(2009) 01 CHH CK 0013

In the Chhattisgarh High Court

Shrawan Kumar Sahu	APPELLANT
Vs	
Resham Bai (Smt.) and Others Resham Bai and Another Vs Uttam Kumar Chandraker and Others	RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 2 MPHT 63

Hon'ble Judges : T.P. Sharrna, J;Sunil Kumar Sinha, J

Bench : Full Bench

Judgement

Sunil Kumar Sinha, J.—These appeals have been filed against the award dated 12-8-1999 passed by the Fifth Additional Motor Accident Claims Tribunal, Raipur in Claim Case No. 121/98. M.A. No. 1881/99 has been filed by the Owner of the offending vehicle for setting aside the award against him, whereas M.A. No. 2299/99 has been filed by the claimants for enhancement of the amount of compensation awarded to them.

2. Ramgopal, aged about 24 years, unmarried son of the claimants, died in the motor accident on 11-8-96 when he was travelling in Jeep No. MP 23-T-0661, which met with an accident in between Kurud and Raipur. His parents filed claim petition u/s 166 of the Motor Vehicles Act claiming compensation of Rs. 17,00,000/-. They pleaded that the deceased was earning Rs. 5,000/- per month.

3. The owner and driver filed their written statement pleading that the deceased died on account of his own negligence as he had put his head out of the vehicle which was dashed by another vehicle. Alternatively, they pleaded that if any compensation is to be awarded, that may be awarded against the Insurance Company as their vehicle was insured on the date of accident.

4. The Insurance Company pleaded that the Jeep, which was insured as a private vehicle was being used as a Taxi, therefore, the insurer was not liable to pay compensation on account of such breach of policy.

5. Learned Claims Tribunal held that the accident occurred on account of rash and negligent driving of the offending vehicle by its driver; the Insurance Company was not liable to pay compensation as offending vehicle was being used as a Taxi, whereas it was insured as private vehicle; and the claimants were entitled to receive a total sum of Rs. 53,000/- as compensation on account of death of the deceased in the motor accident. The Tribunal also awarded interest at the rate of 12% per annum from the date of filing of the Claim Petition till its realization.

6. Shri Deversi Thakur, learned Counsel for the Owner, argued that the Insurance Company has wrongly been exonerated in this matter as admittedly the offending vehicle was duly insured with them.

7. Shri A.S. Singraul, learned Counsel for the claimants, argued that the Tribunal erred in law in awarding low compensation to the claimants, as a lump sum of Rs. 50,000/- has been awarded towards loss of income without making any calculation. He argued that the Tribunal ought to have assessed the dependency of the claimants on the basis of notional income and would have awarded appropriate compensation calculating it on the basis of such income of the deceased.

8. On the other hand, Shri A.K. Athaley, learned Counsel for the Insurance Company, opposed these arguments and supported the award passed by the Claims Tribunal.

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

10. So far as the liability to pay compensation is concerned, the Insurance Policy (Exh. D-1) and Registration Certification (Exh. D-2) have been brought on record. The Registration Certificate would show that the offending vehicle was registered as a Taxi, whereas, the Insurance Policy would show that it was insured as a private vehicle. Even otherwise also, the claimants have pleaded that the deceased was travelling in the vehicle as a paid passenger and such pleadings of the claimants have been substantiated by evidence of Radhelal Gaikwad (A.W. 2). Apart from the contents of the Insurance Policy and Registration Certificate, oral evidence of Vijay Narayan Marathi (NAW1), a clerk of Insurance Company and oral evidence of R.C. Kunjam (NAW 2), a clerk of R.T.O., Raipur have been adduced and on such evidence, the Tribunal recorded a finding that the offending vehicle was being used as a Taxi at the time of accident and on account of the policy being taken for used as a private vehicle, the Insurance Company would not be liable to pay compensation to the claimants. Even otherwise also, if for the sake of argument, it is held that the offending vehicle was not being used as a Taxi at the time of accident and the deceased was not travelling as a passenger in the said vehicle, the Insurance Company would not be held responsible because no extra premium was paid by the owner to cover the risk of such occupants of the vehicle. Therefore, the finding of the

Tribunal exonerating the Insurance Company cannot be held to be fault with and the same has to be sustained.

11. So far as the amount of compensation is concerned, it appears that the Tribunal without assessing the monthly income of the deceased awarded a lump sum of Rs. 50,000/- towards the loss of earning to the claimants and Rs. 3,000/- towards the other permissible heads. In our considered view, the Tribunal ought to have calculated the dependency of the claimants atleast on the basis of notional income of Rs. 15,000/- per annum. Therefore, we propose to re-compute the amount of compensation on the basis of such notional income of the deceased. From Rs. 15,000/-, we make a deduction of 50% and determine the annual dependency of the claimants at Rs. 7,500/- as the claimants are the parents and the deceased was unmarried who would have married after sometime and would have spent substantial amount on his wife and children along with the parents. Since the claimants are parents, therefore, in view of the dictum of the Apex Court in the matter of The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, , we apply the multiplier of 10, so the amount of compensation comes to Rs. 75,000/-. By adding a further sum of Rs. 10,000/- towards the other permissible heads, the total amount of compensation comes to Rs. 85,000/-. The Claims Tribunal has already awarded Rs. 53,000/-, therefore, the difference of amount of compensation comes to Rs. 32,000/-. The claimants are entitled to receive Rs. 32,000/- more from the owner as the amount of compensation. They are also entitled to receive interest on the enhanced amount of Rs. 32,000/- at the rate of 6% per annum from the date of filing of the Claim Petition till its realization. The owner is granted two months time to deposit the entire amount with the concerned Claims Tribunal.

12. In the result, M.A. No. 1881/99 is dismissed & M.A. No. 2299/99 is allowed to the extent indicated above.

13. There shall be no order as to the cost(s).

