

(2018) 02 CHH CK 0059

Chhattisgarh High Court

Case No: Miscellaneous Appeal (C) No. 476 Of 2011

Poonam Patel

APPELLANT

Vs

Reliance General Insurance Co.
Ltd. And Ors

RESPONDENT

Date of Decision: Feb. 2, 2018

Acts Referred:

- Motor Vehicles Act, 1988 - Section 173
- Code Of Civil Procedure, 1908 - Order 41 Rule 22

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Sunil Tripathi, Sourabh Sharma

Final Decision: Allowed

Judgement

P. Sam Koshy, J

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimant seeking enhancement of compensation against the award dated 17.02.2011 passed by the Additional Motor Accident Claims Tribunal (FTC) Pratappur, in Claim Case No. 25 of 2009. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.62,000/- along with interest @ 7.5 percent per annum from the date of application.

2. The contention of the appellant-claimant is that the amount of compensation awarded is unreasonably low and that the claimant was entitled for much more than what has been awarded by the Tribunal. He submits that the Tribunal has awarded less compensation only on the ground that the

claimant in the instant case has got married and her husband was earning an amount of Rs.3000/- per month. According to appellant, it is a case where on the date of accident the claimant was not married and even on the date when the claim application was filed she was not married. She got married subsequently and till she was not married, she was solely dependent upon the income of her deceased mother.

3. He further submits that the claimant in her evidence has categorically stated that she was rendered destitute after her mother died and she was finding it difficult to sustain herself. Under the given circumstances of the case, the claimant has sought for suitable enhancement of the compensation.

4. Per contra, learned counsel for the insurance company submits that the insurance company itself has filed cross objection under Order 41 Rule 22 CPC opposing the award on the ground that the Tribunal has failed to appreciate the fact that the policy which was produced by the owner was fake document. According to him, the policy which was brought on record as Ex. P/9 shows the date of issuance of policy to be 06.11.2008 whereas, it was contended by the insurance company that the policy infact was issued on 06.12.2008 and that the said document Ex. P/9 was not genuine. He further submits that it is a case where the claimant in the instant case herself has stated that her mother was earning Rs.500/- in a month as Angan Badi worker and therefore, the amount of compensation awarded by the Tribunal does not seem to be unreasonable or on the lower side and thus prayed for rejection of the appeal.

5. A perusal of the record would show that the insurance company though have taken a plea that the policy relied upon by the claimant was not genuine document, but the insurance company has not produced any document before the Tribunal. Neither was the affidavit which was filed by the witness of the insurance company supported with the so called policy, which the insurance company had in their possession. In the absence of any such document on record, the Tribunal could not have accepted the contention of the insurance company. What is also pertinent to take note of is that even at the time of filing of the cross objection under Order 41 Rule 22 CPC, though at a belated stage, yet the insurance company has not produced

the copy of the policy which they have in their possession to show that the policy was infact issued on 06.12.2008 i.e. after the date of accident and not on 06.11.2008 as has been claimed by the claimant.

6. Thus, this court does not find any strong case made out on behalf of the insurance company to call for interference so far as liability part is concerned.

7. So far as quantum of compensation is concerned, even though the deceased was working as Angan Badi worker, yet since the date of accident

was November, 2008 and it is beyond imagination that a person would not even be earning even Rs.100/- per day. The deceased must have

undertaken some work which would enable her to earn Rs.100/- per day to sustain herself as well as her dependents. This court has no hesitation in

assessing the income of the deceased at Rs.3000/- per month taking daily wages at Rs.100/- keeping in mind that on the date of accident even an

unskilled labour would had been earning more than Rs.100-150 per day. Thus, this court proceeds to assess the compensation accordingly by taking

the monthly income of the deceased at Rs.3000/-.

8. So far as the amount of compensation awarded by the Tribunal is concerned, there is no evidence brought on record by the insurance company or

for that matter other respondents to show that the present appellant-claimant was already married on the date of death of the deceased. On the

contrary, she makes a statement before the Tribunal that she was left destitute after death of her mother and she was not having any source of

income to survive and she had great financial constraints. Even though there was cross examination of the claimant in respect of her marriage, but

there was no question put forth by any of the respondents specifically asking a query as to whether on the date of death of the deceased she was

married or not? Therefore, it has to be presumed that on the date of death, she was unmarried and it is only subsequently that she has got married.

Even the claim application shows her status to be daughter of Maheshwar Patel and not as a wife of some person which further strengthens the claim

of the claimant. Under such circumstances, the claimant would be entitled for entire compensation.

9. Accordingly, accepting the monthly income of the deceased at Rs.3000/- if 40 percent of it is added towards future prospects keeping in mind the decision of larger Bench of Supreme Court in case of National Insurance Co. Ltd. Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014, the monthly income would reach to Rs.4200/- i.e. Rs.50,400/- yearly, of which if 1/3rd is deducted towards personal expenses, the income would come to Rs.33,600/-, which if multiplied applying the multiplier of 16, the compensation would reach to Rs.5,37,600/-. Thus, it is ordered that the claimant shall be entitled for Rs.5,37,600/- for loss of dependency. The claimant shall also be entitled for a lump sum compensation of Rs.70,000/- under the conventional heads making total compensation payable at Rs.6,07,600/-. It is ordered accordingly that the claimant shall be entitled for a total compensation of Rs.6,07,600/- instead of Rs.62,000/- as awarded by the Tribunal.

10. The enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.

11. Accordingly, the present appeal is allowed. However, the cross objection filed by the insurance company stands dismissed.