Branch Manager, Cholamandlam M S General Insurance Vs Lokbai

Court: Chhattisgarh High Court

Date of Decision: Feb. 7, 2018

Acts Referred: Motor Vehicles Act, 1988 â€" Section 166, 173

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Ghanshyam Patel, Abhishek Sinha

Final Decision: Dismissed

Judgement

P. Sam Koshy, J

1. Present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 challenging the award dated 10/10/2017

passed by the learned Motor Accident Claims Tribunal, Baloda Bazar, Bhatapara (C.G.) in Motor Accident Claim Case No.112/2016.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of

Rs.11,53,000/- with interest @ 9% per annum from the date application.

3. The challenge in the present appeal is on two grounds. Firstly, there is an element of contributory negligence on part of the deceased in the accident

to occur. Secondly, the quantum of compensation awarded by the Tribunal is on the higher side.

4. So far as the contributory negligence is concerned, the said submission made by the counsel for the Insurance Company cannot be accepted for the

simple reason that, the Insurance Company has not led any evidence to substantiate their contention. Even otherwise, the said ground may not be

sustainable for the reason that, though the Insurance Company has pleaded that it was an head on collision, but the contents of the F.I.R. shows that,

the deceased while traveling on a Motorcycle was hit by the offending vehicle from behind.

5. For the aforesaid reasons, the ground of contributory negligence is not established before the Tribunal.

6. So far as the quantum of compensation is concerned, the contention of the appellant/Insurance Company is that, the amount of compensation under

the conventional head is on the higher side in as much as the Tribunal has awarded a compensation of Rs.2,35,000/-. It was also contended that, the

monthly income assessed by the Tribunal also is on the higher side.

7. So far as the compensation under the conventional head is concerned, the deceased in the instant case was aged around 28 years. Considering the

fact that, there were six dependents on the deceased and out of six, three are minor childrens, if we take into consideration the distribution of the

compensation under the conventional head in paragraph 15 of the impugned award, by no stretch of imagination can it be said to be either excessive,

exorbitant or on the higher side. Thus the compensation under the conventional head also does not warrant any interference.

8. So far as the income of the deceased is concerned, since the date of accident is November-2016, the monthly income of the deceased assessed by

the Tribunal is Rs.6,000/- per month i.e. Rs.200/- per day. It is anybody's guess that in November-2016, the minimum income of even an unskilled

labour would be somewhere between Rs.200-300/- per day.

9. Given the facts if the Tribunal has taken Rs.200/- per day as the monthly income of the deceased, the same cannot be said to be in any manner

either excessive or on the higher side. Therefore, the said ground of the Insurance Company also is not sustainable.

10. So far as the judgment of Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & Ors. (SLP Civil No.

25590/2014, decided on 31/10/2017) is concerned, the impugned award in the instant case was passed prior to the judgment of the Pranay Sethi

(Supra) and the award was passed relying upon the judgment of the Supreme Court in the case of Rajesh & Ors. Vs. Rajbir Singh & Ors. [2013 {9}

SCC 54] which was holding the field till the judgment of Pranay Sethi (Supra) was pronounced.

11. In view of the same, this Court does not find any strong case made out by the counsel for the Insurance Company calling for an interference with

the impugned award.

12. The appeal thus fails and is accordingly rejected.