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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 687 of 2012

1. The Oriental Insurance Company Ltd., Branch Office, Near Ambedkar Chowk, Ambikapur, Distt. Sarguja (C.G.)

---- Appellant

Versus

1. Santosh Kumar Gupta, S/o. Late Girish Chand Gupta, aged 26 years.
2. Prasant Kumar Gupta, S/o. Late Girish Chand Gupta, age 23 years.
3. Ku. Pooja Gupta, D/o. Late Girish Chand Gupta, age 20 years.
4. Vikas Kumar Gupta, S/o. Late Girish Chand Gupta, aged about 17 years

Through guardian, mother, Smt. Pushpa Gupta, W/o. Late Girish Chand Gupta.

No.1 to 3 R/o. Mohalla Dutta Colony Nagar, Ambikapur, P.S. Ambikapur, District Sarguja (C.G.)

5. Dinesh Kumar Dubey, S/o. Tarchand Dubey, age 35 years, R/O Gangapur Khurd (Fokat Para), Thana- Gandhi Nagar, Tah. Ambikapur, Distt. Sarguja (C.G.)
6. Rajendra Singh, S/o. Bal Kishan Singh Sardar, aged 42 years, R/o. D.C. Road, Ambikapur, Thana/Teh. Ambikapur, Distt. Sarguja (C.G.)

---- Respondents

For Appellant	: Mr. Sudhir Kumar Agrawal, Advocate
For Respondent No.1 to 3	: Mr. Goutam Khetrapal, Advocate
For Respondent No.4	: Mr. D.N. Prajapati, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

08/10/2015

1. The appeal is against the award dated 10.04.2012, passed in Claim Case No.69/2005, passed by the Motor Accident Claims Tribunal, Sarguja (Ambikapur).

2. In the said claim petition, initially an award was passed on 31.12.2007 and the claim petition was dismissed on the ground that the claimants have failed to prove the fact that the accident had occurred by the offending jeep bearing No. C.G.-15-8569, since in the F.I.R., another number was shown that of the offending vehicle.
3. While hearing the appeal, the Division Bench of this Court in M.A. (C) No.442/2008 called for the entire records of the criminal case No.478/2011, which was filed under Section 304A of I.P.C. (State Vs. Rajendra Singh) from the Court of Judicial Magistrate First Class, Ambikapur, Sarguja. While examining the record of the criminal case, the Division Bench of this Court found that one Vikash Anand Gupta and one Joginder Singh have been shown as an eye-witnesses of the incident and their statements were recorded during the investigation under Section 161 of Cr.P.C. The Court observed that both the persons mentioned the number of the offending vehicle as C.G.-15-8569. The Court further observed that none of the witnesses were examined before the Claims Tribunal including the Investigating Officer and therefore, the case was remanded back to the learned Claims Tribunal with a direction to examine the eye-witnesses of the incident as also the Investigating Officer. Thereafter, the claimants have examined Vikas Anand Gupta as AW-3, Investigating Officer, Lokeshwar Prasad as AW-4, Joginder Singh as AW-5 and Shiv Prasad Gupta as AW-6.
4. Admittedly non-applicant did not examine any witness and eventually the award was passed on 10.04.2012, which is now subject of appeal.

5. Briefly stated facts of the case are that a claim petition was filed by Smt. Pushpa Gupta, the widow and children of Girish Chand Gupta alleging that on 25.04.2005, while Girish Chand Gupta was going back from the shop to his house at that time, he was hit by a vehicle jeep bearing No. C.G-15-8569, which was coming from Vishrampur and was going towards Ambikapur. It was stated that while he was being treated, eventually Girish Chand Gupta breathed his last. It was stated that at the time of the accident, the deceased was working as Time Keeper in Water Resources Department and further period for retirement remained for 1 year and 5 months. Therefore, on different heads, claim of Rs.14,47,817/- was made.
6. The original non-applicant No.1, Dinesh Kumar Dubey, the owner of the offending vehicle contended that no accident had occurred from the jeep bearing No. C.G-15-8569. It was further stated that the accident had happened with the vehicle bearing No. C.G.-15-ZA-1102. According to the FIR and the non-applicants have wrongly been inculpated and the claim petition has been filed. He further contended that the said jeep bearing No.C.G.-15-8569 was insured with the non-applicant No.3 and the claimants are not entitled for any compensation from this respondent. Similarly, the driver of the vehicle, the original non-applicant No.2, Rajendra Singh has also refuted the accident and stated that the accident has actually happened with a vehicle bearing No. C.G.-15-ZA-1102.
7. Likewise, the non-applicant No.3, the insurance company contended that the vehicle bearing No. C.G.-15-8569 was not involved in the accident and actually involvement of the vehicle was

having vehicle No. C.G-15-ZA-1102, therefore, the claimants would not be entitled for any compensation.

