
(2007) 11 CHH CK 0007
In the Chhattisgarh High Court
Case No : M.A. No. 1219 of 1996

Smt. Ravanna and Others

APPELLANT

Vs

Pitambar Lal Sao and Others

RESPONDENT

Date of Decision : 16-11-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 167, 173

Citation : (2008) 2 MPJR 75

Hon'ble Judges : Sunil Kumar Sinha, J; L.C. Bhadoo, J

Bench : Full Bench

Advocate : Prafull Bharat, for the Appellant; N.P. Kostha, Advocate, For Respondent No. 1, Mr. Ajay Mishra, Advocate and Mr. Prashant Jayaswal , For respondent No. 2/Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

L.C. Bhadoo, J.

The claimants, who are wife, daughter & son of Late Chinna Rao, have preferred this appeal u/s 173 of the Motor Vehicles Act, 1988, being aggrieved by the award dated 06.08.1996 passed by the 3rd Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur in claim case No. 46/95 whereby the learned Tribunal even though assessed loss of dependency to the tune of Rs. 1,68,000/- amongst other compensation under the heads of loss of consortium, love & affection, shock & mental agony to the tune of Rs. 10,000/-, Rs. 4,000/- and Rs. 2,000/- respectively and held that they are entitled for compensation of Rs. 1,84,000/- in all, along with 12% interest per annum from the date of filing of claim petition, but dismissed the petition of the claimants on the ground that the Tribunal has no jurisdiction to entertain the petition. The claimants ought to have filed the petition under Workmen's Compensation Act, 1923 before the Commissioner of Compensation.

The facts, in brief, necessary for the disposal of this appeal are that on

13.09.1993 Chinna Rao was working as driver on vehicle No. M.B.Y. 8513. On that day, in the right, when his vehicle reached Lohandiguda near village Bandaji, while returning from Michnar market to Jagdalpur, all of a sudden balance of the vehicle was disturbed, the vehicle turned turtle towards the right side and dashed against a tree standing by the side of the road, as a result of which he sustained injuries and died instantaneously. It was mentioned that the said accident took place on account of mechanical failure of the steering wheel. The matter was reported in the Police Station Lohandiguda where crime No. 132/93 was registered.

The claim petition was resisted by Respondent No. 2/the Oriental Insurance Company. They denied the manner in which the accident alleged to have been taken place. Even it is denied that Late Chinna Rao died in motor accident. Even income of Chinna Rao to the tune of Rs. 12007/- was denied. Respondent No. 3 however filed a reply accepting the manner in which the accident took place. It was further mentioned that late Chinna Rao was getting Rs. 1200/- per month. He used to get daily allowances as and when he used to take the vehicle outside. He used to earn Rs. 14,400/- per year.

After framing of the issue, parties were allowed to lead evidence & after hearing learned Counsel for the respective parties learned Tribunal passed impugned award as aforesaid.

We have heard learned Counsel for the parties.

Learned Counsel for the Appellants while drawing attention of the Court towards Section 167 of the M.V. Act argued that as per the provisions of Section 167 of the M.V. Act the claimants had option for claiming compensation under either the M.V. Act or the Workmen's Compensation Act, 1923.

As far as finding of the Tribunal regarding loss of dependency and compensation awarded under other heads in all to the tune of Rs. 1,84,000/- is concerned, same has not been questioned by the Respondents by filing any appeal or by filing any cross-objection, therefore, to that extent, compensation awarded by the Claims Tribunal has not been challenged by either party. The only short question which required to be decided by this Court is to the extent that whether finding of the Tribunal is erroneous on the ground that claimants had option to file compensation case under the Motor Vehicles Act?

Having heard learned Counsel for the parties, we have considered the provisions of Section 167 of the Motor Vehicles Act which starts with non obstante clause that "Notwithstanding anything contained in the Workmen's Compensation Act, 1923(8 to 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Bare perusal of the above provision of Section 167 shows that the same is clear in its term and it gives option to the claimants

to file claim under the Motor Vehicles Act, 1988, notwithstanding anything contained in the Workmen's Compensation Act, 1923. The only rider is that the claimants are entitled to have option to file claim under one of the Acts and not under both. The claimants preferred to file claim petition under the Motor Vehicles Act, 1988, therefore, finding of the Tribunal is apparently erroneous. It has been mentioned in para-21 of the award that there is clause in Bima policy according to which, the claim petition ought to have been filed under the Workmen's Compensation Act, 1923- As per clause IMT-17, Legal Liability to persons employed in connection with the operation and/or Maintaining and/ or Loading &/or Unloading of motor vehicles: In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the Company shall indemnify the insured against his legal liability under: The Workmen's Compensation Act 1923 and subsequent amendments of that Act prior to the date of this Endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading/or unloading but in any case not exceeding seven in number including driver and cleaner) whilst engaged in the services of the insured in such occupation in connection with the.....and not exceeding six in number (excluding driver) and will in addition be responsible for all costs and expenses incurred with it's written consent.

As per the policy, Rs. 105/- was charged for 5+2 persons employed in connection with the operation, maintenance, loading and unloading of the motor vehicle. But, we are of the considered opinion that this clause of the policy cannot override the statutory provisions of Section 167 of the Motor Vehicles Act which starts with non obstante clause that notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923), in case of death or bodily injury, the claimants shall be entitled to file claim petition under the Motor Vehicles Act or under the Workmen's Compensation Act, 1923. The claimants have exercised their option by filing a claim petition before the Motor Accident Claims Tribunal, thereby they have not committed any illegality. Therefore, finding of the Tribunal that the Tribunal had no jurisdiction is erroneous. We are fortified in our view by the judgment of the Apex Court in the matter of National Insurance Co. Ltd. Vs. Mastan and Another, . In para-22, the Apex Court held that "Section 167 of the 1988 Act statutorily provides for an option to the claimant stating that where the death of or bodily injury to any person given rise to a claim for compensation under the 1988 Act as also the 1923 Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Section 167 contains a non obstante clause providing for such an option notwithstanding anything contained in the 1923 Act." Therefore, in view of the above discussion, we are of the considered opinion that finding of the Tribunal that the Tribunal has no jurisdiction to entertain the claim petition cannot be sustained.

In the result, the appeal of the claimants succeeds and same is allowed.

Respondent No. 2/the Oriental Insurance Company is directed to pay compensation to the tune of Rs. 1,59,000/- in addition to 12% interest as awarded by the Tribunal. The claimants are entitled to their share in terms of para-25 of the impugned awards.