(2010) 09 CHH CK 0037

In the Chhattisgarh High Court

Case No : Misc. Appeal No. 132 of 2004

United India Insurance Co. Ltd. APPELLANT

Vs

Ramniwas Sharma (since dead) and Others RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 147

Citation : (2011) 1 MPHT 48

Hon'ble Judges : N.K. Agarwal, J;I.M. Quddusi, J

Bench : Full Bench

Judgement

I.M. Quddusi, J.—This appeal, filed by the Insurance Company, arises from the award dated 5th December, 2003, passed by the Motor Accident Claims Tribunal, Raigarh, in Claim Case No. 10/2002 (old No. 29/1999), imposing the liability on the Appellant Insurance Company for payment of compensation awarded to the claimants by the impugned award to the tune of Rs. 7,55,000/-.

2. Since the Respondent No. 1/claimant No. 1 Ramniwas Sharma died, his name is deleted from the array of the parties.

3. The brief facts, in nutshell, are that on 24-6-1999 at about 8.30 p.m. in the evening deceased Bajranglal, with an object to perform the work of Munim (clerk) was going to M/s. Gayatri Rice Mill, Saria, while sitting in the Jeep, bearing registration No. M.P. 26 F/3174, at that time, due to rash and negligent driving of the driver of the vehicle, i.e., Respondent No. 7 (Shankar Lal Agarwal) herein, the jeep turned and turtle, as a result of which the accident occurred and Bajranglal died in that accident. The claimants, being legal heirs of the deceased, stating that by doing the work of Munim (Clerk) at various places, the deceased was earning Rs. 10,700/- per month, filed a claim case for award of a total compensation of Rs. 58,89,400/- under various heads.

4. At the time of accident, the vehicle in question was insured with the Appellant. The Respondent No. 8 (Anand Bansal) was the registered owner of the vehicle,

who had sold the vehicle to the Respondent No. 9 (Kishan Lal Agarwal).

5. The original policy has not been filed by the claimants. However, a copy of the policy is available on record, which shows that the passengers of the vehicle, except the driver, were not covered under the policy. It was a third party insurance with risk vis-a-vis covered by only the driver. However, learned MACT concerned has decided the case solely on the ground that the case is covered by the decision in the case of New India Assurance Company Vs. Shri Satpal Singh and Others, wherein it is held that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. But this view has been subsequently over-ruled in the decision in the case of New India Assurance Co. Ltd. v. Asha Rani and Ors. 2003(2) M.P.H.T. 474 : (2003) 2 SCC 223 wherein Hon''ble the Apex Court held as under:

25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen''s Compensation Act. It does not speak of any passenger in a "goods carriage".

26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, were are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used, i.e., "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger traveling in a goods vehicle, the insures would not be liable there for.

27. Furthermore, Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas Sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

28. An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court''s decision in New India Assurance Co. v. Satpal Singh (supra), is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy where for even no premium is required to be paid.

6. In view of the above legal position in the facts and circumstances of the case

in which the deceased was sitting in the offending vehicle as gratuitous passenger which is not covered under the insurance policy, the Insurance Company cannot be held liable for payment of compensation. Therefore, we allow this appeal and set aside the impugned award dated 5-12-2003, only in respect of liability fixed upon the Insurance Company for payment of compensation awarded to the claimants. However, the other portion of the award shall remain intact.