(2018) 03 CHH CK 0064

In the Chhattisgarh High Court

Case No : Misc. Appeal (C) No.1082, 1194 of 2015

SMT. PRABHA SAHU — APPELLANT

Vs

SURENDRA KUMAR SATNAMI — RESPONDENT

Date of Decision : 16-03-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 166, 49(2)(a)(ii)

Citation : (2018) 03 CHH CK 0064

Hon'ble Judges : RAM PRASANNA SHARMA

Bench : Single Bench

Advocate : JA Lohani, Chitra??Shrivastava

Final Decision : Partly Allowed

Judgement

1. As both above mentioned appeals arise out of same judgment, both are being heard and disposed of by a common order.

2. These two miscellaneous civil appeals arise out of award dated 05.5.2015 passed by Additional Motor Accidents Claims Tribunal, Gariyaband, Civil

District Raipur (Chhattisgarh) in Claim Case N0.10/2014 awarding compensation of Rs.7,23,000/- to the claimants with interest thereon.

3. Facts of the case in brief are that deceased Ritesh Kumar Sahu was driving motor cycle bearing registration No.CG-04-KV1815, when he reached

near canal of village Kirwai a Hyva Truck bearing registration No.CG-04 JC 1701 driven by Surendra Kumar dashed the motor cycle causing instant

death of Ritesh Kumar Sahu. The deceased was operating food counter and was earning Rs.15,000/- per month. The claimants being wife, children,

father and mother of the deceased filed claim application before the Tribunal in which the respondent-Insurance Company/Owner/Driver of the

offending vehicle denied the allegations.

4. It is contended on behalf of the Insurance Company that the driver of the offending vehicle was not having valid driving licence to drive the said

vehicle, which is breach of insurance contract, therefore, the Company is not liable to pay the compensation. In view of this Court, breach of Policy

condition has to be proved by the Insurance Company but from the record of the Tribunal, it appears that the Company has laid no evidence to

establish the breach of policy conditions. It is contended on behalf of the Company that the Tribunal has not provided opportunity to lead the evidence

but from the record of the Tribunal, it appears that the Tribunal granted time to adduce evidence to the Insurance Company on 11.02.2015, 24.3.2015,

16.4.2015 and 29.4.2015, but no evidence was adduced by the Insurance Company. Therefore, contention of the Insurance Company is not

acceptable as per the record of the Tribunal. The Insurance Company has failed to establish breach on the part of insured, i.e. owner of the offending

vehicle.

5. In National Insurance Company Limited vs. Swaran Singh and others,reported in (2004(3) SCC 297, it is held by the Hon'ble Apex Court as under:

â??(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation

to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all

vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms

of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section

149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or

disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the

third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable

care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at

the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said

proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on themâ??.

Therefore, the Company cannot be absolved from the liability to pay compensation to the third party.

6. The Tribunal has considered the income of the deceased as Rs.4500/- per month. In the present case date of incident is 21.01.2014 and minimum

wages prevailing at the time of the incident was Rs.200/- per day. Therefore, income of the deceased cannot be calculated less than minimum wages,

hence, the annual income of the deceased comes out to Rs.72,000/- and after deduction of Â¼ as personal expenses of the deceased, it comes out to

Rs.54,000/-; after applying multiplier of 16, as the age of the deceased was between 30-35 years, it comes out to Rs.8,64,000/-. The Tribunal has also

awarded Rs.75,000/- on conventional heads and the same is as per the law settled on the point. Thus, the claimants are now held entitled for a total

sum of Rs.9,39,000/- (Rs.8,64,000/- + Rs.75,000/-) from the date of filing of the application i.e. 11.01.2014.

7. In the result, MAC No.1194/2015 filed on behalf of the Insurance Company is dismissed and MAC No.1082/2015 filed on behalf of the claimants is

allowed in part. It is ordered that the Insurance Company shall pay the claimants an amount of Rs.9,39,000/- from the date of filing of the application,

i.e. 11.01.2014 and shall also pay interest @ 9% till realization of the amount. The Tribunal will disburse the amount as directed in the award. Thus,

the appeal of the claimants is allowed in part and the impugned award is modified to the extent indicated above. All other findings are upheld being not

under challenge.

