(2018) 02 CHH CK 0231

Chhattisgarh High Court

Case No: Miscellaneous Appeal (C) No. 222 Of 2018

Branch Manager, Cholamandlam MS General Insurance Company		APPELLANT
	Vs	
Kannilal Xalxo And Ors		RESPONDENT

Date of Decision: Feb. 13, 2018

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166, 173

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: 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 assailing the award dated 28/10/2017 passed by

the learned Motor Accident Claims Tribunal, Surajpur (C.G.) in Motor Accident Claim Case No. 143/2016.

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.7,23,000/-

with interest @ 9% per annum from the date of application.

3. While passing the impugned award, the Tribunal has fastened the liability of payment of compensation upon the appellant/Insurance Company.

4. The facts of the case in brief is that, the deceased - Mano Bai, wife of the respondent No.1 - Kannilal Xalxo while travelling on the Autorikshaw

bearing registration No. CG-15-CW-3313 met with an accident and succumbed to the injuries on 08/05/2016. The said Autorikshaw was owned by the

respondent No.5 - Devsharan Xalxo and driven by the respondent No.4 - Suresh Kumar Xalxo. The present appellant had insured the said vehicle by

issuance of a package policy valid at the time of the accident.

5. There are two grounds raised by the counsel for the Insurance Company challenging the impugned award. First is that, the Autorikshaw at the

relevant point of time did not have a valid permit for operation as is required under the provision of Section 66 of the Motor Vehicles Act. The second

ground raised by the counsel for the appellant is that, the claim application even otherwise would not be maintainable for the reason that, the recipient

and the injured was infact the same person in as much as the recipient is the son of the insured - respondent No.5 and therefore the same should not

have been entertained by the Tribunal. He further submits that, there is no rebuttal on part of the owner by itself it has been presumed that he did not

had a permit on the date of accident.

6. The said ground could not be acceptable for the reason that, the plea of there being no permit was raised by the Insurance Company and it was the

duty casted upon the Insurance Company to prove this aspect by leading cogent evidence.

7. Perusal of record would show that, the claimant No.1 - Kannilal Xalxo has examined himself along with Smt.Koushalya, an eye witness who was

also travelling along the deceased on the date of the accident in the same vehicle. Further what is also reflected is that, the owner of the vehicle -

Devsharan has also been examined who has admitted the accident and the negligence on part of the driver.

8. The Insurance Company has led an evidence of one Rishabh Pandey, an officer of the Insurance Company who has in his deposition stated that,

the owner of the vehicle at the relevant point of time did not have a valid permit.

9. Given the facts and circumstances of the case what infact has to be ascertained is whether the Insurance Company has been able to establish

before the Tribunal by leading cogent evidence proving the fact that, the respondent No.5 infact did not have the permit to operate the Autorikshaw?

The only witness which has been examined is the officer of the Insurance Company who has only made an oral submission. So far as breach of policy

condition is concerned, the Insurance Company has not examined its investigators if any, who must have been investigated the aspect whether the

vehicle at the relevant point of time had a permit or not?

10. Likewise, the Insurance Company has also not been able to examine an officer from the concerned Transport Office who could have also depose

before the Tribunal that the respondent No.5 did not have a valid permit on the date of accident to operate the said Autorikshaw.

11. Under the given circumstances, it was the burden upon the Insurance Company to have conclusively proved before the Tribunal that, the vehicle

did not have a permit on the date of accident.

12. Except for an oral submission made by the officer of the Insurance Company, there does not appear to be any cogent evidence with which it could

even be presumed that there was no permit. The Insurance Company has also not been able to establish before this Court as to whether there has

been any sufficient query put to the respondent No.5 in his cross- examination so far as permit is concerned.

13. Given the aforesaid facts and circumstances of the case, the contention of the Insurance Company of there being no permit is not sustainable in

the present appeal.

14. As regards the second ground of challenge that the claim application was not maintainable for the reason that, the recipient and the injured being

the same in as much as there is a relationship of son and father, the same again cannot be sustained for the reason that, so far as the claim case under

Section 166 is concerned, if it has been established before the Tribunal that, the driver and owner of the vehicle are different persons and the vehicle

is duly insured, only because the claimant happens to be the son of the owner of the vehicle by itself would not dis-entitle him from claiming any

compensation under the provision of Motor Vehicles Act, particularly when the accident and the death are not in dispute.

15. Given the aforesaid facts and circumstances of the case, this Court does not find any strong case worth admitting the appeal.

16. The appeal thus being devoid of merits deserve to be and is accordingly rejected.