(2008) 03 CHH CK 0030

In the Chhattisgarh High Court

Case No : M.A. No. 1222 of 2004

United India Insurance Company Ltd. — APPELLANT

Vs

Chouvaram and Others — RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 279, 304(A), 337, 338

Citation : (2009) 1 MPJR 1

Hon'ble Judges : Rajeev Gupta, C.J;Sunil Kumar Sinha, J

Bench : Full Bench

Judgement

Sunil Kumar Sinha, J.

These appeals have been directed against the award dated 28.08.2004 passed by The Motor Accident Claims Tribunal, Raipur in Claim Case No. 14/2003 M.A. No. 1222/2004 has been filed by the Insurance Company challenging its liability, where as M.A. No. 13/2006 has been filed by the Claimants for enhancement of the amount of compensation awarded by the Claims Tribunal.

The claimants are the unfortunate parents and sister of the deceased Heera Bai, who died in the motor accident on 30.4.2003. Oh her death, the claimants filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 pleading that on 30.4.2003, when the deceased was traveling as a labour (Reja) in Tata-709 vehicle bearing registration No. MH-31-W-3889, the said vehicle met with an accident on account of rash and negligent driving by the driver resulting into her death. They pleaded that the deceased was earning RS. 80/- per day on account of her labour and she was also earning Rs. 1000/ - per month by stitching clothes, therefore, they should be given compensation in sum of Rs. 8,70,000/- along with interest. To support their claim, they further pleaded that after the accident, a First Information Report was also lodged in concern police station, on which, a crime was registered against the driver u/s 279, 337, 338 & 304 (A) I.P.C. and the dead body of the deceased was sent for post-mortem examination and the vehicle etc. were also seized.

The driver remained ex-parte before the Tribunal.

The owner filed his written statement denying the contention about rash and negligent driving of the vehicle by the driver. He also denied the income of the deceased Heera Bai as Rs. 80/- per day and pleaded that whenever he required, he used to take Heera Bai with his vehicle and on that days he used to pay her Rs. 60/- per day. He further pleaded that his vehicle was insured with the said insurer and in view of the vehicle being insured no liability can be fastened on him.

The Insurance Company also filed its written statement and denied the contents of the claim petition. It took specific plea that the said vehicle was registered and insured as a goods vehicle, whereas, the deceased and other persons were traveling as the passengers in the said vehicle, therefore, the Insurance Company would not be responsible to pay compensation to the claimants.

The Learned Claims Tribunal framed various issues in this case and after recording evidence of the parties, it recorded a finding that the deceased was traveling as a labour in the said vehicle and the Insurance Company shall be liable to pay compensation to the claimants on account of death of the deceased in the said motor accident. It also recorded a finding that the deceased was aged about 20 year and she was earning Rs. 40/- on the days when she was being taken by truck owner and in this manner, she was earning Rs. 800/- per month. After deducting 1/3rd as her own expenditure, the monthly dependency was determined as Rs. 533/-; the annual dependency was determined as Rs.6,396/- and using multiplier of 16, the loss of dependency was determined as Rs. 1,02,336/- over and above, it awarded Rs. 6000/- as a loss of consortium and Rs. 2,000/- as the funeral expenses. In this manner a total sum of Rs. 1,10,336/- was awarded as compensation by the Tribunal and on the pecuniary loss i.e. Rs. 1,04,336/-, it also awarded interest @ 9% per annum from the date of filing of the claim petition till its realization. It is against this award, the parties, referred to above, have filed these two appeals.

Shri Sanjay S. Agrawal, learned counsel for the Insurance Company would argue that the Tribunal erred in law in recording a finding that the deceased was traveling as a labourer in the offending vehicle. He referred to the contents of the E.I.R. filed by the claimants in support of their claim petition, in which, it has been mentioned that the vehicle was hired by the maker of E.I.R. for performing the Chauthiya ceremony of his daughter and he along with many other family members, including the deceased, were traveling in the vehicle as passengers and they were going to bring back the daughter from her in -laws place and the accident occurred during the course when the vehicle was being used for such purpose. He submitted that this part of evidence has completely been ignored by the Tribunal and the Tribunal, on the basis of oral evidence of A.W.1 and A.W.2 has recorded the finding that the deceased was traveling as labourer in the vehicle at the time of accident.

Shri Shivendu Pandya, learned counsel for the appellant would argue that the income of the deceased has wrongly been assessed by the tribunal on the lower side and a wrong multiplier has been adopted, therefore, the amount of compensation should be suitably enhanced.

Per contra, Shri M.K. Bhaduri, learned counsel for the owner would submit that on the basis of oral evidence led by the claimants, it is established that the deceased was traveling as labourer in the vehicle and as per the terms of the policy, the Insurance Company has rightly been held responsible to pay compensation on account of death of the deceased.

We have heard learned counsel for the parties at length and have also perused the records of the claim case.

