(2011) 09 CHH CK 0016

In the Chhattisgarh High Court

Case No : Misc. Appeal No. 1078 of 2009

Vinay Shaha and Others — APPELLANT

Vs

Harvilas Hajarilal Mistri and Another — RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2013) ACJ 373 : AIR 2012 Chh 14

Hon'ble Judges : Rajeev Gupta, C.J;Rangnath Chandrakar, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Rajeev Gupta, C.J.—This is claimants'' appeal for enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal, Bhanupratappur, Ranker (for short ''the Tribunal'') vide award dated 28-11-2008, passed in Claim Case No. 94/2007.

2. As against the compensation of Rs. 5,20,000/- claimed by the appellants/ claimants, unfortunate husband and children of deceased Smt. Mayarani Shaha, by filing a claim petition u/s 166 of the Motor Vehicles Act, for her death on 21-11-2006 on account of the injuries sustained by her in the motor accident on 08-11-2006, the Tribunal awarded a total sum of Rs. 1,75,000/-as compensation along with interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

3. The Tribunal on a close scrutiny of the entire evidence led before it held that deceased Smt. Mayarani Shaha died on 21-11-2006 on account of the injuries sustained by her in the motor accident on 08-11-2006; the accident occurred due to rash and negligent driving of the motorcyclist of the offending Hero Honda Motorcycle bearing registration No. CG-04/CN-1956; though the above motorcycle on the date of the accident was insured with the National Insurance Company Limited, as the risk of the pillion-rider was not covered under the

insurance policy, the Insurance Company was not liable to pay compensation to the claimants and the liability in that behalf was of the owner and driver of the offending motorcycle.

4. The Tribunal assessed the income of the deceased at Rs. 15,000/- per annum. By deducting l/3rd of Rs. 15,000/- towards the personal expenses of the deceased, the claimants'' dependency was assessed at Rs. 10,000/-per annum. By multiplying the annual dependency of Rs. 10,000/-with the multiplier of 16, the compensation was worked out to Rs. 1,60,000/-. By awarding further sum of Rs. 15,000/- under other heads, the Tribunal awarded a total sum of Rs. 1,75,000/- as compensation to the claimants for the death of deceased Smt. Mayarani Shaha in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 1,75,000/- @ 6% per annum from the date of filing of the claim petition till the date of actual payment. As the Tribunal exonerated the insurer of the motorcycle from its liability to pay compensation to the claimants, the owner-cum-driver of the offending Hero Honda Motorcycle was directed to pay the above amount of compensation of Rs. 1,75,000/- along with interest due thereon within a period of two months from the passing of the award.

5. Shri M. K. Bhaduri and Shri P. K. Tulsyan, learned counsel for the appellants submitted that though the Tribunal has rightly assessed the compensation payable to the claimants at Rs. 1,75,000/-, it has erred in exonerating the insurer of the motorcycle from its liability to pay compensation to the claimants as in view of the circular dated 16-11-2009, issued by the Insurance Regulatory and Development Authority (for short ''IRDA''), the Insurance Company is liable to pay compensation to the claimants for the death of pillion-rider on a two-wheeler insured under package/comprehensive policy and in the present case the offending motorcycle admittedly was insured under a package/comprehensive policy.

6. Shri B. N. Nande, learned counsel for respondent No. 2, the National Insurance Company Limited, could not dispute that after issuance of the Circular dated 16-11-2009 by the IRDA, the risk of the pillion-rider on a two-wheeler insured under a package/comprehensive policy is covered and the insurer of the said two-wheeler is liable to pay compensation to the claimants.

7. Though learned counsel for the appellants has not challenged the assessment of the income of the deceased; claimants'' dependency; selection of the multiplier by the Tribunal; and the assessment of the compensation of Rs. 1,75,000/- for the death of deceased Smt. Mayarani Shah, for our satisfaction, we have examined the entire evidence available in the Tribunal''s records and we are satisfied that the compensation of Rs. 1,75,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

8. Now, we shall examine the correctness of the finding recoded by the Tribunal whereby the insurer of the motorcycle was exonerated by the Tribunal from its

liability to pay compensation to the claimants.

9. Deceased Smt. Mayarani Shaha at the time of the accident was travelling as pillion-rider on the offending Hero Honda Motorcycle which was being driven by respondent No. 1 Harvilas, the owner-cum-driver of the said motorcycle. This motorcycle for the relevant period was insured under insurance policy Ex.D/1. The above insurance policy Ex.D/1 reveals that it was a package policy for motorcycle/scooter.

10. By virtue of the Circular dated 16-11-2009 issued by the IRDA, the insurer of the motorcycle has been held liable to pay compensation to the claimant/ claimants for the injuries/death of the pillion-rider on a two-wheeler if the said two-wheeler is insured under a package/comprehensive policy.

11. As in the present case, the offending Hero Honda Motorcycle was insured with the National Insurance Company Limited under a package/ comprehensive policy (Ex. D/1) and deceased Smt. Mayarani Shaha was travelling on the said motorcycle as a pillion-rider, the finding recorded by the Tribunal exonerating the insurer of the motorcycle from its liability to pay compensation to the claimants cannot be sustained and is hereby set aside. We hold respondent No. 2 National Insurance Company Limited, the insurer of the offending Hero Honda Motorcycle liable to pay compensation to the claimants for the death of deceased Smt. Mayarani Shaha in the motor accident.

12. As we have held that the compensation of Rs. 1,75,000/- assessed and awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case, the liability of respondent No. 2 the National Insurance Company Limited, now is to pay Rs. 1.75,000/- as compensation to the claimants.

13. So far as the interest on the above amount of compensation is concerned, considering that the unfortunate accident took place on 8-11-2006; the claim petition was filed on 9-5-2007; the impugned award exonerating the insurer of the motorcycle was passed by the Tribunal on 28-11-2008; the appellants filed the present appeal on 15-6-2009; and the appeal is being finally decided today on 22-9-2011 holding the insurer of the motorcycle liable to pay compensation to the claimants, we quantify the amount of interest payable by the Insurance Company to the claimants on the amount of compensation of Rs. 1,75,000/- at Rs. 25,000/-.

14. For the foregoing reasons, the appeal filed by the appellants/claimants for enhancement of the compensation is allowed in part. While maintaining the quantum of compensation of Rs. 1,75,000/- awarded by the Tribunal, we set aside the finding exonerating respondent No. 2 the National Insurance Company Limited, the insurer of the motorcycle from its liability to pay compensation to the claimants and hold the Insurance Company liable to pay the compensation of Rs. 1,75,000/- assessed and awarded by the Tribunal, to the claimants.

15. Respondent No. 2 the National Insurance Company Limited is granted three month''s time for depositing the total sum of Rs. 2,00,000/- (Rs. 1,75,000/- as compensation assessed and awarded by the Tribunal + Rs. 25,000/- towards quantified amount of interest on the above compensation of Rs. 1,75,000/-) before the concerning Claims Tribunal, in the event of the above amount not having been already deposited by the owner-cum-driver of the motorcycle.

16. No order as to costs.

