing registration No. CG 11 DB – 0130 driven by respondent No. 7 / driver, owned by respondent No. 8 / owner and insured with the appellant / insurance company.

4. As per pleading of the claim application, on the date of accident deceased

Teklal Sidar was going to Village Bhata Ghoghari from his home riding on his motorcycle bearing registration No. CG 11 MP 0592 (for short motorcycle). As he reached near the Ramapati Higher Secondary School, Chandrapur on the main road, the respondent No. 7 / driver driving the offending vehicle rashly and negligently dashed to the motorcycle of the deceased. As a result of which he died on the spot. At the time of accident the deceased was aged about 40 years and was earning Rs. 9,000/- working as a mason and he used to raise respondent Nos. 1 to 6 / claimants from this income. Therefore, the respondent Nos. 1 to 6 / claimants claimed compensation as stated above.

5. Respondent Nos. 7 & 8 / driver & owner did not file their written statement and they were proceeded ex-parte during the pendency of the application.

6. The appellant / insurance company filed its written statement and barring the admitted facts denied the averments of the claim application. It was pleaded that owner and insurance company of the motorcycle are necessary parties. Deceased did not have valid and effective driving license to driver the motorcycle and he was not qualified to drive the motorcycle and he himself has caused the accident. False report against the respondent Nos. 7 & 8 has been lodged and the compensation claimed is excessive. The driver of the offending vehicle was not holding valid and effective driving license and the offending vehicle was being driven without valid and effective permit and fitness which in violation of the terms and conditions of the insurance policy. Hence, the appellant / insurance company may be exonerated from payment of compensation.

7. On the basis of above broad pleadings, the learned Tribunal framed as many as four issues. Issue No. 1 with regard to rash and negligent driving of the offending vehicle by respondent No. 7 / driver was decided as positive. Issue No. 2 with regard to violation of the terms and conditions of the insurance policy was decided as not proved. In Issue Nos. 3 & 4 the learned Tribunal has partly allowed the claim application and awarded Rs. 4,50,000/- as compensation holding the respondent No. 7 & 8 / driver & owner and appellant / insurance company jointly and severally liable to pay the compensation by the impugned award.

8. Mr. Pusty, learned counsel for the appellant / insurance company submits that the finding on issue No. 2 is patently erroneous, contrary to the evidence on record and is bad in law. He further submits that the driver of the offending vehicle was not holding valid and effective driving license hence fastening liability to pay the compensation upon the insurance company is liable to be set aside. He further submits that the driver of the offending vehicle was holding only learner's license and the vehicle was being driven in violation of Rule 3 of the Central Motor Vehicles Rules, 1989 as no person holding valid and effective driving license was seated in the offending vehicle and no display of learning license was there on the offending vehicle hence there is violation of terms and conditions of the insurance policy and the impugned award in so far as fastening the liability upon the appellant / insurance company is liable to be set aside.

In order to buttress his submissions, he placed reliance on the Judgment of this Court passed in Future General India Insurance Co. Ltd. Vs. Smt. Arti Singh Thakur Khangar & others reported in 2020 (1) C.G.L.J. 126, Oriental Insurance Co. Ltd. Vs. Vivek Gir and Others reported in (2020) 09 CHH CK 0009 and judgment of this Court passed in MAC No. 793 of 2015 Ramswaroop Sahu and another Vs. Smt. Pushpa Devi Singh and Others dated 15.01.2021, Janki Bai and Others Vs. Sandeep Kumar and Others reported in ILR 2021 Chhattisgarh 705 : AIROnline 2020 CHH 1381.

9. On the other hand, Mr. Dewangan, learned counsel for the respondent Nos. 1 to 6 / claimants supports the award and submits that the appellant / insurance company has not been able to prove its defense of violation of insurance policy conditions by cogent and prudent evidence. The insurance company did not lead any evidence to prove the breach on the part of insured therefore, finding recorded by learned Tribunal in respect to issue No. 2 cannot be faulted. In support of the cross objection filed by the respondent Nos. 1 to 6 / claimants, he submits that meagre amount of compensation has been awarded, therefore, the amount of compensation may be enhanced suitably.

10. Ms. Kochar, learned counsel for the respondent Nos. 7 & 8 submits that law is very settled that the insurance company is required to plea and prove that the breach of policy conditions by leading cogent and prudent evidence. In the case in hand, this burden has not been discharged by the insurance company and in that event the finding recorded by the learned Tribunal in respect to issue No. 2 is based upon proper appreciation of evidence. She further submits that for the reasons best known to the appellant / insurance company, no witness on their behalf have been examined to substantiate that the driver of the offending vehicle did not have valid and effective driving license. In this appeal the appellant / insurance company cannot permitted to contend that the driver of the offending vehicle did not have valid and effective driving license.

