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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.229 of 2006

Uttara Bai, W/o Late Vallabh Chand Dhritlahare, aged 28 years, R/o Talapara, Bilaspur, Chhattisgarh

---- Appellant

versus

1. Smt. Shyam Bai, aged about 46 years, Wd/o Thanuram Dhritlahare,
2. Basant Kumar, S/o Thanuram Dhritlahare, aged about 26 years,

   No.1 and 2 resident of Village Janji P.S. Seepat, Tahsil Masturi, District Bilaspur, Chhattisgarh

3. Abdul Meman, S/o Rahman Musalman, driver of truck No.CG 04 ZC 1512, resident of Bhunda, Tahsil Kota, District Bilaspur, Chhattisgarh
4. Rajesh Kumar, S/o Satyanarayan Agrawal, aged about 36 years, owner truck No.CG 04 ZC 1512, resident of Main Road, Saraipali, Chhattisgarh
5. The Oriental Insurance Company Limited, First Floor Ambika Complex Badgad, Orissa
6. Aashish Bahal, S/o Surendra Singh Bahal, aged about ….. years, driver of truck No.MP 16A 3369, resident of Ward No.2, Vishwanath Colony, Chhatarpur, Madhya Pradesh **(Deleted)**
7. Sardar Nirmal Singh, S/o Channa Singh, owner truck No.MP 16A 3369, resident of Ward No.4, Sidha Ganeshan Marg, Chhatarpur, Madhya Pradesh
8. United India Insurance Company, Rajendra Nagar Chowk, Bilaspur, Chhattisgarh
9. Anudeepak Jems, S/o D. Jems, owner of vehicle No.CG 10BB 5969, resident of Jarhabhata Chowk, Bilaspur, Chhattisgarh
10. National Insurance Company Limited, B-1, Taha Complex, Priyadarshani Nagar, Bilaspur, Chhattisgarh

---- Respondents

and

Miscellaneous Appeal (C) No.563 of 2006

United India Insurance Company Limited, Rajendra Nagar Chowk, through Its Divisional Manager, Divisional Office, Main Road, Korba, District Korba, Chhattisgarh

---- Appellant

versus

1. Smt. Shyam Bai, widow of Thanuram Dhritlahare, aged about 46 years,
2. Basant Kumar, S/o Thanuram Dhritlahare, aged about 26 years,

   Both are R/o Village Janji, P.S. Sipat, Tahsil Masturi, District Bilaspur, Chhattisgarh

3. Abdul Memon, S/o Rahman, Musalman, Driver Truck No.CG 04 ZC 1512, R/o Bhuda, Tahsil Kota, District Bilaspur, Chhattisgarh
4. Rajesh Kumar, S/o Satyanarayan Agrawal, aged about 36 years, Owner of Truck No.CG 04 ZC 1512, R/o Main Road, Saraipali, Chhattisgarh
5. The Oriental Insurance Company Limited, Ist Floor, Ambika Complex, Badgarh, Orissa
6. Ashish Bahal, S/o Surendra Singh Bahal, Driver, Truck Bearing No.MP 16A 3369, R/o Ward No.2, Vishvanath Colony, Chhatarpur, Madhya Pradesh
7. Sardar Nirmal Singh, S/o Channa Singh, Owner, Truck Bearing No.MP 16A 3369, R/o Ward No.4, Sidh Ganeshan Marg, Chhatarpur, Madhya Pradesh
8. Anudipak Jems, S/o D. Jems, Owner, Maruti Van No.CG 10 BB 5969, R/o Jarhabhatha Chowk, Bilaspur, Chhattisgarh
9. National Insurance Company Limited, B-1, Taha Complex, Priyadarshini Nagar, Bilaspur, Chhattisgarh
10. Uttara Bai, alleged wife late Vallabh Chand Dhritlahare, aged about 28 years, R/o Talapara, Bilaspur, Chhattisgarh

---- Respondents

For Uttara Bai	:	Shri A.L. Singroul, Advocate
For United India Insurance Company	:	Shri Dashrath Gupta, Advocate
For Respective Respondents	:	Shri Raj Awasthi, Shri Vimlesh Bajpai and Shri Qamrul Aziz, Advocates

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Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

21.10.2016

1. These two appeals are being disposed of by a common judgment since they both arise out of one award dated 31.8.2006 passed by the Additional Motor Accidents Claims Tribunal, Mungeli in Claim Case No.92 of 2005.

2. The undisputed facts of the case are that there was a collision between Truck No.CG 04 ZC 1512 and Truck No.MP 16A 3369. Truck No.CG 04 ZC 1512 was being driven by one Abdul Memon and owned by Rajesh Kumar. This vehicle was insured with the Oriental Insurance Company. This truck was allegedly being driven at a high speed and hit the Truck No.MP 16A 3369 which was being driven by Ashish Bahal, owned by Sardar Nirmal Singh and insured with the United India Insurance Company Limited. After the collision, Truck No.CG 04 ZC 1512 hit one Maruti Van bearing registration No.CG 10BB 5969 being driven by deceased Vallabh Chand. As a result of the injuries sustained in the accident, Vallabh Chand died. A claim petition was filed by Smt. Shyambai, mother of Vallabh Chand and Basant Kumar, brother of Vallabh Chand claiming compensation for the death of Vallabh Chand. In the claim petition itself, Uttara Bai was made a party and she has been described as "stated to be wife of Vallabh Chand".

