HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 882 of 2013

1. Smt. Rekha Devi Vishwakarma Aged About 45 Years Wd/o Kanhaiyalal Vishwakarma R/o Devrikhurd Torwa, P.S. Torwa, Tah. And Distt. Bilaspur C.G.

2. Sunil Kumar Vishwakarma Aged About 22 Years S/o Late Kanhaiyalal Vishwakarma R/o Devrikhurd, Torwa, P.S. Torwa, Tah. And Distt. Bilaspur C.G.

---- Appellants

Versus

1. Shahban @ Shaban Ali S/o Ramjan Ali R/o Tikrapara, In Front Of Old High Court, Bilaspur, P.S. City Kotwali, Distt. Bilaspur C.G. Driver-Vehical Owner- Mahadev Transport Services, Through- The Owner/employee, Address- Near Shiv Talkies, Old High Court Road, Bilaspur, P.S. City Kotwali, Tah. And Distt. Bilaspur C.G.

2. Mahadev Transport Service Through- The Owner/employee, Address- Near Shiv Talkies, Old High Court Road, Bilaspur, P.S. City Kotwali, Tah. And Distt. Bilaspur C.G.

3. The New India Insurance Company Limited. Through- The Divisional Manager, Office At Second Floor, Rama Trade Centre, In Front Of Rajeev Plaza, Bilaspur, P.S. City Kotwali, Tah. And Distt. Bilaspur C.G.

---- Respondents

For appellants – Shri Goutam Khetrapal, Advocate.
For respondents No.1 & 2 – Shri Anup Majumdar and Shri Basant Dewangan, Advocates.
For Respondent No.3 – Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

15/09/2015

1. This appeal is against the award dated 29th January, 2013 passed by the Third Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.195/2011.

2. The brief facts of this case are that widow and son of the deceased namely Kanhaiyalal preferred a claim petition with the averments that on 8/12/2008 deceased Kanhaiyalal was coming back in a cycle from Rajkishore Nagar to Devrikhurd to his house. When he reached near a place called Smriti Van, at that time another offending vehicle bus bearing registration No. C.G. 04/E-0852 driven by original non-applicant No.1 Shahban @ Shaban Ali in a rash and negligent manner dashed the cycle whereby he sustained severe injuries and succumbed to it. It was stated that at the time of accident deceased was working as a mason and was earning Rs.4500/- per month and it was stated at the time of accident, age of the deceased was 49 years. Consequently, an amount of Rs.15,87,000/- was claimed by way of compensation.

3. Non-applicant No.1 driver and non-applicant No.2 Mahadev Transport Service owner of the bus did not file any written statement.

4. Non-applicant No.3 the New India Insurance Company Limited contended that the policy which was issued has come to an end and the policy was not existing at the relevant time of accident. Consequently, the insurance company is not liable to pay the amount. Learned tribunal after assessment of the evidence passed an award of Rs.3,22,000/-. Tribunal during the trial after evaluating the facts and evidence further came to a conclusion that at the relevant time offending vehicle bus bearing registration No. C.G. 04/E-0852 being driven by non-applicant No.1 in a rash and negligent manner had caused the accident. The said finding is not under any challenge, therefore in absence of any challenge to the same, such finding are affirmed.

5. Learned counsel for the appellants/claimants would submit that

tribunal has wrongly assessed the income and the claimants have been deprived of just compensation. It is further submitted that assessment of Rs.3000/- per month is wrongly been assessed and future prospect has also not been granted. Consequently, the compensation has not properly awarded. It is further contended that the tribunal has wrongly exonerated the insurance company as it has not been proved that about cancellation of policy the intimation was sent to the owner. He submits that as per record, an amount of cheque of Rs.1,03,359/- by Ex.D-1 was said to be paid. It is contended that said cheque was dishonoured it has not been proved. Therefore, he submits that in absence of any proof the cheque was dishonoured the policy having placed on record by Ex.P-10, the liability should have been fastened over the insurance company.

