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(2013) 04 AHC CK 0001

In the Allahabad High Court

Case No : F.A.F.O. No. 849 of 2013

Oriental Insurance Co. Ltd. — APPELLANT

Vs

Mithilesh — RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Citation : (2013) 4 ACC 58 : (2013) 98 ALR 190

Hon'ble Judges : Rakesh Tiwari, J;Anil Kumar Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari and Anil Kumar Sharma, JJ.—Heard Sri Amresh Sinha, learned Counsel for the appellant and Sri S.D. Ojha for respondent Nos. 1 to 4 and perused the record. The appellant Oriental Insurance Co. Ltd through its Deputy Manager, T.P. Hub, 160-A, M.G. Marg, Civil Lines, Allahabad has challenged the award dated 24.12.2012 passed by M.A.C.T./Addl. District Judge, Court No. 1, Chitrakoot in M.A.C.T. Case No. 91/70/2010., Smt. Mithilesh and others v. Raj Kumar and others.

2. Ram Krishna Gupta (since deceased) husband of claimant-respondent No. 1 Smt. Mithilesh and father of claimant Nos. 2 to 4 died in an accident on 17.6.2009 when Bolero No. U.P. 96 A-8722 in which he was travelling collided with a tree due to rash and negligent driving of its driver.

3. Claimants-respondents preferred M.A.C.P. No. 91/70/2010 claiming compensation from the appellant. The claim was contested and an application u/s 170 of Motor Vehicle Act was filed on behalf of the appellant insurance company which was allowed by the Tribunal vide order dated 23.7.2011. On appreciation of the evidence on record and the arguments advanced by the learned Counsel for the parties, the Tribunal has allowed the claim application by the impugned award holding the appellant''s liability to pay a sum of Rs. 7,45,108/- as compensation within 30 days of the date of the award alongwith

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7% interest to the claimants.

4. Learned Counsel for the appellant has raised four contentions before us assailing the validity and correctness of the aforesaid award. He has firstly assailed the award on the ground that the appellant''s insurance company is not liable to pay the compensation or saddled with its liability for the reasons that vehicle Bolero No. U.P. 96 A/8722 in which deceased was said to have been travelling was being used as a Taxi which was in violation of terms and condition of the policy.

5. The second ground on which he has assailed the award that owner of the vehicle has not preferred O.D. claim for damages sustained by the said Bolero in the said accident when it collided with the tree on the road side. According to him this establishes that there was no accident caused by the aforesaid Bolero which had been insured by the appellant-company.

6. Third ground of attack is that particulars of the policy etc., and details were not given by the claimants-respondents in the claim petition and it also proved that no such accident had taken place by collusion of the aforesaid Bolero by which Ram Krishna Gupta had died.

7. Lastly, appellant has pressed the quantum of compensation awarded to the claimant-respondents on the ground that income and age of the deceased were not proved before the Tribunal and that his sons were major and not dependent upon him.

8. After hearing Counsel for the parties, we find from the record itself that Ram Krishna Gupta (since deceased) had borrowed Bolero for taking bath in Ganga from its owner. He normally used to borrow the car whenever required by him, therefore, it cannot be said that it was being used as Taxi as there is no evidence that Ram Krishna Gupta had hired the Bolero from its owner to be used as Taxi. This argument appears to be more based on hypothesis and presumption.

9. The second contention of the learned Counsel for the appellant regarding O.D. claim is concerned it appears from the written statement filed by the Oriental Insurance Co. Ltd. neither any such pleading had been taken before the Tribunal nor placed on record in the appeal, therefore, Counsel for the appellant cannot be permitted to raise this plea before us. Hence this argument does not help the appellant in the facts and circumstances of the case.

10. As regards the question of income and age of the deceased as well as dependency of the mother, sons is concerned, the Investigator has reported thus:

11. Although the investigator had not appeared before the Tribunal and had not proved its report even then since it had been filed by the appellant-company it can be read against them. From perusal of the aforesaid report extracted above it is apparent that only Sri Dinesh Kumar Gupta aged about 34 years son of the deceased was earning Rs. 5,000/- per month from the legal profession and the other sons and wife were not earning members.

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12. As regards income and age of the deceased is concerned, it appears from the claim application that deceased was in wholesale business of grains in the name and style of M/s. Ram Krishna Gupta Arhaitiya from which his annual income was Rs. 2,50,000/- apart from Rs. 1,00,000/- per annum from agriculture. The Tribunal on the basis of documentary evidence on record has taken an average turnover of five years of business of deceased holding that his turnover was Rs. 36,64,202/- per annum from his whole sale business of sale and purchase of grains. The Tribunal allocated 3% towards profit from the said business and has taken Rs. 1,09,926/- and Rs. 28,000/- from the agriculture income for quantifying the amount of compensation. It may be mentioned here that claimant had also alleged income from cement business of the deceased, however, it has been discarded by the Tribunal in absence of any satisfactory evidence. The Tribunal had also taken the age of the deceased as 60 years on the basis of credit card issued by the Government, in which we do not find any illegality. Therefore, taking into facts and circumstances of the case, we find that award of the Tribunal is reasonable, fair and just. We do not find any illegality or infirmity in the impugned award. Appeal is accordingly dismissed. The Registry is directed to remit back the statutory amount deposited by the appellant to the concerned Tribunal within three weeks.

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