NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1477 of 2008

1. Arjun Lal S/o Shri B. R. Sinha, aged about 52 years, R/o near Ram Janki Mandir, Abhanpur, Tahsil-Abhanpur, District Raipur (CG)
2. Human S/o Shri Kejuram Sinha, aged about 24 years, R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)

---- Appellants

Versus

1. Harishchand S/o Nirbhay Ram Diwan, aged about 21 years, R/o village Kumharpuri, PS & Tahsil Kurud, District Dhamtari (CG)
2. National Insurance Co. Ltd. Branch Manager / Branch Office G.E. Road, Mobil Mahal, Second Floor, Raipur (CG)

---- Respondents

Misc. Appeal (C) No. 4 of 2009

1. Siyaram S/o Dhansai Kanwar, aged about 45 years, R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)
2. Smt. Kuleshwari Bai W/o Siyaram R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)
3. Ku. Yogeshwari D/o Siyaram, aged about 12 years, Minor through guardian father Siyaram Kanwar R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)

---- Appellants

Vs

1. Human S/o Shri Kejuram Sinha, aged about 24 years, R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)
2. Arjun Lal S/o Shri B. R. Sinha, R/o near Ram Janki Mandir, Abhanpur, Tahsil-Abhanpur, District Raipur (CG)
3. National Insurance Com. Ltd. Divisional Manager/Division Office, G.E. Road, Mobil Mahal, 2nd Floor Raipur, C.G.

---- Respondents

Misc. Appeal (C) No. 31 of 2009

Kumari Ishwari D/o Ramadhin, Caste Diwan, aged about 19 years, R/o Village Kanharpuri, Tah. Kurud, District Dhamtari (CG)

---- Appellant

Vs

1. Human S/o Shri Kejuram Sinha, aged about 24 years, R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)

2. Arjun Lal S/o Shri B. R. Sinha, R/o near Ram Janki Mandir, Abhanpur, Tahsil-Abhanpur, District Raipur (CG)
3. National Insurance Com. Ltd. Divisional Manager/Division Office, G.E. Road, Mobil Mahal, 2nd Floor Raipur, C.G.

---- Respondents

Misc. Appeal (C) No. 46 of 2009

Harishchandra S/o Nirbhay Ram Diwan, aged about 21 years, R/o village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)

---- Appellant

Vs

1. Human S/o Shri Kejuram Sinha, aged about 24 years, R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)
2. Arjun Lal S/o Shri B. R. Sinha, R/o near Ram Janki Mandir, Abhanpur, Tahsil-Abhanpur, District Raipur (CG)
3. National Insurance Com. Ltd. Divisional Manager/Division Office, G.E. Road, Mobil Mahal, 2nd Floor Raipur, C.G.

---- Respondents

Misc. Appeal (C) No. 180 of 2009

1. Kanwal Singh S/o Dhansai, aged about 50 years
2. Smt. Hirmotin Bai W/o Dhansai, aged about 45 years
3. Ku. Gayatri D/o Kanwal Singh, aged about 15 years
4. Ku. Kekati D/o Kanwal Singh, aged about 12 years
5. Karan S/o Kanwal Singh, aged about 8 years

Respondents 3 to 5 are minor through legal guardian father Kanwal Singh Sidar, All are resident of village Kanharpuri, PS & Tahsil - Kurud, District - Dhamtari (CG)

---- Appellants

Vs

1. Human S/o Shri Kejuram Sinha, aged about 24 years, R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)
2. Arjun Lal S/o Shri B. R. Sinha, R/o near Ram Janki Mandir, Abhanpur, Tahsil-Abhanpur, District Raipur (CG)
3. National Insurance Com. Ltd. Divisional Manager/Division Office G.E. Road, Mobil Mahal, 2nd Floor, Raipur, C.G.
4. Manik Ram S/o Itwari Ram Kanwara, aged about 32 years, R/o village Dhaurabhata, Tahsil – Kurud, District Damtari (CG)

---- Respondents

Misc. Appeal (C) No. 538 of 2009

Manik Ram S/o Itwari Ram Kanwara, aged about 32 years, R/o village Dhaurabhata, Tahsil – Kurud, District Damtari (CG)