11. I have heard learned counsel for the parties, considered their rival submissions and perused the record.

12. Looking to the submissions of learned counsel for the appellant with regard to exoneration of the appellant / insurance company, it is necessary to determine whether just compensation has been awarded to the respondent Nos. 1 to 6 / claimants or not.

13. As per pleading of the claim application, the deceased was aged about 40 years and was working as a mason and earning Rs. 9,000/-per month. The respondent Nos. 1 to 6 / claimants are widow, three minor children and parents of the deceased. The respondent No. 1 / claimant No. 1 – Budhiyarin Bai Sidar (AW-1) has stated that her husband was working as a mason and was earning Rs. 300/- per day and 9,000/- per month. She has denied the suggestion that the deceased Teklal Sidar was not earning Rs. 9000/- per month. Salik Ram Sidar was examined as (AW-2). He has also deposed in the line of Budhiyarin Bai

(AW-1) who has stated that the deceased was a mason and earning Rs. 9000/- per month. Almost similar statement was given by Santosh Kumar Pandey (AW-3). Apart from these three witnesses, no other witnesses were examined by the respondents. From record, it does not appear that any documents with regard to income of the deceased was filed. Barring the oral statement in the record it does not appear that any documentary evidence was filed regarding income of the deceased. However, considering the evidence available on record, number of dependents, nature of job and minimum wages prevailing at that point of time, even if the monthly income of Rs. 9000/- per month is not accepted, this Court safely asses monthly income of the deceased to Rs. 6000/- per month. Taking guidance from the decisions of the Hon'ble Supreme Court in Smt. Sarla Verma and others VS. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 and National Insurance Co. Ltd. Vs. Pranay Sethi reported in (2017) 16 SCC 680, this Court computes the compensation in the following manner:-

S. No.	Description	Amount
1.	Monthly income	6,000/-
2.	40% Future prospect	2400/-
3.	Total Monthly Income (6000+2400)	8400/-
4.	Total Yearly Income (8400X12)	100800/-/-
5.	1/4 Deduction for personal expenses of deceased	25,200/-

6.

Total Yearly Income

75,600/-

7.

Multiplier of 15 applied to assess total loss of dependency

11,34,000/-

8.

Funeral Expenses

15,000/-

9.

Loss of estate

15,000/-

10.

Spousal consortium

40,000/-

11.

Parental consortium

2,00,000/-

(40,000/- each)

Total compensation

14,04,000/-

14. The learned Tribunal has awarded Rs. 4,50,000/- which requires to be subtracted hence enhance amount of compensation would be Rs. 9,54,000/- (Rs. 14,04,000 – 4,50,000/-). Since the cross objection by the respondent Nos. 1 to 6 / claimants was filed belatedly and while condoning the delay in filing the cross objection, this Court vide its order dated 07.10.2023 directed that the claimants will not be entitled to interest for a period of delay caused in filing cross objection / appeal in the event, enhancement is made by this Court. Therefore, enhanced amount shall carry interest 6% from the date of this order.

15. Now I shall consider the submissions of learned counsel for the appellant / insurance company is with regard to exoneration of the appellant / insurance company from payment of compensation. Supreme court time and again has reiterated that defense of breach of policy taken by the insurance company is

required to be proved by it by cogent and prudent evidence. In the case in hand, the insurance company has only taken a plea that on the date of accident, driver of the offending vehicle was not holding valid and effective driving license and vehicle was being driven without valid, permit and fitness which amounts to violation of the insurance policy. The insurance company in its written statement did not take specific plea that the driver of the offending vehicle had only learner's license and no person having valid driving license was sitting in the offending vehicle beside the driver and there was no proper display of letter "L" on the front and back side of the offending vehicle. Apart from this, for the reasons best known to the appellant / insurance company, no witnesses to substantiate the pleading on the defense taken by it was examined. Even the insurance policy was not exhibited.

16. With due respect the case laws which have been cited by learned trial Court does not in any manner is distinguishable on the fact of this case. In the case in hand, as no witness was examined, the burden which was required to be discharged by the insurance company has not been done and the defense taken appears to have been abandoned by it. In the light of the above discussion, I do not find any force in the submissions of learned counsel for the appellant.

17. As a consequence, the appeal of the insurance company fails and is dismissed. The amount enhanced by this Court Rs. 9,54,000/- be deposited by insurance company within 60 days with 6 % interest from the date of this order. After deposit Rs. 50,000/- (each) shall be invested as fixed deposit in a nationalized bank for a period of two years in the name of respondent Nos. 2 to 6; Rs. 6,50,000/- shall be invested as fixed deposit in a nationalized bank for a period of two years in the name of respondent No. 1. Remaining amount shall be paid to respondent No. 1 through bank transaction/account payee cheque.

18. Appeal thus fails and dismissed and cross objection is partly allowed. No cost.

