(2010) 12 CHH CK 0019

In the Chhattisgarh High Court

Case No : M.A. No''s. 142 and 187 of 2001

Smt. Janki Bai APPELLANT

Vs

Uttam Singh Yadav and Others RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 10(2), 14, 14(2), 166

Citation : (2011) 3 TAC 355

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

Bench : Full Bench

Judgement

Sunil Kumar Sinha, J.—These appeals are directed against the award dated 11th December, 2000, passed in Claim Case No. 10/97 by the Additional Motor Accidents Claims Tribunal, Korba.

2. M.A. No. 142/2001 is filed by the claimant for enhancement of compensation, whereas M.A. No. 187/2001 is filed by the United Insurance Company Ltd. for its exoneration.

3. In M.A. No. 142/2002, Respondent-Babulal Sahu (father of the deceased) has also filed a cross-objection (M. (C.) P. No. 37/2004 for enhancement of compensation.

4. The facts briefly stated, are as under:-

Claimant-Janki Bai and Respondent-Babulal are the parents of deceased-Rameshwar Prasad Sahu, who died in the motor accident on 5th February, 1997, when he was dashed by the offending Mini-Bus, bearing registration No. MP 26C 1171, on account of rash and negligent driving of the said mini-bus by its driver namely Uttam Singh Yadav. The claimant claimed compensation of Rs. 85,61,00/-. the claim petition was filed u/s 166 of the Motor Vehicless Act. The owner of the bus remained ex-parte. The insurer of the bus, United India Insurance Company Ltd., filed its written statement denying the contentions of the claimant. It was pleaded that the driver of the bus was not having a valid driving licence on the date of the accident, therefore, the offending bus was being plied in breach of policy conditions and the Insurance Company was not liable to pay compensation. Respondent No. 5-Babulal (in M.A. No. 142/2001) pleaded that the deceased was his son, therefore, he was also entitled to receive compensation.

5. The Tribunal, on a close scrutiny of evidence led before it, held that the deceased died on account of rash and negligent driving of the minibus by its driver; Claimant-Janki Bai and Respondent Babulal Sahu were the parents of the deceased, therefore, they were entitled to get compensation; and the owner, driver and the insurer of the bus-United India Insurance Company Ltd., were jointly and severally liable to pay compensation. The deceased was having an auto-rickshaw. This was purchased through a bank-loan. He himself used to drive the auto-rickshaw. The claimant contended that the deceased was earning Rs. 6,000/- per month. The Tribunal held that the deceased was earning Rs. 2,000/- per month. By deducting Rs. 800/- towards the personal expenses of the deceased, the dependency of the parents was assessed as Rs. 1,200/- per month and Rs. 14,400/- per annum. The Tribunal applied multiplier of 15 to the said annual dependency of Rs. 14,400/- and the compensation was worked out to Rs. 2,16,000/-. By awarding further sum of Rs. 10,000/- under the other heads, the total amount of compensation was worked out to Rs. 2,26,000/-. The Tribunal, thus awarded total sum of Rs. 2,26,000/- as compensation to the claimant and her husband-Babulal Sahu (parents) for the death of deceased-Rameshwar Prasad Sahu in the motor accident on 5th February, 1997. The Tribunal also awarded interest at the rate of 12% per annum from the date of filing of the claim petition till realization.

6. Mr. Sunil Sahu, Learned Counsel appeapng on behalf of the claimant, argued that the income of the deceased was not properly assessed; the deduction was not proper; and the multiplier was also not proper looking to the age of the deceased. He prayed for suitable enhancement in compensation awarded to the parents of the deceased.

7. Mr. H.B. Agrawal, learned Senior Counsel appearing on behalf of United India Insurance Company Ltd., opposed these arguments. He argued that the Tribunal has wrongly held that the insurer of the bus was liable to pay compensation. His contention was that the driver was having LMV licence, therefore, he was not entitled to driver a mini-bus which was a transport vehicle and in this manner the offending bus was being plied in breach of policy conditions. Except the above no other ground was pressed by him.