---- Appellant

Vs

1. Human S/o Shri Kejuram Sinha, aged about 24 years, R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)
2. Arjun Lal S/o Shri B. R. Sinha, R/o near Ram Janki Mandir, Abhanpur, Tahsil-Abhanpur, District Raipur (CG)
3. The National Insurance Com. Ltd. through: Branch Manager, Branch G.E. Road, Mobil Mahal, 2nd Floor Raipur, C.G.
4. Kanwal Singh S/o Dhansay, aged about 50 years
5. Smt. Hirmotin Bai W/o Kanwal Singh (wrongly mentioned as Dhansay), aged about 45 years
6. Ku. Gayatri D/o Kanwal Singh, aged about 15 years
7. Ku. Kekati D/o Kanwal Singh, aged about 12 years
8. Karan S/o Kanwal Singh, aged about 8 years

Respondents 6 to 8 are minor through legal guardian father Kanwal Singh Sidar, Respondents 4 to 8 are resident of village Kanharpuri, PS & Tahsil - Kurud, District - Dhamtari (CG)

---- Respondents

Civil Revision No. 60 of 2009

1. Arjun Lal S/o Shri B. R. Sinha, aged about 52 years, R/o near Ram Janki Mandir, Abhanpur, Tahsil-Abhanpur, District Raipur (CG)
2. Human S/o Shri Kejuram Sinha, aged about 24 years, R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)

---- Applicants

Vs

1. Mulchand S/o Ramadhin Kanwar, aged about 22 years, R/o village – Kanharpuri, PS & Tahsil - Kurud, District - Dhamtari (CG)
2. National Insurance Company Limited, Branch Manager / Branch Office G.E. Road, Mobil Mahal, Second Floor, Raipur (CG)

---- Respondents

Misc. Appeal (C) No. 1478 of 2008

1. Arjun Lal S/o Shri B. R. Sinha, aged about 52 years, R/o near Ram Janki Mandir, Abhanpur, Tahsil-Abhanpur, District Raipur (CG)
2. Human S/o Shri Kejuram Sinha, aged about 24 years, R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)

---- Appellants

Vs

1. Siyaram S/o Dhansai Kanwar, aged about 45 years, R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)
2. Smt. Kuleshwari Bai W/o Siyaram R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)
3. Ku. Yogeshwari D/o Siyaram, Minor through natural guardian father Siyaram Kanwar R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)
4. National Insurance Co. Ltd. Branch Manager / Branch Office G.E. Road Mobil Mahal, 2nd Floor, Raipur (CG)

---- Respondents

<u>Misc. Appeal (C) No. 1513 of 2008</u>

1. Arjun Lal S/o Shri B. R. Sinha, aged about 52 years, R/o near Ram Janki Mandir, Abhanpur, Tahsil-Abhanpur, District Raipur (CG)
2. Human S/o Shri Kejuram Sinha, aged about 24 years, R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)

---- Appellants

Vs

1. Kanwal Singh S/o Dhansai, aged about 50 years
2. Smt. Hirmotin Bai W/o Dhansai, aged about 45 years
3. Ku. Gayatri D/o Kanwal Singh, aged about 15 years
4. Ku. Kekti D/o Kanwal Singh, aged about 12 years
5. Karan S/o Kanwal Singh, aged about 8 years

   Respondents 3 to 5 are minor through legal guardian father Kanwal Singh Sidar

   All resident of village Kanharpuri, PS & Tahsil - Kurud, District - Dhamtari (CG)
6. Manik Ram S/o Itwari Ram Kanwar, age not known, R/o Dhaurabhatha, Tahsil - Kurud, District - Dhamtari (CG)
7. National Insurance Co. Ltd. Branch Manager / Branch Office G.E. Road, Mobil Mahal, Second Floor, Raipur (CG)

---- Respondents

<u>Misc. Appeal (C) No. 468 of 2009</u>

1. Arjun Lal S/o Shri B. R. Sinha, aged about 52 years, R/o near Ram Janki Mandir, Abhanpur, Tahsil-Abhanpur, District Raipur (CG)
2. Human S/o Shri Kejuram Sinha, aged about 24 years, R/o Village Kanharpuri, PS & Tahsil Kurud, District Dhamtari (CG)