Admitted, the offending vehicle bearing Regn. No. M.H. 31/W-3889 owned by Shri Prakash Sharma was registered as a goods vehicle and description to this effect is mentioned in the document filed by the Insurance Company as Ex. D-2 A permit to carry public goods was also issued by the competent authority, copy of which has been proved as Ex. D-1. Even in the Insurance Policy, it has been mentioned that the said policy was for goods carrying commercial vehicle (open package policy), therefore, it is established that the offending vehicle was insured as a goods carrying commercial vehicle and under the policy, its use was limited to goods carrying. The claimants have come with a case that the deceased was traveling as a coolie on the said vehicle and the same was also admitted by the owner of the vehicle in the written statement and for substantiating such plea, they had examined two witnesses namely Jahur Singh (A.W.1) and Chhaganlal (A.W.2). Jahur Singh (A.W.1) who is the father of the deceased, has deposed that the deceased was traveling as a Coolie in the offending vehicle. In para 3 of his deposition he has very specifically deposed that in support of his claim petition he has filed the copy of F.I.R. as Ex.A-1, copy of the seizure memo prepared by the police as Ex.A-3, copy of the order of the concerned Court regarding handing over the vehicle on Suprudnama as Ex.A-4, copy of the postmortem report as ExA-S and copy of the insurance certificate of the vehicle as Ex. A-7. In the cross examination, he has admitted that he had not seen his daughter going in the offending vehicle and he has also denied the suggestion that the vehicle was being usd by Barathis at the time of the accident. A.W.2 Chhaganlal has deposed that on 30.4.2003 when he was going towards Mudagaon on his bicycle, he saw that the offending vehicle met with an accident and a girl sitting in the vehicle died on the spot. In para 2, he deposed that thereafter many persons gatherd on the spot and the matter was reported to the police. He denied the suggestion that 20-30 persons were sitting on the Matador and has deposed that in fact 6-7 persons were sitting therein. In view of the above oral evidence of the claimants, if we look into the documentary evidence filed by them in support of their claim petition, it would appear that in the E.I.R. (marked as Ex.P.1 and written as Ex.A-1 in the deposition sheet), it has been stated by the maker, who was the hirer of the vehicle, that after marriage of his daughter namely Gendi Bai, she was to be brought from her in laws place, for which, on 30.4.2003, he contacted the owner of the vehicle namely Radhe Shyam (father of registered owner) of village jhara and his vehicle bearing Regn. No. M.H.31W/3889 was hired and he along with his other family members including Sukhi Bai, Dinesh, Dhani Ram, Narendra, Rajeshwar, Mohan, Kandayal, Lakshni, Gayaram, Jasoda, Meena, Lakhni, Bejin Bai, Heera Bai (the deceased), Chanda bai, Mohan, Tikam Bai, Suresh, Rukmani Bai Sunlal, Hemlal and many other ladies and small children were traveling on the said vehicle which met with an accident, on account of rash and negligent driving of the driver. In fact, the Tribunal has completely ignored this evidence and has recorded a finding giving weightage to the oral evidence of above two witnesses A.W.1. and A.W.2. The Tribunal has accepted the E.I.R. and other documents are not denied by the opposite party but has not looked in to the contents thereof.

In the matter of Oriental Insurance Company Ltd. Vs. Premalata Shukla & others, AIR 2007 SCW 3591, with reference to the contents of a document, the Apex Court held that once part of contents of the document are admitted in evidence, party bringing such document on record cannot be permitted to contend that other contents contained in rest part thereof had not been proved. In the said case, the E.I.R. was brought on record by the claimants for the purpose of proving motor accident. The Court said that it could be relied upon to fix liability of driver of offending vehicle as well. The Apex Court said that a party objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and where for consent of the other party has been obtained, the former cannot be permitted to turn round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon.

In view of the above decision of the Apex Court, the contents of the E.I.R. were required to be looked into by the Tribunal and the Tribunal erred in law by ignoring the said contents which clearly prove that many persons including the deceased were traveling on the offending vehicle in the capacity of passengers as the vehicle was hired by one Vishal, s/o Phool Singh Kewat for the purpose of performing Chauthiya ceremony, that is, for bringing back the daughter from her in-laws place after marriage. Therefore, in view of the above evidence, it is established that the goods vehicle was being used for traveling of the passengers and in such circumstances, the insurer of the vehicle would not be responsible to pay compensation on account of death of any of the said passengers. We therefore set aside the finding recorded by the Tribunal holding the Insurance Company liable for payment of compensation in this case.

About the quantum of the compensation, as stated above, the tribunal has held that in fact, the deceased was earning Rs. 40/- per day and she was getting this amount on the days when she was taken as a labourer by the owner of the vehicle. The owner of the vehicle himself has made averment in the written statement that whenever he needed, he used to take the services of the deceased. The pleadings in the claim petition is that the deceased was earning Rs. 80/- per day whereas the pleadings in the written statement of the owner is that he was paying Rs. 60/- per day to the deceased, that too on the days he used to take the services of the deceased. The owner of the vehicle has not examined himself in this case, therefore, looking to the over all evidence, the Tribunal has assed that the deceased was earning Rs. 40/-per day and it was not a regular earning and her earning was dependent on the availability of the work and she must be getting work for 20 days in a calendar month and her monthly income was assessed to be Rs. 800/- Based on the said monthly income, after deducting 1/3rd, the annual dependency was assessed to Rs. 6,396/- and by applying the multiplier of 16, the total dependency has been worked out as Rs. 1,02,336/- Apart from this, Rs. 8000/- has been awarded under other permissible heads, as referred to above, and in all Rs. 1,10,636/- with interst @ 9% per annum from the date of application till its realization has been awarded by the Tribunal. In fact looking to the age of the parents, the multiplier used appears to be on the higher side but since the same has not been challenged by either party, therefore, looking to the over all amount of compensation awarded to the claimants, we do not feel it necessary to interfere in it. In our considered opinion, a just and proper compensation has been awarded to the parents on account of death of their unmarried daughter and we hold it accordingly. We do not find any substance in the argument advanced by Shri Shivendu Pandya, learned counsel for the claimants that the amount of compensation is on the lower side.

In the result, M.A.No. 1222/2004 filed by the Insurance Company is allowed. The Insurance Company is exonerated from its liability to pay compensation to the clamants on account of death of deceased Heera Bai. The claimants shall be entitled to receive the amount of compensation from the owner of the vehicle namely Prakash Sharma award is modified to the extent indicated above.

M.A.No. 13/2006 is dismissed being devoid of merits as the amount of compensation awarded by the Tribunal is just and proper which requires no interference by this Court.

There shall be no order as to costs.

