(2008) 04 CHH CK 0011

In the Chhattisgarh High Court

Oriental Insurance Co. Ltd. — APPELLANT

Vs

Smt. Madhu Gupta and Others — RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 170, 173

Citation : (2008) 5 MPHT 1

Hon'ble Judges : Rajeev Gupta, C.J;Dhirendra Mishra, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—This is insurer''s appeal against the award dated 9-5-1997, passed by the Third Additional Motor Accident Claims Tribunal, Raipur (for short "the Tribunal") in Claim Case No. 98/96.

2. Respondent No. 1/claimant Smt. Madhu Gupta claimed compensation of Rs. 50,00,000/- (Rupees Fifty lacs) for the death of her husband - deceased Ashok Gupta in the motor accident on 22-1-1996 when his scooter was dashed by the offending vehicle jeep bearing registration No. MP-24G/0843, resulting in his death on the spot itself. The claimant further pleaded that her husband Ashok Gupta used to earn Rs. 10,000/- per month from his business.

3. The owner, driver and insurer of the offending vehicle-jeep contested the claim and denied their liability to pay compensation to the claimant. The owner and driver took the plea that the deceased himself was responsible for the accident. The insurer, on the other hand, pleaded that the driver of the jeep was not holding a valid driving licence and the jeep was being plied in breach of the policy conditions.

4. The claimant examined Madhu Gupta (A.W. 1) and Ratan Kumar (A.W. 2) in support of her claim, whereas the owner, driver and insurer did not examine any witness in rebuttal.

5. The Tribunal on a close scrutiny of the evidence led before it held that claimant''s husband-Ashok Gupta died on account of the injuries sustained by him in the motor accident on 22-1-1996; the accident occurred due to rash and -negligent driving of the driver of the offending vehicle-jeep; and as the offending vehicle-jeep, on the date of accident, was insured with Oriental Insurance Company Limited, the Insurance Company was liable to pay compensation to the claimant.

6. The Tribunal assessed the income of the deceased at Rs. 7,430/- per month. After deducting 50% of the above income of the deceased towards his personal expenses, the claimant''s dependency was assessed at Rs. 3,715/- per month and Rs. 44,580/- per annum. By multiplying the annual dependency of Rs. 44,580/- with the multiplier of 15, the compensation was worked out to Rs. 6,68,700/-. By awarding further sum of Rs. 10,000/- under other permissible heads, the Tribunal awarded a total sum of Rs. 6,78,700/- as compensation to the claimant for the death of her husband in the motor accident. The Tribunal directed payment of interest @ 12% per annum from the date of filing of the claim petition till the date of actual payment.

7. Shri B.D. Guru and Shri Rajendra Tripathi, learned Counsel for the appellant-Insurance Company vehemently argued that the Tribunal has erred in awarding excessive amount of Rs. 6,78,700/- as compensation to the claimant.

8. Shri Malay Kumar Bhaduri, learned Counsel for the respondent No. 1/claimant placing reliance on the dictum of the Apex Court in the case of National Insurance Co. Ltd. v. Nicolletta Rohtagi and Ors. reported in 2003 (3) TAC 293 (SC), submitted that as permission u/s 170 of the Motor Vehicles Act, 1988 (for short "the Act") was not granted to the appellant-Insurance Company by the Tribunal to contest the claim on all available defences, it is not open to the appellant-Insurance Company to challenge the quantum of compensation awarded by the Tribunal in this appeal.

9. It is not in dispute that permission u/s 170 of the Act was neither sought by the appellant-Insurance Company nor it so granted by the Tribunal. In the absence of the permission u/s 170 of the Act, whether the insurer of the offending vehicle can challenge the quantum of compensation in the appeal filed by the Insurance Company against the award was considered by the Apex Court in the case of National Insurance Co. Ltd. v. Nicolletta Rohtagi and Ors. (supra), wherein it was categorically held in Paras 31 and 32 as under:

31. We have already held that unless the conditions precedent specified in Section 170 of the 1988 Act is satisfied, Insurance Company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not, implead the Insurance Company to contest the claim in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a

person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in Sub-section (2) of Section 149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

32. For the reasons, our answer to the question is that even if no appeal is preferred u/s 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle.

10. Now reverting to the present case, permission u/s 170 of the Act was not granted to the appellant-Insurance Company. As such quantum of compensation, awarded by the Tribunal, cannot be challenged by the appellant-Insurance Company in this appeal in view of the above quoted dictum of the Apex Court in the case of National Insurance Co. Ltd. v. Nicolletta Rohtagi and Ors. (supra).

11. The appeal, therefore, is liable to be dismissed and is hereby dismissed.

12. Consequently, the interim order dated 10-9-1997 stands vacated automatically.

No order as to costs.

