(2011) 11 CHH CK 0001

In the Chhattisgarh High Court

Case No : M.A. No. 486 of 2004

Smt. Shakuntala Devi Parakh and Another APPELLANT

Vs

Subhash Sabath and Another RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Citation : (2012) 1 CG.L.R.W. 182

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Keshav Dewangan, for the Appellant; H.B. Agrawal with Ms. Meera Jaiswal for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—This appeal has been filed by the claimants against the impugned award dated 31-12-2003 passed by IV Addl. Motor Accident Claims Tribunal (FTC), Jagdalpur in Claim Case No. 75/2002, dismissing the claim petition filed by the claimants who were legal heirs/representatives of the deceased. The deceased was owner and one of the occupants of the vehicle in question. Brief facts of the case as per the version of the claimants are that on 6-4-2001, deceased Gyanchand Parakh alongwith his daughter and other relatives was coming from Raipur to Jagdalpur in a Car bearing Regn. No. M.P. 25-C/0036. Respondent no. 2 was the insurer of the vehicle. On the way at about 4.00 a.m., the said vehicle, which was being driven by respondent no. 1 Subhash Sabath in a rash and negligent manner, struck against a tree near P.T.S. godown Boregaon due to which all passengers sustained injuries. They were brought to R.N.T. Hospital, Kondagaon where Gyanchand Parakh expired. A three months child Khyati Surana also died in the said accident and others sustained grievous injuries. At the time of accident, the deceased was aged about 50 years, he was running a wholesale business of Agricultural equipments for the entire district and was earning Rs. 1,20,000/- per annum. The claimants being dependents/ legal representatives have filed Claim Petition u/s. 166 of the Motor Vehicles Act for the award of a total compensation of Rs. 37,00,000/- on various heads.

2. The learned Claims Tribunal having regard to the facts situation and material and evidence on record has held that the Car bearing Regn. No. C.G. 16/0611 driven by non-applicant no. 1 in a rash and negligent manner, struck against the tree, as a result of which, Gyan Parakh died; the vehicle was insured with respondent no. 2; the driver was having valid and effective driving licence. However, learned Claims Tribunal after considering the objections made by the Insurance Company in respect of non-payment of premium for the owner of the vehicle rejected the claim of the appellants who were legal representatives of the deceased/ owner of the said vehicle.

3. We have heard learned counsel for the parties and have also gone through the records of the Tribunal.

4. In fact, 5 claim petitions were filed as excluding driver, 5 persons were traveling in the vehicle. Out of which, two were deceased persons including Gyanchand and three were injured. The Claims Tribunal has granted compensation to the three injured and the other dead person on the ground that there was limit of insurance for 4 persons in the insurance policy and therefore, denied to grant compensation to the claimants of the instant appeal who were the dependents of the deceased Gyanchand on the ground also that the owner was not included in the number of persons i.e., four. We have perused the insurance policy and found that nothing was mentioned therein that the owner would be excluded. Rather against the name of the insured person, the name of the owner Gyan Chand Jain has been mentioned, therefore, the legal heirs of the person who was insured has been denied the claim and other persons have been given. If there was limit of 4 persons in the insurance policy, the insured person was compulsorily covered therein.

5. In case of National Insurance Co. Ltd. Vs. Anjana Shyam and Others, , Hon''ble the Apex Court has laid down the principle that the higher amount of compensation should have been paid by the Insurance Company and remaining persons liability was of the owner and in case of death of owner their legal representatives. In the said case, Hon''ble the Apex Court has in sum and substance held vide Paras 20 & 21 that inspite of the relevant provisions of the statute, insurance still remains a contract between the owner and the insurer and the parties are governed by the terms of their contract. The insured is covered only to the extent of the passengers permitted to be insured or directed to be insured by the statute and actually covered by the contract. The Insurance Company can be made liable only in respect of the number of passengers for whom insurance can be taken under the Act and for whom insurance has been taken as a fact and not in respect of the other passengers involved in the accident in a case of overloading.

Further in para 22 it has been held as follows:

22. Then arises the question, how to determine the compensation payable or

how to quantify the compensation since there is no means of ascertaining who out of the overloaded passengers constitute the passengers covered by the Insurance Policy as permitted to be carried by the permit itself. As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind we think that the practical and proper course would be to hold that the Insurance Company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of the compensation awarded to the extent of the number of passengers covered by the insurance policy.

In view of the above discussion, the matter requires reconsideration at the end of the Tribunal. Therefore, we allow this appeal in part, set aside the impugned award dated 31-12-2003 passed in Claim Case No. 75/2002 and remit the matter back to the Tribunal for deciding the claim petition afresh at the earliest in the light of the observations made above. However, in case the lowest amount of compensation is to be paid by the owner and if it is found that the liability of the owner who is no more goes on the legal heirs/legal representatives, while making payment to the claimants, the amount which has been paid on lowest compensation shall be adjusted towards payment to the claimants. The records of the Tribunal shall be sent back without further delay. No order as to costs.

