NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 388 of 2014

(Arising out of order dated 23.01.2014 passed by the learned Additional Motor Accident Claim Tribunal, Kunkuri, District Jashpur in Claim Case No. 69/2010)

- Baldev Singh S/o Jeet Singh Aged About 48 Years, by caste-Sikkh, R/o House No. 189, Sukhiya Road, 10 Number Basti Golmuri, Jamshedpur, Civil & Revenue Distt. Jamshedpur Jharkhand.

---- Appellant

Versus

1. Munita Gupta W/o Late Aditya Kumar Gupta Aged About 24 Years by caste – Rauniyar, R/o Patratoli, P.S. Duldula, Civil & Revenue Distt. Jashpur (C.G.)
2. H.D.F.C. Argo Insurance Company Limited, Mumbai, Through- Branch Office- Jamshedpur, Upper Ground Floor, Gayatri Enclave, Jamshedpur, Distt. Jamshedpur Jharkhand.

---- Respondents

For Appellant	: Shri Soumitra Kesharani, Advocate on behalf of Shri Awadh Tripathi, Advocate.
For Respondent No. 1	: Shri A. K. Prasad, Advocate.
For Respondent No. 2	: Shri N. K. Thakur, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge
Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

01.09.2020

1. Fixation of the liability to the tune of Rs. 29,000/- upon the Appellant/Owner of the offending Truck towards the "3rd party property damage" observing that the liability of Insurer to the said vehicle was only a tune of Rs. 6,000/-, is the grievance projected in this appeal preferred by the owner of the Truck.

2. As revealed from the pleadings and proceedings, on 01.03.2010 there occurred a collision between Maruti Omni Van/Car bearing Registration No. JH 07 A – 8005 and the offending Truck bearing Registration No. HR 63-

4645 owned by the Appellant at about 8:30 pm. Because of the great impact of the hit, fatal injuries were caused to one Aditya Kumar Gupta who was travelling in the Van and also to the driver of the offending Truck by name Vivek Singh; besides causing much damage to the Maruti Van. Both Aditya Kumar Gupta (travelling in the Van) and Vivek Singh (driver of the offending Truck) succumbed to the injuries and lost their lives. The loss of lives of the deceased concerned and the damage caused to the Maruti Van were sought to be compensated by filing separate claim petitions before the Tribunal. In respect of the claim preferred by the widow of the deceased who was travelling in the Van, claim was made seeking for compensation of Rs. 1.25 lac towards the damage caused to the Car. After considering the pleadings and materials brought on record, the Tribunal fixed Rs. 35,000/- as the compensation payable, which was awarded accordingly, with interest, as mentioned above. But in view of the fact that the statutory liability for the Insurer of the offending Truck was to only an extent of Rs. 6,000/-, it was ordered to be paid by the Insurer and the balance amount of Rs. 29,000/- was fixed as the liability of the owner of the offending Truck, which made the Appellant to approach this Court by filing this appeal.

3. During the course of hearing, we raised a query to the learned counsel for the Appellant/Owner of the offending Truck as to whether any wider coverage towards the 3rd party property damage was obtained under the policy paying additional premium. This was categorically answered by the learned counsel for the Appellant in 'negative'. The learned counsel submits that since the entire liability ordered to be satisfied by the Insurer towards the deceased Aditya Gupta, the Tribunal is not justified in taking a different stand and mulcting major portion of the liability upon the Appellant / owner of the Truck.

4. Section 147 of the Motor Vehicles Act, 1988 speaks as to the requirements

of policy and limits of liability. When Sub-section (1) of Section 147 deals with the nature of the policy to be issued under the Act, Sub-section (2) deals with the extent of such coverage. Section 147 (2) (b) of the Act, 1988 is extracted herein for easy reference:

> “Section 147. Requirements of policies and limits of liability:-
>
> xxx xxx xxx
>
> (2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:-
>
> (a) save as provided in clause (b), the amount of liability incurred;
>
> (b) in respect of damage to any property of a third party, a limit of rupees six thousand:”

5. From the above, it is clear that under Sub Clause (a) of Section 147 (2) of the Act, 1988, the policy of insurance in respect of the statutory liability will have to cover the entire amount of liability incurred, except to the extent as provided in clause (b). Clause (b) says that in respect of damage to any 'property of 3rd party', it shall stand limited to Rs. 6,000/-. In the said circumstance, even though the entire liability {subject to Clause (b)} in respect of the death or injury caused to a 3rd party is liable to be satisfied by the Insurer under a policy issued for covering the statutory risk, when it comes to the damage caused to the property of a 3rd party, it is limited only to Rs. 6,000/-. The question is whether any wider coverage has been provided by the Insurance Company under the policy by accepting any additional premium towards the enhanced 3rd party property damage.

6. As pointed out already, when we raised a specific question in this regard as to whether any wider coverage was there, the learned counsel for the Appellant/Owner of the offending Truck fairy conceded that no wider coverage was obtained by paying any additional premium in respect of enhanced 3rd party property damage. In view of the admitted position as

above, the maximum liability that can be fastened on the Insurer of the offending Truck is only Rs. 6,000/- in terms of Section 147 (2) (b) of the Act, 1988. This alone has been done by the Tribunal. Out of the total sum of Rs. 35,000/-, Rs. 6,000/- has been directed to be satisfy by the Insurer of the offending Truck and the balance alone is directed to be satisfied by the Appellant/Owner of the offending Truck, with interest as specified.

7. The learned counsel for the Appellant submits that the fixation of the total compensation as Rs. 35,000/- towards the damages caused to the Maruti Van is not correct or sustainable as it is not based on any legally acceptable evidence, but for some photographs. The learned counsel however concedes that no opportunity was denied to him for adducing any evidence and admittedly, the Appellant/Owner of the offending Truck had not chosen to mount the box and assert the facts and figures to substantiate his version. No cross-examination/rebuttal of the evidence adduced by the Claimants was also made from the part of the Appellant in this regard. We have gone through the evidence on record. Even a bare look of the photograph itself is more than sufficient to ascertain the gravity of the hit made by the offending Truck. The entire front portion, almost up to the middle is crushed down to scarp and is lying down. In the absence of any effective steps taken from the part of the Appellant to adduce evidence as to the quantum of damage sustained by the owner of Van, we are of the view that the compensation fixed by the Tribunal as Rs. 35,000/- towards the damages is quite reasonable and is not liable to be branded as on the higher side. There is absolutely no merit in the appeal.

8. Appeal stands dismissed accordingly.

Sd/- Sd/-

(P. R. Ramachandra Menon)
Chief Justice

(Parth Prateem Sahu)
Judge

Hem