(2012) 02 CHH CK 0047

In the Chhattisgarh High Court

Case No : M.A. (C) No. 393 of 2009

The Oriental Insurance Co. Ltd. APPELLANT

Vs

Rambaran Lahre and Others RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 1 MPJR 5

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : Shailendra Sharma, for the Appellant; Shivendu Pandya, Advocate For respondent No. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

N.K. Agarwal, J.—This is insurer''s appeal against the award dated 29.04.2008 passed by the XIth Addl. Motor Accident Claims Tribunal, Raipur (for short ''the Tribunal'') in claim case No. 53/07. As against the compensation of Rs. 21,90,000/- claimed by respondent No. 1 to 4 by filing application u/s 166 of the Motor Vehicles Act, 1988 (for short ''MV Act'') for the death of deceased Yashwant Kumar in the motor accident on 23.02.2007, the Tribunal has awarded a total sum of Rs. 2,17,500/- as compensation along with interest @ 6 percent per annum from the date of application till its actual payment against the driver and appellant/ insurance company.

2. The Tribunal, on a close scrutiny of the evidence led, held : the accident had occurred due to rash and negligent driving by driver of Truck bearing registration No. CG-04-G-9233; deceased Yashwant Kumar who was sitting in the Truck, died on account of injuries sustained by him in the said accident; appellant/insurance company liable for payment of compensation to the claimants as it could not establish violation of policy conditions; assessed and awarded aforesaid sum as compensation against the appellant as well as respondent No. 5/Driver.

3. Shri Shailendra Sharma, learned counsel appearing for the appellant would submit: deceased Yashwant Kumar was neither owner nor employee of the Truck, he was sitting in the Truck as a gratuitous passenger; the claim petition has been filed without impleading the owner of vehicle as party respondent; the owner of the vehicle Rambaran Lahre/respondent No. 1 is the main claimant inasmuch as the respondent No. 2 to 4 are sons and daughter of owner/Rambaran who were not dependent upon the deceased, but are dependent upon respondent No. 1/ Rambaran; the appellant/insurance company is neither statutory liable to cover the risk of gratuitous passenger sitting in the goods carriage commercial vehicle nor had undertaken such risk by entering into special contract and by charging extra premium therefore, therefore, the Tribunal went wrong in fastening the liability of payment of compensation upon the insurance company.

4. On the other hand, Shri Shivendu Pandya, learned counsel appearing for the respondent No. 1 to 4 while supporting the findings of Tribunal regarding liability of insurance company for payment of compensation, would submit the amount of compensation awarded by the Tribunal is shockingly on lower side, and therefore, the cross-objection preferred by respondent No. 1 to 4 deserves to be allowed and the award amount deserves to be suitably enhanced.

5. I have heard the counsel appearing for the parties and perused the order impugned including records of the Tribunal.

6. It is nobodies case deceased was owner or employee of the Truck. Admittedly claimant Rambaran i.e. respondent No. 1 is the owner of the vehicle and also one of the claimant. Deceased was his son and was certainly sitting in the vehicle in question as gratuitous passenger.

7. It is settled law that provisions of the MV Act do not enjoin any statutory liability on the owner of the vehicle to get his vehicle insured for any passenger traveling in a goods carriage vehicle and the insurer would have no liability therefor. However, an owner of a vehicle intends to cover himself from other risks; it is permissible to enter into a contract of insurance in which event the insurer would be bound to reimburse the owner of the vehicle strictly in terms thereof. A contract of insurance which is not statutory in nature should be construed like any other contract.

8. The Supreme Court in case of New India Assurance Company Limited v. Asha Rani and Others, 2002 AIR SCW 5259 has held that for passengers traveling in goods vehicle, the insurance company would have no liability therefor. This position was further highlighted by the Hon''ble Supreme Court in cases of Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc., National Insurance Co. Ltd. Vs. Ajit Kumar and Others, , National Insurance Co. Ltd. Vs. Baljit Kaur and Others, and National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others,

9. A bare perusal of policy would reveal appellant/insurance company has not assumed the risk of any gratuitous passenger sitting in the Truck by entering into

special contract with the owner of the vehicle and by charging extra premium therefor, in the absence whereof, by applying the ratio of law laid down by the Supreme Court in the cases referred hereinabove, the liability of payment of compensation cannot be fastened upon the appellant/ insurance company.

10. Further, the Supreme Court in case of Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Others, has held, where an accident occurs owing to rash and negligent driving by the driver of the vehicle, resulting in sufferance of injury or death by any third party, the driver would be liable to pay compensation therefor. Owner of the vehicle in terms of the Act also becomes liable under the MV Act. In the event vehicle is insured, the insurance company would statutorily be enjoined to indemnify the owner. The insurers, however, would be liable to reimburse the insured to the extent of the damages payable by the owner to the claimants subject of course of the limit of its liability as laid down in the Act or the contract of insurance.

11. In the instant case, neither the deceased was a third party nor the claim has been preferred against the owner, on the contrary, owner himself is the claimant.

12. Examining the matter from any angle, it is crystal clear that the Tribunal has grossly erred in holding the insurance company liable for payment of compensation to the claimants.

13. Cross-objection filed by the respondent No. 1 to 4 in the facts and circumstances of the case, is also devoid of merit and therefore, the same is also dismissed.

14. For the forgoing, the appeal is allowed in part. Part of the award by which the liability has been fastened upon the appellant/The Oriental Insurance Co. Ltd. to pay compensation to the claimants is set aside. Award is modified to the above extent. Rest of the conditions mentioned in the award shall remain intact.

15. Appellant/insurance company is entitled to recover the amount deposited by it & disbursed to the claimants, if any, from the respondents/ claimants by filing execution petition before the concerned claims Tribunal. No order as to costs.