8. Mr. Ashish Surana, Learned Counsel appearing on behalf of the Owner, opposed the above 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. We shall firstly consider the question of liability of the insurer of the mini-bus. According to the papers of mini-bus, as also the evidence of Sunil Kumar Tirkey (NAW-1), mini-bus No. MP 26C 1171 was registered as a public service vehicle (Ext. D/l), having gross weight of 5300 kgs. It was a light Motor Vehicles and was a passenger carrying vehicle having carrying capacity of 20 passengers, 1 driver and 1 cleaner. Sunil Kumar Tirkey (NAW-1)'' was working as a lower division clerk in R.T.O., Bilaspur. He was called by the Tribunal with all relevant documents relating to the offending mini-bus as also driving licence of driver Uttam Singh Yadav. He further deposed that R.T.O., Bilaspur had issued driving licence No. U/594 in favour of Uttam Singh Yadav on 4th January, 1997. It was valid upto 3rd January, 2007. The original records pertaining to the licence were exhibited as Ext. D/4. The said licence was issued to drive LMV, non-transport vehicle. He very specifically deposed in examination-in-chief that uttam Singh Yadav was having no licence to drive a transport vehicle. He proved the certificate issued to this effect by R.T.O., Bilaspur as Ext. D/5. He deposed that Ext. D/5 was issued on the basis of entries made in the R.T.O. register (Ext. D/4). He further admitted that the '' offending mini-bus was a transport and Light Motor Vehicles (LMV) and Uttam Singh Yadav was not holding a valid driving licence to drive the offending mini-bus.

11. Vinay kohli (NAW-2) was a Senior Assistant in United India Insurance Company. He has proved the policy of Insurance (Ext. D/6). This policy was valid from 23rd September,, 1996 to 22nd September, 1997. The offending bus was a light Motor Vehicles and it was a passenger carrying vehicle. According to the conditions of the policy this vehicle was allowed to be driven by the holder of a valid and effective driving licence to drive the said vehicle. According to their verification report Ext. D/5, Uttam Singh Yadav was holding a licence to driver light Motor Vehicles and he was not authorized to drive a transport vehicle. The learned Claims Tribunal held that Uttam Singh Yadav was holder of a valid and effective driving licence to drive a light Motor Vehicles. It was further held by the Tribunal that the offending mini-bus was a light Motor Vehicles, therefore, he was authorized.to drive the said vehicle and there was no breach of policy conditions.

12. We are unable to accept the said finding recorded by the Claims Tribunal. Light Motor Vehicles is defined in Section 2(21) of the Motor Vehicless Act which says that "light Motor Vehicles" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms". In Oriental Insurance Company Ltd. v. Angad Kol and Ors. 2009 (75) A.L.R. 10 : 2009 (2) T.A.C. 4 (S.C.) (Sum.), the Supreme Court observed vide para-9 that "Although the definition of the Tight Motor Vehicles'' brings within its umbrage both ''transport vehicle'' or ''omnibus'', indisputably, as would be noticed by various provisions of Section 3 and Section 10 of the Act, a distinction between an effective licence granted for transport vehicle and passenger Motor Vehicles exists."

13. Section 3 deals with the necessity for driving licence and Section 10 deals with the form and contents of licenses to drive. Sub-section (1) of Section 3 states as under:-

3. (1) No person shall drive a Motor Vehicles in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cycle hired for his own use or rented under any scheme made under Sub-section (2) of Section 75 unless his driving licence specifically entitles him so to do.

The contents of Section 10 reads as follows:-

10. Form and contents of licences to drive.-(1) Every learner''s licence and driving licence, except a driving licence issued u/s 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A farmer''s licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a Motor Vehicles of one or more of the following classes, namely:-

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light Motor Vehicles;

(e) transport vehicle;

(i) road-roller;

(j) Motor Vehicles of a specified description.

