(2018) 01 CHH CK 0130

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (C) No. 567 Of 2011

Oriental Insurance Co. Ltd. APPELLANT

Vs

Krishna Kumari And Ors RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 173
Code Of Civil Procedure, 1908 — Order 41 Rule 22

Citation : (2018) 01 CHH CK 0130

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Raj Awasthi, Anil Gulati, Atanu Ghosh

Final Decision : Allowed

Judgement

P. Sam Koshy, J

1. IA No.2, application for condonation of delay in filing the cross appeal is allowed and accordingly delay is condoned.

2. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurer against the award dated 28.01.2011 passed by the

Motor Accident Claims Tribunal, Korea (in short, the Tribunal) in Claim Case No.04 of 2007. Vide the said impugned award, the Tribunal in a death

case has awarded a compensation of Rs.4,58,400/- with interest @ 7.5 percent per annum from the date of application.

3. The claimants in the instant case have also filed cross appeal under Order 41 Rule 22 CPC seeking enhancement of compensation.

4. Learned counsel for the appellant-insurance company assails the award on two grounds. The first ground being that there was breach of policy

conditions to the extent that the tractor involved in the accident was not being used for agriculture purpose when the accident took place and that the

policy was for agricultural purpose. The second ground raised was that the deceased in the instant case was sitting on the body of tractor which is not

permissible as the sitting capacity of tractor is only one which is the driver who could drive the tractor. Thus, there are breach of policy conditions and

therefore the award be set aside/quashed.

5. However, perusal of records would reveal that the insurance company in support of his contentions had examined only one witness namely Ashish

Kumar Gupta, an Investigator. Apart from the Investigator, no other witnesses have been examined. The investigator is examined only to prove the

investigation report. He was not an eyewitness to the accident nor does he have any conclusive evidence to establish the contentions put forth by the

insurance company both using of tractor for non agriculture purpose as also in respect of the deceased sitting on the body of tractor.

6. On the contrary, perusal of record would show that eyewitness Fattelal, AW-2, who also happens to be travelling on the same tractor at the time of

accident, was examined and who has categorically stated that the deceased was sitting on the trolley when the accident took place and that infact it

was he who was sitting on the body of the tractor.

7. Further, there is no evidence whatsoever brought on record to establish that the tractor at the relevant point of time was being used for other than

agricultural purpose. Eyewitness Fattelal during the course of evidence has stated that the tractor was empty at the time of accident which further

disproves the contentions of the insurance company.

8. Given the aforesaid facts and circumstances of the case, this court is of the opinion that no strong case is made out by the insurance company to

interfere with the impugned award or to set aside the liability which has been fastened upon it.

9. So far as the cross appeal filed by the claimants is concerned, the sole ground on which the cross appeal has been filed is that, the deduction made

by the Tribunal is 1/3rd whereas it ought to have been 1/4th considering the total number of claimants. Likewise, the claimants would also be entitled

for 40 percent of his income towards future prospects. Similarly, the compensation under the conventional heads also is said to have been

unreasonably low. Therefore, the award deserves to be enhanced suitably.

10. All the contentions raised by the claimants for enhancement of compensation seem to be fair and reasonable and also inconsonance to the findings

of the Supreme Court in case of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. and all subsequent recent decisions uptill National

Insurance Co. Ltd. Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014.

11. Accordingly, accepting Rs.3000/- as monthly income of the deceased as assessed by the Tribunal, the yearly income comes to Rs.36,000/- to

which if 40 percent of it is added towards future prospects, the amount would reach to Rs.50,400/-, of which if 1/4th is deducted towards personal

expenses considering the total number of claimants, the income would come to Rs.37,800/-, which if multiplied applying the multiplier of 17, the

compensation would reach to Rs.6,42,600/-. Thus, it is ordered that the claimants shall be entitled for Rs.6,42,600/- for loss of dependency. The

claimants shall also be entitled for a lump sum compensation of Rs.70,000/- under conventional heads to make the total compensation payable to the

claimants at Rs.7,12,600/-Thus, the total compensation payable to the claimants would become Rs.7,12,600/-. It is ordered accordingly that the

claimants shall be entitled for a total compensation of Rs.7,12,600/- instead of Rs.4,58,400/-.

12. The enhanced amount of compensation shall also carry interest at the same rate as has been awarded by the Tribunal.

13. Consequently, the appeal filed by the insurance company stands rejected and the cross appeal filed by the claimants stands allowed.