3. The Tribunal held that deceased Vallabh Chand was earning Rs.3300/- per month. It deducted 1/3rd towards his personal expenses and awarded Rs.4,83,200/- as compensation. The Tribunal further held that Uttara Bai had failed to prove that she was the widow of the deceased and rejected her claim and awarded the entire amount in favour of the mother and the brother of the deceased. It further held that the Respondents No.1, 2 and 3 in the claim petition, i.e., the driver, the owner and the insurer of Vehicle No.CG 04 ZC 1512 would be liable to the extent of 60% and Respondents No.4, 5 and 6 in the claim petition, i.e., the diver, the owner and the insurer of Vehicle No.MP 16A 3369 would be liable to pay 40% of the compensation.

4. Aggrieved by this award, United India Insurance Company Limited has filed one appeal in which the main ground is that there is no allegation of negligence against the driver of Truck No.MP 16A 3369 and, therefore, the insurance company has wrongly been fastened with the liability. Uttara Bai has also filed an appeal in which she has claimed that she has wrongly been denied the compensation. According to her, she is the widow of deceased Vallabh Chand. She also claims compensation and due share in the same.

5. I shall first take up the issue with regard to the allegation of negligence. No eyewitness to the accident has been produced. Both the insurance companies have failed to summon the drivers of the trucks which were insured with them. Therefore, there is no direct evidence before this Court. Admittedly, the collision took place. How this collision took place could best have been described by the drivers of the two trucks because the driver of the third vehicle (Maruti Van) died. The Tribunal was justified in holding that it is a case of contributory negligence. Therefore, I find no merit in the United India Insurance Company's appeal, which is accordingly dismissed.

6. As far as the appeal filed by Uttara Bai is concerned, I am of the view that the Tribunal did not appreciate the evidence in its proper perspective. Uttara Bai stated that she was married to Vallabh Chand in Kali Mandir. Thereafter, some social ceremonies were held in Village Janji, the native village of deceased Vallabh Chand. Basant Kumar, brother of the deceased has stated that his brother was never married to Uttara Bai. Surprisingly, Smt. Shyam Bai, mother of the deceased was not examined in evidence. Not only that, the claimants examined one Bharatlal, who was earlier husband of Uttara Bai. Bharatlal in his statement has clearly stated that he and Uttara Bai were earlier married but thereafter divorce took place between them. Uttara Bai has not only stated that she was married to the deceased but she had also given an address where she was residing with the deceased. She has also given the name of the employer of the deceased. Therefore, it is more than obvious that Uttara Bai was in a marital relationship with the deceased. Unfortunately, what has happened is that one of the insurance companies has not filed any appeal and the compensation has been paid to the claimants, i.e., the mother and the brother of the deceased. As far as the second case is concerned, 50% of the award amount has been deposited and it is not clear whether it has been paid to the claimants or not.

7. As far as the amount of compensation is concerned, even if this Court accepts the finding of the Tribunal to be correct that the income of the deceased was Rs.3300/- per month, there is one major defect in the award. The deceased was 28 years of age and 50% of his income has to be added towards his future prospects. After the addition, it comes to Rs.4,950/-. If 1/3rd is deducted towards the personal expenses of the deceased, the remainder comes to Rs.3300/- per month or Rs.39,600/- per annum. Since the deceased was aged about 28 years, as per the judgment rendered in **Sarla Verma (Smt.) v. Delhi Transport Corporation, (2009) 6 SCC 121,** the relevant multiplier would be 17 and the compensation would work out to Rs.6,73,200/-. In addition thereto, the widow would be entitled to Rs.50,000/- for loss of consortium and Rs.20,000/- for funeral expenses. Thus, the total compensation works out to Rs.7,43,200/-. Normally, the widow would have been entitled to more than half of the compensation but since the major portion of the compensation has been paid to the claimants, i.e., the mother and the brother of the deceased, I do not want the parties to enter any further litigation and, therefore, I direct that the widow shall be entitled to the entire enhanced amount of compensation as well as the compensation not disbursed to the mother and brother. On the amount of compensation, the widow shall also be entitled to 9% interest from the date of filing of the claim petition till payment/deposit of the amount. Needless to say that the insurance company shall be entitled to deduct/adjust the amount already paid /deposited by them. The share of the mother and the brother of the deceased is restricted to the amount already paid to them and the entire balance amount whether lying in deposit or now to be deposited by the insurance company shall be paid only to widow Uttara Bai. Consequently, the appeal filed by Uttara Bai is allowed in the aforesaid terms.

Sd/-

(**Deepak Gupta**)
CHIEF JUSTICE

Gopal