(2011) 08 CHH CK 0007

In the Chhattisgarh High Court

Case No : M.A. (C) No. 843 of 2008

Oriental Insurance Co. Ltd. APPELLANT

Vs

Smt. Gouri Gupta and Others RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 166, 170

Citation : (2011) 3 CG.L.R.W. 427

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Ghanshyam Patel, for the Appellant; Shakti Raj Sinha for the Respondent Nos. 1 to 5, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—All the respondents except the driver i.e., respondent no. 7 have been served. Therefore, service of respondent no. 7 is dispensed with. This appeal has been filed by the Insurance Company against the impugned award dated 30-3-2007 passed by the 1st Additional Motor Accident Claims Tribunal, Ambikapur, District Sarguja in Claim Case No. 48/2008 in so far as it relates to quantum part only.

2. Brief facts of the case as per the version of the claimants are that on 21-4-2005 deceased Rajeshwar Prasad Gupta was going to village Baraili from Ambikapur by riding Hero Honda Motorbike bearing Regn. No. C.G. 15-ZH/9513 (Old No. 27-D/9618) for attending his duty. At about 7.15 a.m., on the Main road of village Chaindra, a Truck bearing Regn. No. ZC/0757 which was being driven by respondent no. 7 in rash and negligent manner dashed the motorcycle, due to which, Rajeshwar Prasad sustained grievous injuries and died in hospital during the course of treatment.

At the time of accident, the deceased was aged about 43 years; he was a Government Servant, working as an Assistant Teacher and was drawing a monthly salary of Rs. 10,505/-. The claimants being dependents/legal representatives have filed claim petition u/s. 166 of the Motor Vehicles Act for award of total compensation of Rs. 20,00,000/ - on various heads.

3. Learned counsel for the appellant has argued that the application u/s 170 of the MVA was filed but the same remained undecided. Therefore, he has prayed for remitting the matter to the Claims Tribunal for decision of the application u/s. 170 of the MVA.

4. From perusal of the record, it is evident that the appellant-Insurance Company has not obtained the permission u/s 170 of the Motor Vehicles Act, 1988. Section 170 reads as under:-

170. Impleading insurer in certain cases.-Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim, it may for reasons to be recorded in writing, direct that the insurance who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

5. In the instant case, at the very outset, the insurer was already impleaded as a party/respondent no. 3 in the claim petition. Claimant No. 1 Gouri Gupta has examined herself as A.W. 1 and she was also cross-examined by the Insurance Company. Thereafter, another claimant witness namely Moti Prasad Gupta (A.W. 2) was also cross examined by the Insurance Company. However, Nepal Chand (A.W.-3) was not cross examined by the appellant/Insurance Company though opportunity was given to it to cross-examine. Besides the above, written statement was also filed by the owner of the vehicle contesting the claim. A perusal of the order sheets of the Tribunal shows that opportunity was given by the Tribunal to adduce evidence on behalf of the insurer, but it did not produce witnesses and therefore, the Tribunal has declared its evidence closed. Further, Pankaj Jaiswal (owner) and Mahendra Kumar Pandey (driver) themselves came into witness box and made their statements on oath. They were also cross examined by the learned counsel for the appellant Insurance Company.

6. In view of the above discussion, we are of the opinion that the owner of the vehicle was not in collusion with the claimants. Further, the Claims Tribunal had given ample opportunity to the appellant/Insurance Company but it did not avail.

7. The Insurance Company was solely responsible to see that its application should have been decided but in the instant case, it failed to press the application and as such if an application was not pressed during the entire

pendency of the claim petition, it is not open for the Insurance Company to plead that its application u/s. 170 of the Act to contest remained undecided. The purpose of filing of application u/s. 170 of the Act is that the insurer may get the right to contest but in this case, the Tribunal has crossed the stage of filing of written statement which has already been filed by it, thereafter started recording evidence and till then the insurer did not press the application. If the insurer was not cautious from the very beginning that it should have obtained permission by pressing application which was not pressed, then it is not open for the insurer to say that its application seeking permission u/s. 170 of the Act remained pending.

8. In the above back ground, Hon''ble the Apex Court in case of Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, , held that the Insurance Company when impleaded as party by the Tribunal can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in Section 170 are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal which should be a reasoned order by the Tribunal and unless that procedure is followed the Insurance Company cannot have a wider defence on merits that what is available to it by way of statutory defence. The same view was reiterated in series of other decisions including Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, , wherein the Apex Court held that if the Insurance Company had not obtained permission from the Tribunal before filing the appeal, the appeal preferred by the Insurance Company before the High Court would not be maintainable in law. Further in the matter of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , it has been observed that "we have already held that unless the condition precedent specified in Section 170 of 1988 Act is satisfied, Insurance Company has no right of appeal to challenge the award on merits."

9. In view of the above, the contention raised by the learned counsel for the appellant that the application of the Insurance Company for permission u/s. 170 remained undecided and thus it can challenge the award on the question of quantum is not sustainable. Therefore, the appeal against quantum is not maintainable. Accordingly, it is dismissed. No order as to costs(s).