6. Learned counsel for respondents No.1 & 2 submits that liability should have been fastened over the insurance. It is further contended that insurance company could not have avoided the liability since on the date of accident insurance was existing.

7. Per contra, learned counsel for respondent No.3 vehemently opposes the argument and submits that policy having been cancelled with intimation, insurance company has been right exonerated as on the date no policy was existing. He submits that order of the tribunal is well merited which do not call for any interference.

8. I have heard learned counsel for the parties at length, perused the documents and the evidence.

9. The claimant wife in her statement contended that the deceased Kanhaiyalal her husband was working as mason and used to earn Rs.4500/- per month. It is further stated that apart from the work of mason

her husband used to do the job of chowkidar thereby additional earning was being made. Undoubtedly, in this case no document has been placed on record to support income.

10. In order to arrive at notional income, if the provisions of Second Schedule as provided in Sub-section (3) of Section 163-A of the Motor Vehicles Act are looked into, it has fixed the notional income to the extent of Rs.15,000/- way back in the year 1994. As the Central Government has failed to amend the second schedule as provided in Sub-section (3) of Section 163-A of the Motor Vehicles Act, the Courts/Tribunal can take judicial notice of increase in the prices of essential commodities and the cost of living during the period between the introduction of the second schedule in the year 1994 and the date of accident in the given case.

11. Perusal of the statement of the wife/claimant would show that wife of the deceased has stated that her husband used to earn Rs.4500/- per month. Apart from that he used to earn by work of guard. Therefore, looking to the avocation of the deceased as it is stated that deceased was working as mason, it is also supported by statement of AW-2 Sunil Kumar Vishwakarma son of the deceased it cannot be stated that he was not a skilled labour though document have not been placed on record to prove the income. Considering the fact that deceased belonged to unorganized sector, therefore it can be presumed that there can be hardly any evidence which could have been documented. Since accident had taken place on 8/12/2008, therefore taking price of essential commodities during the period 1994 to 2008 and taking into fact that wages which was prevailing of skilled labour and considering the statement of the wife of the deceased on record that the deceased used to work as mason and also as a guard,

in the opinion of this court the income which has been stated by wife of Rs.4500/- do not appear to be unreasonable or exorbitant and accordingly it is assessed income of Rs.4500/- as stated by the wife of the deceased as reasonable and can be accepted to be notional income per month in the facts and circumstances of this case. Consequently, notional income of the deceased is assessed to Rs.4500/- per month, thereby annual income comes to Rs.54,000/-.

12. Perusal of the award shows that tribunal has not awarded any sum towards future prospect. Here in the instant case age of the deceased was shown to be 49 to 50 years, therefore there would be further addition of 30% as future prospect as per law laid down in case of **Rajesh & others Vs. Rajbir Singh & others (2013) 9 SCC 54** over and above income of Rs.54,000/-. Therefore, after addition of 30% of the income i.e. Rs.16,200/-, the total income comes to Rs.70,200/- (Rs. 54,000 + Rs.16,200).

13. Now coming to the deduction towards personal expenses. Claim petition was preferred by widow and her son, therefore following the principles laid down in case of **Sarla Verma v. D.T.C. (2009) 6 SCC 121** there would be deduction of one third from such income. Therefore, after deducting one third i.e. Rs.23,400/- annual dependency comes to Rs.46,800/- (70,200 minus 23,400). Since deceased belonged to age group of 50 years as such multiplier of 13 would be applicable, thus total dependency comes to Rs.6,08,400/-. Under the conventional head amount of Rs.5000/- has been awarded for funeral expenses, Rs.5000/- has been awarded for loss of estate, therefore amount under the conventional head also needs to be re-assessed. In view of the law laid

down in case of ***Asha Verma Vs. Maharaj Singh and others*** *reported in* ***2015 AIR SCW 3577 –,*** I am inclined to award Rs.1 lakh to the wife for loss of consortium and Rs.25,000/- for loss of love and affection to the son. Amount awarded of Rs.5000/- under loss of estate is further enhanced to Rs.25,000/-, Rs.5000/- awarded for funeral expenses is enhanced to Rs.25,000/-. Thus, the total compensation is re-assessed as under.