---- Appellants

Vs

1. Ku. Ishwari D/o Ramadhin Diwan, aged about 19 years, R/o village – Kanharpuri, PS & Tahsil - Kurud, District - Dhamtari (CG)
2. Mulchand S/o Ramadhin Kanwar, aged about 122 years, R/o village – Kanharpuri, PS & Tahsil - Kurud, District - Dhamtari (CG)
3. National Insurance Company Limited Branch Manager/Branch Office G.E. Road Mobil Mahal, Second Floor, Raipur (CG)

---- Respondents

Shri D. N. Prajapati, Advocate for the Owner and the Driver.
Shri Dashrath Gupta, Shri Goutam Khetrapal and Shri Anand Gupta, Advocates for the National Insurance Company.
Shri R. K. Pali and Shri Sumit Shrivastava, Advocates for the respective claimants.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

01/11/2017

These are 10 appeals arising out of five claim cases i.e. Claim Case Nos. 21, 22, 23, 24, & 25 of 2007 decided by the Additional Motor Accident Claims Tribunal (FTC) Dhamtari, District Dhamtari (CG) on 19.09.2008. Vide the impugned award, the Tribunal in Claim Case No. 21/07 in an injury case Rs.25,000/-, in Claim Case No.22/07 in a death case Rs.1,04,500/-, in Claim Case No.23/07 in an injury case Rs.22,500/-, in Claim Case No. 24/07 in an injury case Rs.5,300/- and in Claim Case No.25/07 in a death case Rs.85,000/- has been awarded as compensation.

2. MAC Nos. 1477/08, 1478/08, 1513/08, 468/09 & CR No.60/09 have been filed by the owner challenging the liability which has been fastened upon him. MAC Nos. 31/09 & 46/09 have been filed by the injured claimants Ku. Ishwari and Harishchand and MAC Nos. 4/09,180/09 & 538/09 have been filed by the respective claimants seeking enhancement of compensation. MAC Nos. 1477/08 & 46/09 arise out of Claim Case No.21/07, MAC Nos. 4/09

& 1478/08 arise out of Claim Case No.22/07, MAC Nos. 31/09 & 468/09 arise out of Claim Case No.23/07, MAC Nos. 180/09, 538/09 & 1513/08 arise out of Claim Case No.25/07 and CR No.60/09 arises out of Claim Case No.24/07.

3. The brief facts relevant for adjudication of the present case are that the Maruti Van bearing registration No. CG 04/ZD 7306 owned by Arjun Lal and driven by Human met with an accident on 30.03.2007. The accident occurred when the LPG gas kit installed in the Maruti Van caught fire as a result of which the persons travelling in the said van received grievous injuries out of which two persons namely Durpat Ram and Pushpa Kanwar died on the spot whereas three persons namely Harishchand, Mulchand and Kumari Ishwari received burn injuries.

4. While passing the impugned award the Tribunal reached to the conclusion that since the owner of the offending vehicle had not paid any premium for use of the vehicle with LPG gas kit, the Insurance Company having not received any premium in this regard would not be liable for indemnifying the owner for any accident which arises out of the said vehicle. Based on the said finding, the entire liability of payment of compensation was fastened upon the owner i.e. Arjun Lal.

5. The owner and the driver have challenged the exoneration of the Insurance Company and the impugned award on the ground that the vehicle having been installed with LPG gas kit was duly intimated to the transport authority and that there is a valid entry of the use of LPG gas kit reflected from the RC book pertaining to the vehicle involved in the accident. According to the counsel for the owner, since there was a valid endorsement regarding the use of LPG gas kit and that the vehicle was duly insured, the entire liability of payment of compensation should have fallen upon the Insurance Company. He further submits that the evidence also reflects that the Insurance Company has not produced the declaration form before the Tribunal to establish the fact that the owner at the time of getting the policy issued had made any suppression of fact so far as the use of LPG gas kit is concerned. Counsel for the owner referred to two decisions in support of his contention first being 2008 ACJ 2027 of the MP High Court in the case of **Santosh Singh Vs. United India Insurance Co. Ltd.** and the other being the judgment of the Division Bench of this Court in Misc. Appeal No. 606/2005 in the case of **Hazi Alim Memon Vs. Nirendra Mohan Das and another** decided on 04.04.2011. Thus, prayed for suitable modification of the impugned award to the extent that the owner be discharged of his liability and the liability of payment of compensation be fastened upon the Insurance Company.

