(2011) 01 CHH CK 0028

In the Chhattisgarh High Court

Case No : M.A. (C) 877 of 2009

Oriental Insurance Company Ltd. APPELLANT

Vs

(Smt.) Dhurputa and Others RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 149, 165, 168, 173

Citation : (2011) 1 CGBCLJ 93

Hon'ble Judges : Prashant Kumar Mishra, J;I.M. Quddusi, J

Bench : Full Bench

Advocate : Sudhir Agrawal, for the Appellant; P.K. Tulsyan, Advocate for Respondent No. 1 to 3, None for the Respondents No. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—Heard. This is an insurer''s appeal questioning the liability only.

2. By way of this appeal u/s 173 of the Motor Vehicles Act, 1988 (for short the Act''), the appellant-Insurance Company has impugned the award dated 23-09.2008 passed by the learned Motor Accident Claims Tribunal, Bastar at Jagdalpur (C.G.) (For short ''the Tribunal'') in Claim Case No. 110/2007 allowing the claim application of the claimants, awarding a compensation of Rs. 4,32,000/- to the claimants and fastening liability on the appellant-Insurance Company to first satisfy the award and there after recover the same from owner of the vehicle.

3. Facts of the case, in brief, are that on 15.2.2007 Dhablu alias Gupta (since deceased), after unloading tamarind was returning to his village Murtihondi. P.S. Kotapad, District Koraput (Orissa) in the pick-up vehicle bearing registration numbers OR10-D-1044. The said pick-up vehicle met with an accident with the vehicle coming from the opposite side as a result said Dhablu fell down and sustained grievous injuries. He was taken to Maharani Hospital, Jagdalpur where

he died on 17.2.2007 while undergoing treatment. At the relevant time the said vehicle was driven, owned and insured by the respondent No. 4, 5 & the appellant herein respectively. The claimants/respondents No. 1 to 3 herein, who are unfortunate widow and parents of the deceased, have claimed compensation on the ground that they were dependent on the deceased, who was the sole earning member in family, and due to his death, they have suffered loss of income.

4. Non-applicants No. 1 & 2 have filed their written statements and denied the claim of the claimants. In the additional submissions the non-applicant Nos. 1 & 2 have stated that at the relevant time the vehicle was insured with the appellant-Insurance Company and therefore if any compensation is awarded to the claimants, then the same is payable by the Insurance Company.

5. Non-applicant No. 3-Insurance Company also filed its written statement in which it has been mentioned that the deceased was traveling in the said vehicle as passenger. Driver was not having valid and effective driving licence at the time of accident and as such the vehicle was plied in breach of the insurance policy and therefore, the insurance company is not liable to pay the amount of compensation.

6. On the pleadings of the parties, the Tribunal framed as many as six issues and after hearing the parties and considering the material available on record arrived at a conclusion that the claimants are entitled for compensation as the incident had taken place due to rash and negligent driving of respondent No. 1 herein and accordingly, allowed the claim petition and awarded a sum of Rs. 4,32,000/- as compensation. The Tribunal has also granted liberty to the appellant Insurance Company to first pay the amount of compensation to the claimants and thereafter recover the same from the owner of the vehicle in question.

7. On the other hand, learned counsel for the respondents No. 1 to 3 has supported the impugned award.

8. Mr. Agrawal learned counsel for the appellant-Insurance Company has submitted that the deceased was traveling inside the said vehicle and was allegedly an employee and therefore, he cannot be treated as third party and thus, the Tribunal has erred in passing the direction regarding pay and recover.

9. On the other hand, learned counsel for respondent no. 1 to 3 has supported the impugned award.

10. We have heard learned counsel for the parties and perused the records of the Tribunal as also the findings given in the impugned award.

11. It is true that the Hon''ble Apex Court in the matter of National Insurance Co. Ltd. Vs. Swaran Singh and Others, has held thus:-

107-We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of issuance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realize the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 & 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.

However, present is not the case of third party, rather it is the case where the deceased was engaged in the said vehicle as employee and was sitting inside the vehicle and as such, his status in the said vehicle was of gratuitous passenger and as per Section 147 of the Act the gratuitous passengers sitting in a goods vehicle are not required to be covered under the statutory policy. Therefore, impugned award of the Tribunal, at one hand exonerating the Insurance Company from its liability and at the same time directing to pay the claimants and thereafter recover from the owner, is erroneous.

12. In the result we allow this appeal, set aside the award dated 23.9.2008 passed by the Tribunal in Claim Case No. 110/07, so far as it relates to fastening of liability on the appellant-Insurance Company and held that the appellant-Insurance Company is not liable to pay compensation to the claimants involved in the impugned award and the same shall be paid by the owner of vehicle in question. In case any amount deposited by the appellant-Insurance Company has been withdrawn by the claimants, it will be open for it to recover the same from the owner of vehicle. However, if the amount, so deposited, has not been withdrawn so far the insurance company shall be allowed to withdraw the same. Rest of the conditions and findings of the impugned award are hereby confirmed. It is hereby clarified that the claimants are free to execute the award against the owner of vehicle.

13. No order as to costs. Certified copy as per rules.