HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 162/2015

Branch Manager, The Oriental Insurance Co.Ltd. The Oriental Insurance Co. Ltd. Branch office-Ambikapur Distt. Surguja C.G.

Appellant

Versus

1. Smt.Anir Kunwar and Ors. W/o Late Rajaram aged about 32 Years R/o Gram Jaliadand, Thana-Baikuntpur, Distt. Korea C.G.
2. Ku. Pooja D/o Late Rajaram aged about 15 Years Thru- Mother Smt. Anil Kunwar R/o Gram Jaliadand, Thana-Baikuntpur, Distt. Korea C.G.
3. Vikas Kumar S/o Late Rajaram aged about 13 Years Thru- Mother Smt. Anil Kunwar R/o Gram Jaliadand, Thana-Baikuntpur, Distt. Korea C.G.
4. Jokhan Ram S/o Duleshwar aged about 60 Years R/o Gram Jaliadand, Thana-Baikuntpur, Distt. Korea C.G., Thana-Baikuntpur, Distt. Korea C.G.
5. Smt. Shanti Bai W/o Jokhan Ram aged about 55 Years R/o Gram Jaliadand, Thana-Baikuntpur, Distt. Korea C.G., Thana-Baikuntpur, Distt. Korea C.G.
6. Govind S/o Sahdev Ram aged about 30 Years R/o Gram Lalpur (Garudand), Thana-Baikuntpur, Distt. Korea C.G.
7. Ishwar Gupta S/o Parago Gupta, R/o Village- Lohakhan, Mahloi, Raigarh, Distt. Raigarh C.G.

---- Respondents

For Appellant : Shri Ghanshyam Patel, Advocate

For Respondents 1 to 5 : Shri Atanu Ghosh, Advocate
For Respondents 6 & 7 Smt. Usha Chandrakar, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

21.07.2017

1. Present is an appeal preferred under section 173 of the Motor Vehicle Act (in short MV Act) by the Insurance Company assailing the award dated

18/11/2014 passed by the Motor Accident Claims Tribunal, Baikuntpur, District Korea (C.G.) in MACC No.37/2013.

2. The facts of the case in brief is that deceased Rajaram who was working as a labourer met with an accidental death on 29/04/2013 while he was travelling on the tractor bearing Registration No. CG-13A 3203 belonging to Respondents 6 & 7. On account of the rash and negligent driving on the part of the Respondent No.6, the deceased who was sitting on the tractor fell down and suffered grievous injury to which he later on succumbed. The claimants who are the widow, Children and the parents of the deceased had filed the claim application before the claims Tribunal.
3. Taking into consideration the evidences which have come on record the Tribunal vide its impugned award dated 18/11/2014 reached to the conclusion that since the vehicle was duly insured with the Appellant, fastening the liability upon the Insurance Company ordered for payment of compensation to the tune of Rs.6,36,000/- to the claimants.
4. It is this award which is under challenge in the present appeal by the Insurance Company.
5. The Respondents No.1 to 5 have also filed a cross objection/appeal against the same award seeking for enhancement of the compensation awarded.
6. So far as the challenge by the Insurance Company to the impugned award is concerned, the counsel for the appellant submits that there was a clear violation of the policy condition. Since the premium for the passenger was not paid, the appellant cant be fastened with the liability in respect of the death of a passenger. According to the counsel for the Appellant, the policy which was issued in favour of Respondent No.7, was only an act policy whereas the risk which was covered was only of the driver of the tractor alone and not for any other person. It was also submitted that the driver also did not have proper valid license for driving the tractor and thus there was a breach of policy

condition. On both the grounds, the Tribunal has not appreciated the evidence which has come on record in its proper perspective and has wrongly fastened the liability upon the Insurance Company. Lastly it was argued that considering the totality of the facts, the Tribunal ought to have ordered for pay and recovery in favour of the Appellant accepting the breach of policy condition.

