
(2010) 07 CHH CK 0022

In the Chhattisgarh High Court

Case No : Misc. Appeal No's. 472 and 627 of 2001

Ram Kumar and Another

APPELLANT

Vs

Nistor Kindo and Others

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 166

Citation : AIR 2011 Chh 126 : (2011) 1 MPJR 79 : (2011) 2 TAC 409

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

Bench : Full Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.

1.These appeals have been directed against the award, dated 30.4.2001 passed in Claim Case No. 22/97 by the Member, Motor Accident Claims Tribunal, Jashpur.

2. M.A. No. 472/2001 has been filed by the owner and driver for setting-aside the award against them and for holding the liability of the Insurance Company to pay compensation, if any, whereas M.A. No. 627/ 2001 has been filed by the claimants for enhancement of compensation.

3. The facts briefly stated, are as under:

The claimants, unfortunate parents of deceased Sunil Kindo, a male child aged about 7 years, filed a Claim petition u/s 166 of the Motor Vehicles Act claiming compensation of Rs. 4,00,000/- for his death in the motor accident which took place on 28.10.1996 when the Mini-Bus, bearing registration No. MP 27/9495, ran over the deceased on account of rash and negligent driving of the said vehicle by its driver. On 28.10.96, at about 11 p.m., a video-show was being displayed in the village on account of Durga-Pooja festival. Suddenly, the electric supply failed. On this, driver-Sanjay Gupta got in the Mini-Bus for taking it to village Bagicha for bringing generator-set, as the mini-Bus was standing near the

place of show. Any how the Mini Bus went towards the mob and dashed against many persons who were sitting there for watching video. Many of them received injuries. However, it ran over the deceased who was also present in the mob.

The owner of the bus remained ex parte and he did not file written statement. The driver of the bus filed his written statement denying all the facts pleaded by the claimants. The Insurance Company also filed its written statement with a formal denial and pleaded that the vehicle was being plied in breach of policy conditions, therefore, the insurer was not liable to pay compensation.

The claimants examined Singhasai (AW-1), Masatsai Paikra (AW-2), Nistor Kindo (AW-3- father of the deceased) and Dr. Chryst Dular Bakhla (AW-4) in support of their claim petition, whereas, the non-claimants examined Sanjay Kumar Gupta (NAW-1driver) in rebuttal.

The Tribunal held that the accident occurred on account of rash and negligent driving of the Mini-Bus by its driver and the claimants were entitled to receive lump sum compensation of Rs. 60,000/-alongwith interest at the rate of 10% per annum from the date of filing of Claim Petition till realization. It was further held that there was no permit issued in favour of the Mini-Bus and there was no proof that any road tax or even the spare tax was paid by the owner, therefore, the owner and driver were jointly and severally liable to pay compensation and the Insurance Company was exonerated.

4. Mr. Sanjay Agrawal, learned Counsel appearing on behalf of the driver and owner, argued that the Tribunal erred in law in holding that the accident occurred on account of rash and negligent act of the driver of the Mini-Bus. He also argued that the Tribunal further erred in exonerating the Insurance Company, whereas, the insurance policy was valid on the date of the accident.

5. Mrs. Meena Shastri, learned Counsel appearing on behalf of the claimants, supporting the argument relating to exoneration of the Insurance Company, argued that a low compensation was awarded by the Tribunal.

6. Mr. Abhishek Sinha and Mr. S.K. Mishra, learned Counsel appearing on behalf of the Insurance Company, opposed these arguments and supported the award passed by the Claims Tribunal. They argued that the policy of the insurance was subject to certain conditions and the condition of permit to ply the vehicle was not fulfilled by the owner, and even no tax was paid in that period, therefore, the Insurance Company has been rightly exonerated. They relied on the decision of the Apex Court in National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, .

7. We have heard the learned Counsel for the parties at length and have also perused the records of the claim case.

8. So far as rash and negligent act on the part of the driver is concerned, the evidence is writ large on record. Singhsai (AW-1) and Masatsai (AW-2) have clearly deposed that when the electricity supply failed, the driver sat on the Mini-

Bus for bringing generator-set from village Bagicha and on his negligence, the Mini-Bus went towards that place where the villagers, including the deceased, were sitting for watching the video show. They have further deposed that on this act many persons got injured including the wife of Jageshwar who lost her seven teeth and the bus also ran over the deceased who lost his life. Dr. Chryst Dular Bakhla (AW-4) also found that the left portion of the deceased, including the skull, was crushed. Nothing has been brought in the cross-examination of these witnesses, on which, their testimonies may be discarded. On due consideration of the entire evidence available in this regard, we are satisfied that the Tribunal has rightly held that the accident occurred on account of rash and negligent driving of the Mini-Bus by its driver.

9. So far as liability is concerned, no doubt that the policy (Ext. P/3) was operative on the date of the accident as it was covering the period from 27.12.95 to 26.12.96, but the same was subject to certain conditions. One of the condition was that the vehicle would be plied under a valid permit (contract or stage carriage), duly issued by the concerned authority, for carrying passengers under the provisions of Motor Vehicles Act, 1988. In Challa (Supra), the Insurance Company contested the claim on the ground that the insured had not obtained a permit to ply the vehicle and therefore, in terms of the policy of insurance the insurer had no liability. Their plea was accepted by the Tribunal, but the High Court held that the insurer was liable to indemnify the award. Allowing the appeal of the Insurance Company, the Supreme Court held that the insurer had the statutory defences to contest the claim which are confined to those provided in Section 149(2) of the Act. Therefore, in terms of Section 149(2) a defence of such nature was available to them. Plying of vehicle without a permit is an infraction and the question of the policy being operative had no relevance for issue regarding liability of the insurer.

10. The Tribunal has observed that the owner remained ex parte and he has monitored the proceeding through the driver, who filed his written statement of denial and has filed many documents relating to the vehicle, but nothing could be brought on record to show that either a permit was issued as per provisions of Motor Vehicles Act or even the tax was paid or the vehicle was kept in "C form. The Tribunal on the basis of evidence available on record held that, in fact, there was no permit relating to the vehicle and the Insurance Company cannot be held liable for compensation even if the policy was operative at the time of accident. On due consideration of the entire evidence, we do not find any infirmity in such finding recorded by the Claims Tribunal exonerating the Insurance Company from its liability to pay compensation.

11. So far as quantum of compensation is concerned, in *Oriental Insurance Co, Ltd. v. Syed Ibrahim and Ors.*, 2007 (1) SCC 512 : 2007 (4) T.A.C. 385, the Apex Court held in Para 10 of the judgment as follows:

In cases of young children of tender age, in view of the uncertainties abound, neither their income at the time of death nor the prospects of the future increase

in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither is the income of the deceased child capable of assessment on estimated basis nor is the financial loss suffered by the parents capable of mathematical computation.

In the said case, the deceased was a child aged about 7 years, the Tribunal awarded Rs. 51,500/- as compensation. The High Court enhanced the same to Rs. 1,52,000/-. However, the Supreme Court in appeal set-aside the judgment of the High Court and the quantum, as awarded by the Tribunal, was maintained. In case on hand, the deceased was also aged about 7 years. The Tribunal, after considering the entire facts and circumstances, awarded a sum of Rs. 60,000/- as compensation to the parents of the deceased with interest at the rate of 10% per annum from the date of filing of the Claim Petition till realization. This was also an accident nearly of the same period. In the above facts and circumstances of the case, we do not find it appropriate to interfere in the quantum of compensation awarded by the Claims Tribunal.

12. For the foregoing reasons, the appeals filed by the respective Appellants are liable to be dismissed. However, the parties are left to be on their own costs.