
(2015) 03 CHH CK 0020
In the Chhattisgarh High Court
Case No : M.A. Nos. 512 and 589 of 2004

Oriental Insurance Company Ltd.	Vs	APPELLANT
Parmeshwari and Others		RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(14)

Citation : (2015) 3 ACC 224

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Raj Awasthi and Renu Kochar, for the Appellant

Final Decision : Allowed

Judgement

Goutam Bhaduri, J—Both the appeals are being tried and decided together by this common order as they are arising out of the same accident and similar facts are involved. The M.A. No. 512/2004 is preferred by Insurance Company against the liability fastened on the Company and the another M.A. No. 589 of 2004 is by the claimants for enhancement of the award.

2. No representation is made on behalf of Biharilal and Baliram, owner and driver of the offending vehicle.

3. The brief facts of the case, as pleaded by the claimants, are that on 17th November, 2001, the deceased Ramfal was travelling in a vehicle Metador bearing No. M.P.-26/D-5500, going from Champa to Akaltara. The vehicle which was being driven by Baliram in a rash and negligent manner met with an accident and turned turtle and thereby Ramfal died on the spot. The incident was reported to the police. It was stated that the deceased was working on the post of Peon in the Electricity Department and was getting a salary of Rs. 8,281 per month. The owner of the vehicle was Biharilal and the vehicle was being driven by Baliram and was insured with the Oriental Insurance Company.

4. The non-applicant Oriental Insurance Company refuted the claim and it was

stated that the deceased was illegally travelling in the said offending vehicle and he was not authorised to travel in the vehicle and therefore, there was a breach of policy was committed. The owner and driver also refuted and denied the averments of the claim petition.

5. The learned Claims Tribunal after evaluating the entire evidence on record, as against the claim made of Rs. 25,00,000 passed an award of Rs. 1,94,000 and also fixed the liability on the Insurance Company. Therefore, the instant appeal by the claimants for enhancement and by the Insurance Company against the liability which is fastened over the Insurance Company.

6. Learned Counsel appearing on behalf of the Insurance Company in Appeal No. 512/2004 would submit that in this case, according to the own admission of the claimants, the deceased was travelling as a gratuitous passenger in a commercial vehicle and, therefore, there was a breach of policy committed by the owner. Consequently, the liability cannot be fastened over the Insurance Company. He would refer to the statement of the claim petition and the report of the criminal case and stated that admittedly the deceased was travelling as a gratuitous passenger, therefore, the liability cannot be fastened over the Insurance Company in view of such admission made.

7. Learned Counsel appearing on behalf of the claimants in Appeal No. 589/2004 would submit that it was the duty of the Insurance Company to prove the fact that the deceased was travelling as a gratuitous passenger. It is submitted that the deceased was going to discharge of his official job and was travelling in the Metador which met with an accident and therefore, it cannot be said that deceased was travelling as gratuitous passenger. It is further contended that such fact required to be proved by the Insurance Company. It is further submitted that the award passed by the Tribunal should also be enhanced accordingly as the Tribunal has failed to grant the just compensation to the claimants.

8. I have heard the learned Counsel appearing for the appellants at length and perused the documents and evidence on record.

9. Firstly, the contention of the Insurance Company is dealt with as to whether the liability can be fastened over the Insurance Company.

10. Perusal of the claim petition would reveal that at para 2 of the claim petition, it is stated that on 17th November, 2001, the deceased Ramfal was travelling in the offending vehicle Metador bearing No. M.P.-26/D-5500 which met with an accident because of the rash and negligent driving of the driver Baliram. Because of the accident, the deceased Ramfal succumbed to the injuries. The driver of the offending vehicle Baliram, who was examined as Non-applicant witness No. 1 has stated that on 16th November, 2001, he was coming with load of Ginger to Bilaspur, thereafter, he met with an accident. He has proved the document registration, fitness certificate goods permit and insurance policy as Ex. NA-1, NA-2, NA-3 and NA-4 respectively. The document Ex. N-3(c) is the permit

granted for carrying the goods by the R.T.O. The certificate of insurance is marked as Ex. NA-4(c). Reading of such certificate would go to show that it was for goods carrying commercial vehicle four wheeler. The liability covered in that was for the driver and the workman. Ex. NA-5 was the licence.

11. The claimant has also proved the document of criminal case i.e. FIR as Ex. A-3 and Morgue Intimation as Ex. A-4 and the statement of the witness in the criminal case. Reading of the statement and evidence and the policy along with all averments of the claim petition it would go to show that the deceased Ramfal boarded the ill-fated vehicle Metador while he was going for his official job and he took that lift in the vehicle which met with an accident.

12. The goods carriage vehicle has been defined in Section 2(14), of the Motor Vehicles Act, 1988, which reads as under:

"Section 2(14). "Goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods."

A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "goods vehicle" in the old Act. The position becomes further clear because the expression used is "good carriage" is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the Act.

13. The similar proposition has been followed by this Court in Prakash Enterprises Vs. Sukaloram and Others, (2015) 1 ACC 204 and National Insurance Company Vs. Mahendra Kumar and Others, (2015) 1 ACC 461 . Therefore, in view of the same, it is found that there was a clear breach of policy of the insurance and the Insurance Company cannot be held liable to make good the payment to the claimants. Consequently, the liability which has been fastened over the Insurance Company is set aside.

14. Now, coming to the quantum which has been awarded by the Claims Tribunal, admittedly, according to the PW-3, Chandrikalal Sahu and the wife of the deceased Ramfal namely Parmeshwari Sahu, the deceased Ramfal was working as Peon in the Electricity Department and he was getting a salary of Rs. 8,281 as per the salary slip which is proved as Ex. A-1. This fact has not been disputed that the salary slip was also been proved by the claimant wife which is corroborated by the claimants' witness. At the time of accident, the deceased was aged about 36 years as would be evident from Ex. A-7, the post mortem report. Further, the perusal of Ex. A-1 would reveal that the net salary which has been receivable by the deceased was Rs. 5,700. Therefore, taking into law laid down in a case of Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 , the future prospects as has been reiterated that 30% has to be

added over the income of the deceased. The claimants in this case were widow and three children therefore the deduction would be 1/4th as has been laid down in case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 . The age of the deceased was 36 years, consequently the multiplier of 16 would be applicable. Therefore, the income is reassessed as under:

15. After deducting Rs. 1,94,000 as awarded by the Tribunal, the enhancement would be Rs. 10,73,136. The claimants will be entitled to Rs. 10,73,136 in addition what is already awarded. The enhanced amount will carry interest @ 9% from the date of filing of the petition till its realization. In the result, both the appeals are allowed to the above extent. The claimants shall be entitled to recover the amount of compensation from the owner and driver of vehicle as the Insurance Company has been exonerated from the liability to make good the award. No order as to costs.