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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No. 708 of 2004

1. Janak Ram Yadav S/o Kasat Ram, aged about 53 years (Died & deleted)
2. Smt. Urmila Devi W/o Janak Ram Yadav, aged about 48 years.
   Both R/o Bakitoli, Jashpur Nagar Tahsil and District Jashpur, Chhattisgarh.

---- Appellants

Versus

1. Ramjeet Ram S/o Ram Prasad Ram, R/o Presently residing at Gamhariya, Tahsil and District Jashpur, Chhattisgarh.
2. Birbal Ram S/o Madan Ram, village Gamhariya, Tahsil and District Jashpur, Chhattisgarh.
3. National Insurance Company Ltd. Branch Office Gumla, District Gumla, Jharkhand.

---- Respondents

Miscellaneous Appeal No. 864 of 2004

National Insurance Company Ltd. Branch Office Gumla (Jharkhand) Through Divisional Manager, Priyadarshni Nagar, Bilaspur, Chhattisgarh.

---- Appellant

Versus

1. Janak Ram Yadav, 53 years, S/o Kasat Ram Yadav.
2. Smt. Urmila Devi, 48 years, W/o Janak Ram Yadav.
   Both R/o village Banki Toli, Jashpur Nagar, District Jashpur, Chhattisgarh.
3. Ranjeet S/o Ram Prasad Ram, Caste Uraon, R/o village Bhud Kela, at present R/o village Gamharia, Tahsil and District Jashpur, Chhattisgarh.
4. Birbal Ram S/o Madan Ram, Caste Uraon, R/o village Gamharia, Tahsil and District Jashpur, Chhattisgarh.

---- Respondents

For Appellants	: Shri Pawan Kesharwani and Shri Anmol Sharma, Advocate.
For Respondents	: Shri Azad Siddique, Shri B.N.Nande, Shri Basant Dewangan, Advocates

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<u>Hon'ble Shri Deepak Gupta, Chief Justice</u>

Judgment on Board

<u>21.10.2016</u>

1. These matters were heard in part on 26.08.2016 and I had virtually dictated the judgment when learned counsel for the Claimants sought time to search out some law on the subject, but no such law has been brought to my notice. Therefore, I propose to hear and decide these appeals.

2. These two appeals are being disposed of by a common judgment since common facts and question of law are involved.

3. These appeals by the Claimants as well as Insurance Company are directed against the award dated 06.05.2004 passed in Motor Accident Claims Case No. 02 of 2004 by the Motor Accident Claims Tribunal, Jashpur (hereinafter called 'the Tribunal') wherein the learned Tribunal has awarded a sum of Rs. 92,000/- as compensation to the Claimants.

4. The Claimants/Appellants are the parents of late Jitendra Kumar Yadav who was aged about 22 years. The deceased died in an accident on 26.03.2001. It was the case of the Claimants themselves that the deceased was sitting in a tractor-trolley bearing registration No. MP 26 E 5861 and MP 26 E 5862. The learned Tribunal came to the conclusion that the deceased was earning Rs. 600/- per month and has awarded compensation of Rs. 92,000/-. The Insurance Company was held liable to pay the compensation. Aggrieved by this judgment, the Claimants have approached this Court claiming enhancement of the compensation.

5. The Insurance Company has filed the appeal contending that since the deceased was an unauthorised passenger in the Tractor-trolley, the Insurance Company cannot be held liable. The stand of the Insurance Company before the Tribunal was that the deceased was travelling in the vehicle as unauthorised passenger in violation of the provisions of the Motor Vehicles Act and the conditions of

the insurance policy, and as such, the Insurance Company could not be held liable to pay compensation.

6. As far as compensation is concerned, it was claimed that the deceased was a labourer but it is also alleged that he was a motor mechanic and he was earning Rs. 3,000/- per month.

7. No doubt that the Claimants have not led any cogent evidence with regard to the income of the deceased but this Court can take judicial notice of the fact that even in 2001, an able bodied person would be able to earn at least Rs. 100/- per day or Rs. 3,000/- per month. However, the work of a labourer is not available everyday and therefore, I take the monthly income of the deceased to be Rs. 2,500/- per month.

8. There is violation of the terms of policy of insurance as well as the Act inasmuch as passenger was allowed to travel on the Tractor. In such circumstances, the Insurance Company cannot be held liable to pay compensation and the liability shall be that of the driver and owner of the Tractor only.

9. In this case, I deduct 50% towards the personal expenses as the Claimants are the parents of the deceased. Looking to the age of the deceased, the appropriate multiplier in this case would be 18. and the compensation works out to Rs. 2,70,000/-. In addition thereto, the Claimants are held entitled to another sum of Rs. 10,000/- for funeral expenses and Rs. 20,000/- for loss of love and affection. The total compensation is accordingly assessed at Rs. (2,70,000+10,000+20,000) = 3,00,000/-. Accordingly, the compensation amount is enhanced from Rs. 92,000/- to Rs. 3,00,000/- i.e. by Rs. 2,08,000/-.

10. Next comes the question is as to who is liable to pay the compensation. Case of the Claimants themselves is that the deceased was travelling in the tractor. From perusal of the Insurance Policy, I find that the Tractor was insured. What has been produced before the Trial Court is a policy of the Trailer but the policy of the Tractor

has not been produced on record. However, this Court can take judicial notice of the fact that the Tractor cannot be used for carrying passenger.

11. In view of the above discussion, the appeal filed by the Claimants i.e. Miscellaneous Appeal No. 708 of 2004 is allowed in part and compensation is enhanced from Rs. 92,000/- to Rs. 3,00,000/- i.e. by Rs. 2,08,000/-. Miscellaneous Appeal No. 864 of 2004 filed by the Insurance Company is also allowed and it is held that the Insurance Company cannot be held liable to pay compensation and the liability to pay compensation shall be the joint liability of the driver and the owner of the Tractor in question.

Sd/-
(Deepak Gupta)
Chief Justice

Amit/Subbu