S.No.	Heads	Calculation
(i)	Notional income @ Rs.4500/- per month	Rs.54,000/- per annum
(ii)	30% of (i) to be added as future prospects	Rs.54,000+Rs.16,200= Rs.70,200/-
(iii)	One third of (ii) deducted as personal expenses of the deceased	Rs.70,200 - 23,400 = Rs.46,800/-
(iv)	Compensation after multiplier of 13 is applied	Rs.46,800 x 13 = Rs.6,08,400/-
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	For loss of love and affection to the son	Rs.25,000/-
(vii)	Loss of estate	Rs.25,000/-
(viii)	Funeral expenses	Rs.25,000/-
	Total	Rs.7,83,400/-

14. Thus the total compensation will be Rs.7,83,400/-. After deducting Rs.3,22,000/- awarded by the tribunal, the enhancement would be Rs.4,61,400/-.

15. The claimants will be entitled to the said sum of Rs.4,61,400/- in addition to what is already awarded.

16. Now coming to the interest, the Supreme Court in ***Asha Verman & others V. Maharaj Singh & others (supra)*** held in para 19 that the High

Court has erred in awarding an interest at the rate of 8% per annum only, instead of 9% per annum on the compensation amount as per the principles laid down in case of ***Municipal Corporation of Delhi V. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481 : AIR 2012 SC 100***. Therefore, in the instant case, interest @ 9% per annum is awarded on the compensation amount from the date of filing of the application till the date of payment.

17. Further turning to the other part of the argument about the exoneration of the insurance company. The document which is placed on record insurance company in written statement has pleaded that the policy had come to an end on 29/08/2008 as cheque which was paid in lieu of the premium was dishonoured. Insurance company on their behalf had examined one witness namely V. Tirkey wherein it is stated that consolidated cheque of Rs.1,03,359/- dated 22/08/2008 was paid in lieu for the premium by Ex.D-1. Said cheque was dishonoured for want of fund and the intimation was received by the company on 27/08/2008 by Ex.D-2. Subsequently, the intimation was sent to the owner Mahadev Transport Service by Ex.D-3 and further intimation was also sent to the RTO by Ex.D-4. Consequent to that endorsement policy was cancelled. Reading document together along with statement would show that amount of cheque which was paid for the premium was dishonoured thereby policy though was issued by Ex.P-10 came to an end on 29/08/2008 itself when intimation was sent. There is no denial by the owner of the vehicle about non receipt of such intimation. Therefore, insurance policy having been cancelled statutory liability of the insurer to indemnify third party which the policy covered came to an end as in this case intimation was sent on

29/08/2008 which was duly received by the owner which is proved by Ex.D-6 and there is rebuttal to it.

18. Similar proposition was laid down by the Hon'ble Supreme Court in the case of **United India Insurance Company Limited Vs. Laxmamma and other**s reported in **(2012) 5 SCC 234** wherein it was held that when policy was cancelled and it was informed then statutory liability to cover third party risk comes to an end. At para 25 and 26 of the judgment the court has held as under:-

> "25. In Seema Malhotra (2001) 3 SCC 151, the claim was by the legal heirs of the insured for the damage to the insured vehicle. In this peculiar fact situation, the Court held that when the cheque for premium returned dishonoured, the insurer was not obligated to perform its part of the promise. Insofar as Deddappa (2008) 2 SCC 595 is concerned, that was a case where the accident of the vehicle occurred after the insurance policy had already been cancelled by the insurance company.
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> 26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance

company is not liable to satisfy awards of compensation in respect thereof."

19. Therefore, applying the aforesaid principles in the instant case since cheque issued was returned dishonoured and the policy was cancelled, insurance company cannot be held liable to make good the payment.

20. In the result, the appeal is partly allowed.

21. The Registry is further directed to communicate the claimants in writing the "amount of award enhanced in this appeal" as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language.

Sd/-

(Goutam Bhaduri)

JUDGE

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