

(2009) 11 CHH CK 0003
In the Chhattisgarh High Court
Case No : Misc. Appeal No. 604 of 1994

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Hari Prasad Soni and Others		RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 242(3)
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2009) 4 CGLJ 58

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

Bench : Full Bench

Advocate : Abhishek Sinha, for the Appellant; V.A. Goverdhan, for Respondents No. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—Being aggrieved with the award dated 5.3.1994 passed in Claim Case No. 6/93 by the Motor Accident Claims Tribunal, Bilaspur, the Appellant/insurer has filed this appeal u/s 173 of the Motor Vehicles Act.

2. The Appellant/insurer has also filed I.A. No. 1/2009 for production of additional evidence (Insurance Policy).

3. During the pendency of the appeal, Respondents 1 and 2/claimants have also filed their cross objection vide M.(C.)P. No. 821/2005 for enhancement of amount of compensation.

4. The facts, briefly stated, are as under:

Respondents 1 and 2 are the parents of deceased Umesh Kumar who died in the motor accident on 1.7.1992. They filed a Claim Petition u/s 166 of the Motor Vehicles Act for awarding compensation of Rs. 5,74,000/- on account of death of the deceased in the motor accident. Respondents 1 and 2 pleaded that the accident occurred on account of rash and negligent driving of the offending

Tractor, bearing Registration No. M.P. 26/B-2052, by its driver. The deceased was working as a labour in the tractor who was sitting by the side of the driver in the said tractor at the time of the accident. They further pleaded that the deceased was aged about 21 years, and was earning Rs. 40/-per day.

The owner and driver filed their written statement denying the contentions of the Respondents/claimants. However, they pleaded that the tractor was insured with the Appellant, therefore, if the claimants are held entitled to receive compensation, it should be directed to be paid by the Appellant/ insurer. In their written statement, they mentioned the Insurance Policy number but they did not file any document in support of their contention so as to fix the liability of the Insurance Company in terms of policy taken by the owner.

The Appellant/insurer also filed its written statement. Though it admitted the factum of insurance in the relevant period but it also did not produce the copy of the Insurance Policy.

The learned Claims Tribunal held that since the factum of accident as well as insurance of the vehicle with the Appellant/insurer were admitted, therefore, the owner, driver and Insurance Company would be liable to pay compensation to Respondents 1 and 2/claimants.

The Tribunal awarded a total sum of Rs. 68,000/- as compensation to the claimants on account of death of their son Umesh Kumar in the motor accident. It also awarded interest at the rate of 12.5% per annum on the said amount from the date of filing of the Claim Petition i.e. from 8.8.92 till its realization.

5. Mr. Abhishek Sinha, learned Counsel appearing on behalf of Appellant/ insurer, while arguing on I.A. No. 1/2009, submitted that the copy of the Insurance Policy was not filed either by the claimants or by the owner of the vehicle. However the owner pleaded in his written statement that his vehicle was insured and he mentioned the cover note number of the policy in Para-4. He further argued that the Appellant/insurer bonafidely admitted vide Para-4 of its written statement that the tractor was insured with the Appellant but the Insurance Policy was not filed by the Appellant. He submitted that the policy could not be filed because only the cover note number was available with the Insurance Company. The Insurance Company made all efforts with due diligence to trace the Insurance Policy on cover note number but it could not trace it in time. He submitted that after passing of the award on 5.3.94, the policy could be traced, therefore, the same has been put on record. He prayed for taking the policy into consideration. His submission was that according to the terms of the policy, the liability of the accident would not be on the insurer in the facts and circumstances of the case.

6. On the other hand, Mr. V.A. Goverdhan, learned Counsel appearing on behalf of Respondents 1 and 2/claimants, opposed these arguments.

7. The provisions of Order XLI of the First Schedule of the Code of Civil Procedure, 1908 have been made applicable mutatis mutandis to the appeals

preferred to the High Court u/s 173 of the Motor Vehicles Act by virtue of Sub-rule (3) of Rule 242 of the M.P. (C.G.) Motor Vehicles Rules, 1994. Rule 27 of Order XLI provides for production of additional evidence in Appellate Court in the following circumstances:

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

We find that the insured, who was holder of the policy did not file the same before the Tribunal and no reason has been assigned. Even he did not appear to lead evidence before the Tribunal. Mr. Abhishek Sinha has argued that after getting the cover note number, the authorities of the company tried their best to trace out the policy but they could not trace the same till passing of the award. We find that the Appellant company had admitted in the written statement regarding insurance of the vehicle and they were not going to be benefited by suppressing the policy. Therefore, the reason assigned by them that they could not trace it on the basis of the cover note number given by the owner in the written statement appears to be correct. Moreover, Sub-clause (b) of Order XLI Rule 27 provides that if the Appellate Court requires any document to be produced, for any substantial cause, it can allow such document to be produced. Here we feel that production of the said document is necessary for lawful disposal of the case.

8. Therefore, we deem it appropriate to allow this application and take the Insurance Policy on record as an additional evidence. Accordingly, I.A. No. 1/2009 is allowed and the copy of the Insurance Policy filed as D-I is taken on record.

9. So far as cross objection filed by Respondents 1 and 2 for enhancement of amount of compensation is concerned, we find that after passing of the impugned award on 5.3.94 these Respondents/claimants had filed M.A. No. 694/94 before the High Court of Madhya Pradesh, which was exercising jurisdiction at that time, and the said Misc. Appeal was dismissed by the said Court vide order dated 9.11.94. The M.P. High Court held that adequate amount of compensation has been awarded to Respondents 1 and 2. Therefore, after disposal of the regular appeal for enhancement of compensation, in the above manner, subsequently this cross objection would not be maintainable. Accordingly, M.(C.)P. No. 821/2005 is dismissed.

10. After taking the copy of the Insurance Policy on record, we deem it appropriate to remand the matter to the concerned Tribunal for limited purpose of deciding the liability for payment of compensation.

11. Accordingly, the appeal is partly allowed. While confirming the finding regarding quantum of compensation, the finding regarding joint liability of the Appellant and Respondents 3 and 4 (insurer, owner and driver) are set aside. The matter is remanded to the Tribunal with a direction to determine the liability for payment of compensation by giving due opportunity of leading evidence to all the parties after admitting the policy of insurance on record.

12. By an interim order of the High Court it was directed that if the Appellant deposits 50% of the amount of the impugned award, the operation of the award shall remain stayed until further orders. If the said amount has been deposited, and is lying with the Tribunal, it shall remain as it is till the fresh award is passed and the disposal of the said amount shall be governed by the terms of the fresh award passed by the Claims Tribunal.

13. The Registry is directed to take out the copy of the Insurance Policy from the appellate record after keeping a photocopy of the same and send it to the Tribunal along with the records for the purpose of disposal of the Claim Petition.

14. The appeal is allowed to the extent indicated above.

15. No order as to cost.