(2018) 02 CHH CK 0259

Chhattisgarh High Court

Case No: Miscellaneous Appeal (C) No. 748 Of 2012

Reliance General Insurance Company Ltd.		APPELLANT
	Vs	
Ramhlabai And Ors		RESPONDENT

Date of Decision: Feb. 15, 2018

Acts Referred:

- Motor Vehicles Act, 1988 - Section 173

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Sourabh Sharma

Final Decision: Partly Allowed/Disposed Of

Judgement

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P. Sam Koshy, J

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurer against the award dated 03.05.2012 passed by the

Additional Motor Accident Claims Tribunal, Balod (in short, the Tribunal) in Claim Case No.148/2009. Vide the impugned award, the Tribunal has

awarded compensation of Rs.4,19,000/- along with interest @ 6 percent per annum from the date of application.

2. This is second round of litigation. The Tribunal on an earlier occasion had passed an award on 19.11.2010 which was challenged before the High

Court by the insurance company vide MAC No.1065/2011. The appeal of the insurance company was allowed and the award was set aside and the

matter was remitted back for a fresh adjudication to determine whether the deceased was travelling on the Truck as labour engaged by the owner or

whether the deceased was travelling as an owner or representative of the goods being transported. Subsequent to remittance of the matter, no fresh

evidence was led by the claimant to justify their contention or to establish their case as per the order of the High Court in MAC No.1065 of 2011.

3. However, the Tribunal again on the same set of evidence have fastened the liability of payment of compensation upon the insurance company

indemnifying the owner and the driver of the offending vehicle.

4. The contention of the appellant is that the factual matrix of the case which have come on record on the basis of the pleadings of the claimant so

also witness examined, both would establish the fact that the deceased in the instant case Sumeri Thakur was not engaged as labour by the owner of

the vehicle, but was travelling on the vehicle after purchasing some goods pertaining to the marriage in the family. This was the case of the claimants

in the pleadings so also in their evidence. There is no change on the stand of the claimant even after the matter was remitted back by this court vide

order dated 17.01.2012 in MAC No.1065 of 2011.

5. Under the given facts and circumstances of the case, this court has no hesitation in reaching to the conclusion that the findings of the Tribunal to the

extent of fastening liability upon the insurance company does not seem to be proper, legal and justified.

6. However, what is pertinent to be taken note of is the fact that after the award was passed, the entire amount as per direction of this court, has been

deposited before the Tribunal and of which 50 percent of the awarded amount has already been ordered to be disbursed to the claimants.

7. Under the given factual matrix of the case, considering the claim case to be of the year, 2009 and the award to be of the year, 2012, this court is of

the opinion that ends of justice would meet if the appeal is disposed of applying the principle of ""Pay and Recovery"".

8. Accordingly, the liability of the appellant-insurance company to pay compensation to the claimant is held to be unjustified. Since, the entire amount

has already been deposited by the insurance company, the same may be disbursed to the claimants with liberty to the insurance company to recover

the same from the owner of the offending vehicle.

9. The appeal stands partly allowed and disposed of.