(2011) 09 CHH CK 0011

In the Chhattisgarh High Court

Case No : Misc. Appeal (C) No. 781 of 2007 with Misc. Appeal (C) No. 955 of 2007

Satwantin Bai and Others — APPELLANT

Vs

Vinod Kumar Yadav and Others — RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 3 CG.L.R.W. 431

Hon'ble Judges : Rajeev Gupta, C.J;Nawal Kishore Agarwal, J

Bench : Full Bench

Advocate : Amrito Das in M.A. C No. 781 of 2007 and Mr. Sushobhit Singh in M.A. C No. 955 of 2007, for the Appellant; Amrito Das for the Respondent Nos. 1 to 4 in M.A. (C) No. 955 of 2007, Shri Sushobhit Singh for the Respondent Nos. 1 and 2 in M.A. (C) No. 781 of 2007, Shri Dashrath Gupta for the Respondent No. 3 in M.A. (C) No. 781 of 2007 and Shri Akhilesh Kumar on behalf of Shri Deepak Gupta for the Respondent No. 6 in M.A. (C) No. 955 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

Nawal Kishore Agarwal, J.

1 M.A. (C) No. 781/2007 has been preferred by the appellants/claimants seeking enhancement of compensation awarded by the 1st Additional Motor Accidents Claims Tribunal, Bilaspur (for short ''the Tribunal'') in claim case No. 117/2006 vide award dated 3-5-2007 whereas M.A. (C) No. 955/2007 has been preferred by the appellant/owner of the offending vehicle challenging his liability for payment of compensation fastened upon him in the above award. Both the appeals were filed against the same award passed by the Claims Tribunal, therefore, both the appeals are being disposed of by this common order.

2. As against the compensation of Rs. 13,80,000/- claimed by the claimants i.e. unfortunate widow and minor children of deceased Santosh Kumar Sahu by filing application u/s 166 of the Motor Vehicles Act, 1988 (for brevity ''the Act'') for his

death in the motor accident on 20-3-2006, the learned Tribunal has awarded a total sum of Rs. 3,63,000/- along with interest at the rate of 6% per annum from the date of application till its actual payment against the owner and driver of the offending vehicle bearing registration C.G. 11/A-5038, exonerating the New India Insurance Company Limited from its liability to pay compensation to the claimants.

3. The learned Tribunal, on a close scrutiny of the evidence led, held Vinod Kumar Yadav i.e. driver of the offending vehicle i.e. Auto bearing registration No. C.G. 11/A-5308 responsible for the accident; as the offending vehicle was being plied at the time of accident in violation of policy conditions, Insurance Company is not liable for payment of compensation; assessed and awarded the aforesaid sum of Rs. 3,63,000/- as compensation in favour of the claimants against the owner and driver of the offending vehicle, along with interest at the rate of 6% per annum from the date of filing of claim application till its actual payment.

4. Shri Amrito Das, learned counsel appearing for the appellants/claimants in M.A. (C) No. 781/2007, vehemently argued: the learned Tribunal has fallen in error in assessing the monthly income of the deceased as Rs. 2500/- and in awarding low amount of compensation.

5. Shri Sushobhit Singh, learned counsel appearing for the appellant/owner in M.A. (C) No. 955/2007 would submit: the learned Tribunal has fallen in error in exonerating the respondent/the New India Insurance Company Limited from its liability to pay compensation and in fastening the liability to pay compensation upon appellant/owner and respondent No. 5.

6. On the other hand, Shri Dashrath Gupta and Shri Akhilesh Kumar, appearing for the New India Insurance Company Limited supported the award and submitted that in the facts and circumstances of the present case, the learned Tribunal has rightly exonerated the Insurance Company from its liability to pay compensation and the award deserves to be upheld.

7. We have heard the learned counsel appearing for the parties, perused the award impugned and records of the Tribunal.

8. We shall first examine sufficiency or otherwise of the amount of compensation awarded by the Tribunal.

9. True, the claimants pleaded, deceased Santosh Kumar Sahu used to earn Rs. 4500/- per month by selling bread and from agriculture, no cogent and reliable evidence was led before the Tribunal to establish the above income of the deceased. In this state of evidence, we do not find any infirmity in the assessment of the income of the deceased, who was resident of Sonasari, Tahsil Pamgarh, District Janjgir-Champa, at Rs. 2500/- and Rs. 30000/- per annum by the Tribunal.

10. The learned Tribunal, after deducting one-third of the income towards personal expenses of the deceased, rightly assessed claimants'' yearly

dependency as Rs. 20,000/-. By multiplying the claimants annual dependency with the multiplier of 16, the amount of compensation assessed by the Tribunal is Rs. 3,20,000/-. The Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , has prescribed the multiplier of 15 for the age group between 36 to 40, and therefore, the multiplier of 16 selected by the Tribunal cannot be found fault with. The learned Tribunal has further awarded Rs. 43,000/- on other heads (Rs. 20,000/- toward loss of consortium; Rs. 10,000/- towards loss of love and affection; Rs. 10,000/- towards loss of estate and Rs. 3000/- towards funeral expenses) and thus awarded total sum of Rs. 3,63,000/- as compensation for the death of Santosh Kumar Sahu. The above amount of compensation, by no stretch of imagination, can be said to be inadequate. Therefore, in our opinion, the learned Tribunal has awarded just and proper compensation in the facts and circumstances of the case and claimants'' appeal is devoid of merit.

11. Now, coming to the second question, indisputably, the offending vehicle is a goods carriage vehicle. Satwantin Bai (A.W. 1) in her evidence admitted that offending vehicle Auto is a goods carriage vehicle and her husband (since deceased) along with two other persons was sitting in the above vehicle. Deceased was not employee and certainly was sitting in the vehicle as gratuitous passenger.

12. It is settled law that provisions of the MV Act do not enjoin any statutory liability on the owner of the vehicle to get his vehicle insured for any passenger traveling in a goods carriage vehicle and the insurer would have no liability thereof. However, an owner of a vehicle intends to cover himself from other risks, it is permissible to enter into a contract of insurance in which event the insurer would be bound to reimburse the owner of the vehicle strictly in terms thereof. A contract of insurance which is not statutory in nature should be construed like any other contract.

13. We have noticed the terms of the contract of insurance. The policy issued in the case is goods carrying commercial vehicle (open) package policy which covers the risk of third party and one employee. By charging extra premium of Rs. 100/-, the risk of owner-cum-driver is also covered to the extent of Rs. 2,00,000/-. The deceased was passenger sitting in the offending vehicle. The contract of insurance did not cover the risk of passenger sitting in the vehicle in question.

14. In the absence of any contract covering the risk of gratuitous/non-gratuitous passenger sitting and traveling in the offending goods carriage vehicle, the Insurance Company cannot be held liable for payment of compensation to the claimants for the death of deceased Santosh Kumar Sahu sitting and traveling in the goods carrying commercial vehicle as gratuitous passenger.

15. For the reasons mentioned hereinabove, above two appeals, being devoid of merit and substance, are liable to be and are hereby dismissed. However, in the

facts and circumstances of the case, there shall be no order as to costs.

