(2009) 01 CHH CK 0005

In the Chhattisgarh High Court

Oriental Insurance Company APPELLANT

Vs

Rajesh Yadav and Others RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 166, 170, 173

Citation : (2009) 2 MPHT 40

Hon'ble Judges : Rajeev Gupta, C.J;Sunil Kumar Sinha, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—This is insurer''s appeal against the award dated 7-2-2004, passed by First Additional Motor Accident Claims Tribunal, Ambikapur, in Motor Claim Case No. 64/2003.

2. Respondent Nos. 3 to 7, unfortunate widow and minor children of deceased Vimal Kumar claimed compensation of Rs. 34,10,000/- by filing a claim petition u/s 166 of the Motor Vehicles Act for his death in the motor accident on 4-7-2003. The claimants pleaded that deceased Vimal Kumar was working as Constable in Central Industrial Security Force and was getting salary ofRs. 6,000/-per month.

3. The owner, driver and the insurer of the offending vehicle truck contested the claim and denied their liability to pay compensation to the claimants. The insurer took further plea that the truck was being plied in breach of the policy conditions and the driver of the truck was not holding a valid driving licence.

4. The Tribunal on a close scrutiny of the evidence led before it held that deceased Vimal Kumar died on account of the injuries sustained by him in the motor accident; the accident occurred due to rash and negligent driving of the driver of the offending vehicle truck; as the offending vehicle truck on the date of the accident was insured with the Oriental Insurance Company Limited; the Insurance Company was liable to pay compensation to the claimants.

5. The Tribunal assessed the income of the deceased at Rs. 5,128/- on the basis of the salary certificate adduced in evidence. The claimants'' dependency was assessed at Rs. 3,400/- per month. By multiplying the annual dependency with the multiplier of 15, the compensation was worked out to Rs. 6,12,000/-. By awarding a further sum of Rs. 20,000/- under other permissible heads, the Tribunal awarded a total sum of Rs. 6,32,000/- as compensation along with interest @ 9% per annum from the date of filing of the claim petition till the date of actual payment.

6. Shri Vinay Harit, learned Senior Counsel for the appellant/Insurance Company vehemently argued that the Tribunal has erred in awarding excessive sum of Rs. 6,32,000/- as compensation to the claimants.

7. Shri Sushil Dubey, learned Counsel for respondent Nos. 3 to 7 (claimants) submitted that the appellant/Insurance Company cannot be permitted to challenge the quantum of compensation awarded by the Tribunal as permission u/s 170 of the Motor Vehicles Act to contest the claim on all available defences was not granted by the Tribunal to the appellant/Insurance Company.

8. Shri Vinay Harit, learned Senior Counsel for the appellant after going through the Tribunal''s record conceded that the appellant/Insurance Company neither applied for grant of permission u/s 170 of the Motor Vehicles Act before the Tribunal nor the Tribunal granted any permission u/s 170 of the Motor Vehicles Act.

9. It is also relevant here to mention that the owner and driver of the offending vehicle truck contested the claim by filing their separate written statements before the Tribunal.

10. The Apex Court in the case of National Insurance Co. Ltd. v. Nicolletta Rohtagi and Ors. reported in 2003 (3) T.A.C. 293 (SC), while considering the permissibility of challenge in appeal by the insurer of the offending vehicle to the quantum of compensation awarded by the Tribunal observed in Paras 31 and 32 as under:

31. We have already held that unless the conditions precedent specified in Section 170 and 1988 Act is satisfied, an 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 bonafide 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.

11. Now, reverting to the present case, admittedly, the Insurance Company never sought permission from the Tribunal u/s 170 of the Motor Vehicles Act to contest the claim on all available defences. In the absence of permission u/s 170 of the Motor Vehicles Act, the insurer of the offending vehicle cannot be permitted to challenge the quantum of the compensation and the finding about the negligence/contributory negligence 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).

12. Shri Vinay Harit, learned Senior Counsel for the appellant/Insurance Company fairly and frankly conceded that the appellant/Insurance Company has not challenged the impugned award on any other ground except the quantum of compensation and the finding about the negligence/contributory negligence.

13. In this view of the matter, the appeal filed by the appellant/Insurance Company is liable to be dismissed.

14. The appeal, therefore, fails and is hereby dismissed.

No order as to costs.