8. Learned counsel for the appellant/insurance company vehemently submits that according to the claimants themselves, the vehicle bearing No. C.G.-15-ZA-1102 was seized and therefore, it can be inferred that vehicle bearing No. C.G.-15-8569 was not involved in the accident. He would further submit that perusal of the FIR would show different number of the vehicle and after quite period of time, the instant vehicle was said to be involved in the accident, which can not be accepted in view of the evidence on record. He further submits that false implications have been made to raise the compensation, therefore, the award is liable to be set-aside.
9. Per contra, learned counsel appearing on behalf of the claimants would submit that despite the opportunity granted to the insurance company, for the best reasons known to them, they have not adduced any evidence to discharge their liability so as to substantiate the fact whether the vehicle C.G.-15-ZA-1102 was actually involved in the accident or not. He further submits that the claimants have discharged their onus of proof and has established this fact that the vehicle bearing No. C.G.-15-8569 was involved in the accident by examining the eye-witnesses, which too affirmed by the Investigating Officer and nothing has come in the cross-examination to rebut the same, therefore, the award is well merited, which do not call for any interference. The counsel appearing on behalf of the claimants also pressed the cross-appeal filed by the claimants and submits that the compensation needs to be suitably

enhanced as the learned Claims Tribunal has failed to award the just compensation.

10. I have heard the learned counsel for the parties, perused the documents and the evidence on record.
11. After the remand was made, by the Division Bench in M.A.(C) No.442/2008 on 26.09.2011, the claimants have examined one Vikas Anand Gupta as AW-3, Lokeshwar Prasad as AW-4, Joginder as AW-5 and Shiv Prasad Gupta as AW-6. Perusal of statement of Vikas Anand Gupta, who is said to be an eye-witness, this witness has stated that on 25.04.2005, jeep bearing No. C.G.-15-8569 had dashed the deceased, Girish Chand Gupta. In the cross-examination of this witness, on different suggestions having been given to him, he stated that after the accident, the vehicle stopped for few seconds and he had seen the accident from the distance of 5 meters. He further stated that after hearing the sound, he had seen the accident. Consequently, by reading of both the paras - 8 & 9 of the cross-examination of this witness, this can be inferred as it would be a natural consequence that after the accident, the vehicle stopped for few seconds and he has seen the vehicle. In the examination-in-chief, this witness narrated the number of the offending vehicle and in the cross-examination, denied the suggestion given that vehicle No. C.G.-15-8569 was not involved in the accident. Further even the cross-examination made by the owner, this witness maintained the stand that the number of the vehicle was not C.G.-15-ZA-1102 but actually it was C.G.-15-8569.

12. Further the Investigating Officer, Lokeshwar Prasad, AW-4, has stated that he had investigated the FIR which was made by Ex.P/1. In view of the Ex.P/1, which shows number of the vehicle as C.G.-15-ZA-1102, the witness has stated that after the investigation, he found that the vehicle number C.G.-15-8569 was actually involved in the accident, which was seized by Ex.P/5, the seizure memo of the vehicle of the criminal case. He further stated that during the investigation of the crime, on an enquiry it reveal that the vehicle which caused the accident was having number C.G.15-8569 and accordingly the statements were recorded. In reply to specific question as to whether he enquired whereabouts the vehicle No. C.G.-15-ZA-1102, at para 32, this witness has stated that during the investigation, he found that actually the accident had occurred by C.G.-15-8569, consequently he did not enquire about where about such other vehicle. The argument, which is advanced by the learned counsel for the insurance company that actually the vehicle No. C.G.-15-ZA-1102 was involved in the accident can not be sustained in view of the evidence which has come on record.
13. After the case was remanded by this High Court, the insurance company was aware of the fact on which issue evidence was to be led. If the insurance company was sanguine of fact that vehicle bearing No.C.G-15-ZA-1102 was too a jeep and was actually involved in accident, they could have easily enquired from the concerned RTO and would have summoned the concerned official to prove the existence of vehicle which was numbered in the FIR. On the contrary, the record would reveal that they did not adduce

any evidence and have tried only to catch hold of the few lines of the cross-examination to demonstrate the fact that actually the vehicle bearing No. C.G.-15-ZA-1102 was involved in the accident. The burden of proof, in the facts of the case, when the claimants have discharged their part, certainly shifted to the insurance company to demolish such evidence by way of counter evidence with respect to their defence. Simply by making the statement that other vehicle was involved as the number C.G.-15-ZA-1102 which was named in the FIR, it could not be conclusively held that the vehicle C.G.15-ZA-1102 was involved in the accident and not the vehicle No. C.G.-15-8569. Therefore, in absence of any evidence by the insurance company, the inference can not be drawn simply on the basis of the arguments of the appellant that the vehicle bearing No. C.G.-15-8569 was not involved in the accident.