14. The Supreme Court in Angad Kol (supra) observed that "The distinction between a ''light Motor Vehicles'' and a ''transport vehicle'' is, therefore, evident. A transport vehicle may be a light Motor Vehicles but for the purpose of driving the same, a distinct licence is required to be obtained". This was based on the contents of Section 10 which clearly defines that ''Light Motor Vehicles'' and ''Transport Vehicle'' were classified jn two different classes and the provisions of Sub-section (2) of Section 10 required distinct licence for driving such vehicles.

15. The distinction between a ''transport vehicle'' and other vehicles can also be noticed from Section 14 of the Motor Vehicless Act. Sub-section (2) of Section 14 provides for duration of a period of three years in case of an effective licence to drive a ''transport vehicle'', whereas in case of any other licence, it may remain effective for a period of 20 years.

16. It is, therefore, clear that though Uttam Singh Yadav was holding a valid and effective driving licence to drive a light Motor Vehicles, but his licence was not valid and effective to drive a transport vehicle or a passenger carrying vehicle.

Therefore, the finding of the Claims Tribunal that driver Uttam Singh Yadav was holding a valid and effective driving licence to drive the passenger bus cannot be accepted and the same is set aside.

17. Now we shall consider about the quantum of compensation. Claimant-Janki Bai has pleaded that the deceased was earning Rs. 6,000/ - per month by driving his own auto-rickshaw. She was examined as A.W. 1. In her Court evidence, she deposed that the deceased was earning Rs 300-350/- per day. Except the above oral evidence of the claimant there is no other evidence on record to establish such income of the deceased. Janki Bai (A.W. 1) admitted in her evidence that this auto-rickshaw was financed through Central Bank of India, Korba, and records of the auto-rickshaw must be in the said Bank. She further admitted that this auto-rickshaw was purchased 1-1/2 years prior to the date of accident. She deposed that she cannot tell as to how much amount is outstanding in the loan account of the deceased. The Tribunal, considering the above circumstances, held that out of earning from driving the auto-rickshaw, the deceased must be paying bank installment and he must be spending certain amount on maintenance of the auto-rickshaw as also in fuel, etc. The Tribunal, therefore, assessed the monthly income of the deceased as Rs. 2,000/-. After appreciating the entire evidence relating to the income of the deceased, we do not find ariy fault in such assessment made by the Tribunal.

18. The Tribunal has been quite liberal in deducting Rs. 800/- towards the personal expenses of the deceased, whereas, the deduction would have gone to the extent of 50% on the judgment of the Supreme Court in Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, , in which, it was held that the general rule regarding deduction from the income of the deceased is 50%, if he is bachelor and one-third if he is married.

19. The deceased was unmarried and the claimant and Respondent No. 5-Babulal Sahu are the parents of the deceased. The Tribunal has used multiplier of 15. Whereas, in view of the dictum of the Supreme Court in The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, , the multiplier should not have been more than 10. Over and above, the Tribunal has been further liberal in awarding interest at the rate of 12% per annum from the date of filing the Claim Petition till realization. We, therefore, do not find any scope for enhancement of compensation awarded to the parents by the Claims Tribunal.

20. In the result, the appeal filed by the United India Insurance Company Ltd. i.e. M.A. No. 187/2001 is allowed. The United India Insurance Company Ltd. is exonerated from its liability to pay compensation. It is directed that the owner and the driver of the offending mini-bus would be jointly and severally liable to pay the amount of compensation. If any amount has already been paid by the Appellant/Insurance Company, the Insurance Company shall be entitled to recover the said amount from the owner and the driver of the mini-bus and in such case, the parents would be entitled to receive the difference after

adjustment of the amount already paid from the owner and the driver.

21. The appeal filed by the claimant i.e., M.A. No. 142/2001 and the cross-objection filed by Respondent No. 5 (Babulal Sahu i.e., M. (C) P. No. 37/2004) stand dismissed.

22. There shall be no orders as to cost(s).