7. So far as the contention of the Insurance Company is concerned, if we look into the evidence of the witness examined on behalf of the Insurance Company i.e. non-applicant witness No.3 Prakash Lakda, it would reflect that the said witness during the course of cross examination has accepted the fact that when the policy was initially issued, it was mentioned sitting capacity as 1+1 whereas in the subsequent policy which was produced before the court by the said witness there was a seal endorsed of one driver only reflected on the said policy indicating that the policy which was given to the Respondent No.7 was covering only the risk of the driver. The fact that there were two policies produced during the course of the trial and in one policy the sitting capacity was mentioned as 1+1 and the other policy which was produced by the Insurance Company, showed of 1+1 as the sitting capacity with an additional seal of "one driver only" which was not reflected in the photocopy presented before the Tribunal at the first instance. This putting of an additional seal on the policy which was produced during the course of evidence by the non-applicant witness No.3, forces an inference to be clearly drawn by the Tribunal of the seal having been put only for the purpose of adducing evidence before the Court so that the liability of the Insurance Company could be escaped.

8. As regards the contention of the Insurance Company that the driver did not have a valid license at the relevant point of time in as much as for driving a tractor the endorsement of a transport vehicle is not reflected in the license of

the driver, the said cant be accepted for the reason that the tractor was registered for agricultural purpose and if the tractor was being used for agricultural purpose, it would not fall within the definition of transport vehicle and would be only a light motor vehicle for which there was a license in the possession of the driver. Thus this contention of the Insurance Company also stands negated.

9. Counsel for the appellant further submits that though there appears to be a discrepancy in respect of the seal of “one driver” reflected in the policy but the fact still remains that the premium was paid only in respect of the driver of the vehicle which is reflected from both the policies which were produced during the course of proceeding. The said contention of the appellant may not be of much help to the Insurance Company for the simple reason that the witness of the Insurance Company himself has stated before the Tribunal that the policy issued was with a sitting capacity of 1+1, thus the said ground also stands negated.

10. In view of the same, the appeal so far as the Insurance Company is concerned, the same does not have much force calling for any interference with the impugned award and the appeal of the Insurance Company is accordingly dismissed.

11. So far as the cross appeal of the claimants i.e. respondents 1 to 5 is concerned, the two grounds which have been raised by the counsel for the claimants that the Tribunal has erred in as much as not granting any compensation towards future prospects and that the deduction made under the head of personal expenses is 1/3rd whereas taking into consideration the fact that there are 5 claimants and also in view of the judgments of the Hon'ble Supreme Court in the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** the deduction under such circumstances ought to have been 1/4th seem to be

genuine grounds raised by the appellants. It is well settled by a series of decisions of the Supreme Court starting from the landmark judgment of Sarla Verma (supra) till the case of **Rajesh and Others vs. Rajbir Singh and others** reported in **(2013) 9 SCC 54** for the purpose of calculating compensation, the future prospects should also be borne in mind of the Tribunal and also the fact that in the event of the claimants being more than 4, the deduction towards personal expenses should be 1/4th. Accordingly, this court holds that the impugned award deserves to be modified and the compensation also liable to be enhanced accordingly.

12. Accepting the monthly wages of the appellant to be Rs.4,500/- if we add 50% of it towards future prospects, the total monthly wages would be Rs.5,750/- and the yearly income would come to Rs.81,000/-. If 1/4th of the same is deducted under the head of personal expenses, the yearly income of the deceased would be Rs.60,750/- and if the same is multiplied by the multiplier of 16, the net amount would be Rs.9,72,000/-. Accordingly, the claimants shall be entitled for a compensation of Rs.9,72,000/- towards loss of income as against the amount of Rs.6,04,800/- awarded by the Tribunal. The compensation under other heads remains intact and thus the total amount payable to the claimants would be Rs.10,32,000/- instead of Rs.6,64,800/- as awarded by the Tribunal. Thus, the claimants would be entitle for the enhanced compensation of Rs.3,67,200/- to be paid by the Insurance Company within a period of two months form today. The said amount shall also carry interest at the rate as awarded by the Tribunal.

Sd/-
(P. Sam Koshy)
Judge

Bhola