14. In a result the appeal filed by the insurance company has no force and it is dismissed.
15. Now considering the cross-objection filed by the claimants about the quantum of compensation, the Tribunal in its ward has assessed the salary of the deceased to Rs.5798/- on the basis of Ex.P/6. Perusal of Ex.P/6, which is a salary certificate would show that basic salary of the deceased was Rs.4025, D.A was shown to be 2455, triable area allowance was of Rs.42 and house rent was of Rs.140/- and deduction towards provident fund Rs.431, and group insurance of Rs.150/- was shown. Further taking into the fact, the deduction which has been made by the Tribunal, it appears that the said deductions being statutory in nature, they could not be the part of

the deductions for calculation of the salary, therefore, in the opinion of this Court, the salary would come to Rs.6,662/-. Accordingly, the annual income of the deceased is worked out to Rs.79,944/-.

16. According to the medical certificate, which is placed on record, the discharge report of the hospital, shows that the age of the deceased was shown to be 57 years, consequently, following the law laid down in case of **Rajesh & Ors. Vs. Rajbir Singh & Ors**, reported in **(2013) 9 SCC 54** as the deceased was between the age group of 55 to 60, there would be further addition of 15% over and above the income of Rs.79,944/-. After adding 15% of the income i.e. Rs.11,991/-, the total income comes to Rs.91,935/- (Rs.79,944 + 11991).
17. Initially the claim petition was filed by the five persons, however, four survived, therefore, there would be a deduction of $\frac{1}{4}$, which comes to Rs.22,983/-. Therefore, after deducting $\frac{1}{4}$ i.e. Rs.22,983/- from the income, the annual dependency comes to Rs.68,952/- (91,935 – 22,983). Considering the age of the deceased to be of 57 years, the multiplier of 9 would be applicable as per the law laid down in case of **Sarla Verma v. D.T.C.**, reported in **(2009) 6 SCC 121**. Thus the total dependency comes to Rs.6,20,568/- (Rs.68952 x 9).
18. Under conventional head, the Claims Tribunal has awarded Rs.20,000/- for loss of love and affection to the children and Rs.5,000/- for loss consortium to the wife and Rs.2,000/- towards funeral expenses. In the opinion of this Court, the amount awarded under conventional heads also needs to be reassessed in view of

law laid down in case of **Asha Verman Vs. Maharaj Singh and Ors., reported in 2015 AIR SCW 3577**. Therefore, I am inclined to award Rs.25,000/- for loss of love and affection to each of the children numbered as 4 i.e. total Rs.1,00,000/-. The amount of Rs.2,000/- granted for funeral expenses is further enhanced to Rs.25,000/-. Loss of consortium to wife of Rs.5,000/- is added towards loss of estate in absence of the wife. The amount of Rs.3,500/- awarded towards medical expenses and Rs.1,500/- for transportation is maintained.

19. Thus the total compensation to be reassessed is as follows :-

S.N.	Heads	Calculation
(i)	Salary of the deceased per month @ Rs.6,662/-.	Rs.79,944/- per annum
(ii)	15% of (i) above to be added as future prospects.	(Rs.79,944 + 11,991 = Rs.91,935/-
(iii)	¼ of (ii) deducted as personal expenses of the deceased.	Rs. 91,935 – 22,983 = Rs. 68,952/-
(iv)	Compensation after multiplier of 9 is applied.	Rs. 68,952 x 9 = Rs. 6,20,568/-
(v)	For loss of estate.	Rs. 5,000/-
(vi)	For loss of love & affection to the four children	Rs. 1,00,000/-
(vii)	For transportation	Rs. 1,500/-
(viii)	For medical expenses	Rs. 3,500/-
(ix)	Funeral expenses.	Rs. 25,000/-
	Total	Rs. 7,55,568/-

20. Thus the total compensation is recomputed as Rs.7,55,568/-. After deducting Rs.4,03,200/- as awarded by the Tribunal, the enhancement would be Rs.3,52,368/-. The claimants would be entitled to the said sum of Rs.3,52,368/- in addition to what is already awarded by the Claims Tribunal with interest at the rate of 7% per annum from the date of filing of the claim petition till the date of

its realization.

21. In a result, the appeal filed by the appellant/insurance company is dismissed and the cross-appeal filed by the claimants is allowed to the above extent.
22. Perusal of the claim petition shows that one of the claimant, Vikas Kumar Gupta, though is made as a party in the claim petition as claimant/applicant No.4, after deletion of name of Smt. Pushpa Gupta, who died, the award do not contain his name. In the effective part of the award though has considered and it is directed that the amount of compensation is to be distributed among all the claimants/applicants i.e. No.1 to 4, but award only contained three names. Admittedly it appears that inadvertently due to typographical mistake, the name of Vikas Kumar Gupta, the claimant/applicant No.4 has not been shown in the cause title of the award. Therefore, the name of the Vikas Kumar Gupta is added in the memo of appeal. Necessary amendments be carried out within 15 days.
23. The Registry is further directed to communicate the claimants in writing the “amount enhanced” as against the award made by the Tribunal below. The said communication be made in Hindi Devanagari language.
24. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge