(2020) 01 CHH CK 0086

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (C) No. 41 Of 2015

Oriental Insurance Company Ltd. APPELLANT

Vs

Achhey Lal. And Ors RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 17 Rule 1
Motor Vehicles Act, 1988 — Section 166, 173
Indian Penal Code, 1860 — Section 279, 304(A), 337, 338

Citation : (2020) 01 CHH CK 0086

Hon'ble Judges : Sanjay S. Agrawal, J

Bench : Single Bench

Advocate : Chitra Shrivastava, Devarshi Thakur, Satyendra Shriwas

Final Decision : Allowed

Judgement

1. This Miscellaneous Appeal has been preferred by Non-Applicant No.3- Oriental Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 13.10.2014 passed by the 1st Additional Motor Accident Claims Tribunal, Baloda Bazaar (for short 'the Claims Tribunal') in Claim Case No.91/20l2 by which, the learned Claims Tribunal, while allowing the claim in part, has fastened the liability upon the Insurance Company. The parties to this Appeal shall be referred hereinafter as per their description in the trial Court.

2. The facts of the case in nut-shell are that on 25.03.2012, at 10.30 p.m, deceased Sonu Gupta, after closing his shop, was taking rest in front of his shop and at the relevant time, Non-Applicant No.1 Saiyyad Mukarram, while driving the offending vehicle i.e. 'truck' bearing its Registration No.OR 15/E 5159, owned by Non-Applicant No.2-Sunil Kumar, insured with Non-Applicant No.3-Insurance Company, in a rash and negligent manner, dashed vehemently the said shop and rode over on deceased Sonu Gupta, as a result of which, he died on the spot. A report was thereafter lodged in police station, City Kotwali, Baloda Bazaar where,

the case was registered as Crime No.383/2012 and after investigating the matter, the concerned Investigating Officer has submitted its final report before the Judicial Magistrate First Class, Baloda Bazaar, while registering the offence punishable under Sections 279, 337, 338 and 304-A IPC against the driver of the said offending vehicle.

3. On account of the aforesaid accident, the claim enumerated under Section 166 of the Act of 1988 has been made by the Claimants being the legal heirs of the deceased alleging inter alia that the deceased, a 20 years old, used to earn Rs.9,000/- per month while running a shop and thus claimed a total amount of compensation to the tune of Rs.47,30,000/- under various heads.

4. Non-Applicants No.1 & 2, the driver and the owner of the offending vehicle have denied the averments made in the claim Petition, while Non- Applicant No.3, insurer of the vehicle in question, contested the claim on the ground that the alleged offending vehicle was being driven without any permit by a driver, who was not holding even the valid and effective driving license, therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred due to rash and negligent driving by the driver of the offending vehicle, resulting in the sad demise of deceased Sonu Gupta. It held further while relying upon the extracts of the driving license marked as Ex.NA-1 that the driver of the offending vehicle was holding the valid and effective driving license. In consequence, it was held that the vehicle in question was not being used in violation of the policy and by considering the monthly income of the deceased at Rs.3,000/-, awarded a total amount of compensation to the tune of Rs.4,20,000/- with 7% interest per annum from the date of filing of the claim Petition till its realization, while fastening the liability upon the Insurance Company.

6. Being aggrieved, Non-Applicant No.3/Insurance Company has preferred this Appeal. Smt Chitra Shrivastava, learned Counsel appearing for the Insurance Company submits that the Claims Tribunal, without providing sufficient and reasonable opportunity of hearing and even without considering the defence of the Insurer as to whether the alleged offending vehicle was being used with a valid permit or not, has erred in fastening the liability upon the Insurance Company.

7. On the other hand, learned Counsel appearing for Non-Applicants No.1 & 2 has supported the award impugned.

8. I have heard learned Counsel for the parties and perused the entire record carefully.

9. From perusal of the record, it appears that the Claims Tribunal, while entertaining the Issue No.5, has arrived at a conclusion that the vehicle in question was not being used in violation of the policy on finding that the driver of

the alleged offending vehicle was holding the valid and effective driving license while placing its reliance upon the extracts of the driving license of the driver of the offending vehicle, which was marked as Ex.NA-1 and consequently, fastened the liability upon the Insurance Company. However, no finding, whatsoever, has been recorded in so far as the question regarding the alleged use of the offending vehicle, as to whether it was being used with a valid permit or not. The Tribunal has thus, erred in fastening the liability upon the Insurance Company even without considering the said defence taken specifically by the Non-Applicant No.3/Insurance Company.

10. Pertinently to be noted here further that on 29.09.2014 an application enumerated under Order 17 Rule 1 of Code of Civil Procedure, 1908 was made by Non-Applicant No.3/Insurance Company seeking time to produce the certified copy of the permit as it was not delivered, though an application was already made before the concerned Regional Transport Officer for the said purpose. It was however rejected on the same day as evidenced by the order sheet dated 29.09.2014 by observing that sufficient opportunity for adducing the evidence has already been provided on an earlier occasion and therefore, no further time could be granted on the pretext for furnishing the said document. The approach of the Claims Tribunal refusing to grant time as such cannot be held to be sustainable, particularly, when it appears from the seizure memo Ex.A-7 that the permit of the alleged offending vehicle was shown to be expired prior to the occurrence of the alleged accident, i.e. on 20.09.2011.

11. What is therefore reflected from the aforesaid observation of the Tribunal that, despite specific defence being taken by the Insurance Company regarding the use of the alleged offending vehicle, as to whether it was being used with valid permit or not, yet neither the finding was recorded while considering the said Issue nor time was granted to the Non-Applicant No.3/Insurance Company in order to establish the said fact. Therefore, in my opinion, the true facts should come out in this regard as to whether the vehicle in question i.e 'truck' insured as the 'Goods Carrying Commercial Vehicle' was being used along with its valid permit or not and that can be possible only if the matter is remitted back to the Tribunal for determination of the said issue skipped over in deciding the same.

12. Consequently, the award impugned is hereby set aside and the matter is remitted back to the concerned Tribunal. The Non- Applicant N.3/Oriental Insurance Company and Non-Applicants No.1 & 2 (driver and owner of the offending vehicle) are hereby directed to remain present before the concerned Tribunal on 10.02.2020, who in turn, shall issue fresh notices to Applicants No.1 & 2 (Claimants) and thereafter decide the matter afresh in accordance with law, while keeping the aforesaid observation in mind.

13. Needless to mention here further that the parties, shall be allowed to amend their pleadings and adduced further evidence in support of their pleadings and may file further documents and get the documents verified thereafter and the decision shall be made by the concerned Tribunal accordingly.

14. Registry is directed to transmit the entire file to the concerned Tribunal forthwith. No order as to costs.