
(2010) 11 CHH CK 0014
In the Chhattisgarh High Court
Case No : M.A. No. 364 of 2010

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Laxmi Bai and Others

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 2

Motor Vehicles Act, 1988 — Section 149(1), 149(2), 149(5), 149(7), 18

Citation : (2012) ACJ 157 : (2011) 1 CG.L.R.W. 78 : (2012) 2 TAC 581

Hon'ble Judges : Nawal Kishore Agarwal, J; I.M. Quddusi, J

Bench : Full Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—This appeal has been filed by the insurance company against impugned award dated 15.2.2010 passed by the First Additional Motor Accidents Claims Tribunal, Raipur, in Claim Case No. 10 of 2009 so far as the Tribunal has fixed liability on the insurance company. Brief facts of the case as per the version of the claimant are that on 11.9.2008 at about 7.30 a.m. Shyamlal Yadav (deceased) was driving his autorickshaw bearing registration No. CG 04-T 2744 and at that time, respondent No. 3 Harshchind who was rashly and negligently driving the motor cycle bearing registration No. CG 04-CA 8007 owned by respondent No. 4 Raj Engineering Works forcibly dashed the autorickshaw and the said autorickshaw overturned, as a result of which Shyamlal Yadav received grievous injuries and died. The deceased was a healthy man of about 50 years, he was owner and driver of the autorickshaw and was earning Rs. 10,000 by driving the autorickshaw. The claimants being dependants of the deceased filed the claim petition seeking compensation to the tune of Rs. 13,60,000 on different heads.

2. The Tribunal assessed the monthly income of the deceased as Rs. 4,500 and the annual income as Rs. 54,000. After deducting 1/3rd, the annual loss of dependency was worked out to Rs. 36,000 and by adopting multiplier 8, the total

loss of dependency was worked out to Rs. 2,88,000. Besides this, the Tribunal has also granted Rs. 12,500 under other heads. Thus the Tribunal has awarded a total compensation of Rs. 3,00,500.

3. We have perused the lower court record as well as the finding given in the award on the basis of the evidence and the documents available on record. The Tribunal has framed issue No. 3 to the effect that whether the motor cycle was being driven by its driver violating the conditions of the insurance policy and answered the same in the negative. The insurance company has been able to prove that the driver of the motor cycle who was driving the vehicle owned by respondent No. 4 was having only a learner's licence that too authorising him to drive the motor cycle without gear only. The date of birth was mentioned in the learner's licence of the driver, namely, Harshchind as 2.1.1991. The licence was issued on 10.9.2008; therefore, on the date of issuance of learner's licence the driver was aged about 17 years and 8 months, that is, less than 18 years.

4. Chapter II of the Motor Vehicles Act, 1988, relates to licensing of drivers of motor vehicles. Section 4 of the Motor Vehicles Act speaks about age limit which is relevant here and quoted below:

4. Age limit in connection with driving of motor vehicles.--(1) No person under the age of eighteen years shall drive a motor vehicle in any public place:

Provided that a motor cycle with engine capacity not exceeding 50 cc may be driven in a public place by a person after attaining the age of sixteen years.

(2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.

5. In view of the above quoted provision, the driver in the instant case was issued learner's licence to drive the motor cycle without gear only, meaning thereby that he is entitled to drive a motor cycle with engine capacity not exceeding 50 cc which is the motor cycle of category L-1. Further, "Category L-1" has been defined in rule 2 (i) of the Central Motor Vehicles Rules, 1989 to the effect that "motor cycle with maximum speed not exceeding 45 kmph and engine capacity not exceeding 50 cc if fitted with a thermic engine or motor power not exceeding 0.5 kilowatt if fitted with electric motor". Therefore, it is beyond doubt that the driver of the motor cycle was less than 18 years of age at the time when the learner's licence was issued to him authorising him to drive the motor cycle without gear with an engine capacity not exceeding 50 cc if fitted with a thermic engine or motor power not exceeding 0.5 kilowatt if fitted with electric motor.

6. The appellant has been able to prove its insurance policy and conditions vide Exh. D2, which clearly shows that the policy has been issued in the name of respondent No. 4 Raj Engineering Works; the motor cycle bearing registration

No. CG 04-CA 8007 which is a Bajaj Eliminator of manufacturing year 2002 was covered under the said policy and the engine capacity was mentioned as "exceeding 150 cc and not exceeding 350 cc". Therefore, it is proved beyond any doubt that the said motor cycle was insured with the appellant which was having capacity exceeding 150 cc and the driver of the vehicle, namely, Harshchind was authorised to drive the motor cycle without gear not exceeding 50 cc that too in the capacity of learner. Hence, we are of the opinion that he was not having a valid and effective driving licence on the date of accident.

7. In view of the above, the appellant insurance company cannot be held liable in any case for payment of compensation. Therefore, we discharge the insurance company from its liability to pay the compensation. However, the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time. It is a well settled rule of law and should not ordinarily be deviated from. The Apex Court in case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, has laid down vide para 76 as under:

Sub-section (5) of section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does not mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of section 149 of the Act, to which pointed attention of the court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of sub-section (2) of section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and required contextual reading.

(Emphasis supplied)

9. Therefore, at the first instance, the insurance company is directed to pay the compensation to the claimants and recover the same from owner. In the result this appeal is allowed. The interim order dated 3.5.2010 stands discharged.