6. So far as the appeals preferred by the injured claimants are concerned, it was contended that the Tribunal has not properly appreciated the gravity of the injury sustained by each of the injured as they had received severe burn injuries. Counsel for the injured submitted that it is a case where because of the burn injuries the injured had been subjected to treatment for a considerable period of time and there is also a disfigurement of their body because of the burn injuries with which the injured would have to live rest of their life. He further submitted that the injured claimants have not been adequately compensated for the pain and suffering and the agony they have gone and will go through their whole life. Thus prayed for the compensation to be suitably enhanced.

7. So far as the death cases are concerned, counsel for the claimants submits that the Tribunal has not quantified the compensation in accordance with the principles laid down by the Supreme Court in the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, in as much as the multiplier used and the income under the future prospects have not properly been taken into consideration while quantifying the compensation and on this ground also the compensation deserves to be suitably enhanced.

8. Counsel appearing for the Insurance Company opposes the appeal to the extent of the liability part which is under challenge and submits that it is a case where firstly the Insurance Company had not received any premium for the use of the vehicle by LPG gas kit therefore in the absence of any extra premium paid for the same, the liability cannot be fastened upon the Insurance Company. Since the Van was being used with the aid of LPG fuel which was not intimated or informed to the Insurance Company, the same would amount to breach of policy condition. It was contended by the Insurance Company that even otherwise on perusal of the policy would show that the policy is an act only policy and that there is a limited liability upon the Insurance Company for the reason that the Insurance Company has received the premium of covering the risk of 5 persons up to the limit of Rs.50,000/- per person as the premium charged for the 5 persons was Rs.25 per person. Thus, even if for any sake the liability is fastened upon the Insurance Company, the same would be only up to the limit of Rs.50,000/- and not beyond that.

9. So far as the liability being shifted on the owner only on the ground of using LPG fuel is concerned, this Court is of the opinion that the view expressed by the Tribunal may not be sustainable in the light of the two decisions referred by the counsel for the owner i.e. the cases of Santosh Singh (supra) and Hazi Alim Memon (supra). The case of Santosh Singh was also referred before the Tribunal which was not considered only on the ground that the accident had occurred in the said case on account of the vehicle hitting a tree and in the instant case the accident occurred because of the LPG cylinder by itself catching fire. The mode of accident would not be material to decide the liability of the Insurance Company as in the case of

Santosh Singh also the Insurance Company had not been paid any premium for the vehicle being used with the aid of LPG fuel. Similar view has also been expressed by the Division Bench of this Court in the case of Hazi Alim Memon. Further when we look into the insurance policy which was issued in respect of the said vehicle, the only limitation as to the use is reflected in the policy but it does not have any entry so far as the use of the vehicle with the aid of other than the petrol and diesel is concerned. Thus, the exoneration of the Insurance Company on the said ground is not sustainable and the same deserves to be and is accordingly set aside.

10. However, there is much force in the argument submitted by the counsel appearing for the Insurance Company so far as the liability of the Insurance Company being limited up to Rs.50,000/- in respect of five persons for whom extra premium had been paid by the owner. A perusal of Insurance policy clearly reflects that the owner in the instant case while taking the policy had paid an extra premium of Rs.125/- covering the risk of 5 occupants to travel in the said vehicle and that it was specifically mentioned in the policy itself that the limit for the said 5 persons would be maximum of Rs.50,000/- in each case. Thus, it shall be the liability of the Insurance Company to pay the compensation to the claimants in each of the cases up to the extent of Rs.50,000/- beyond which the amount of compensation would be paid by the owner. The impugned order to that extent stands modified.

11. So far as the appeal by the injured claimants are concerned, in Claim Case No.21/07, the injured Harishchand, aged about 21 years and in Claim Case No. 23/07, the injured Ku. Ishwari, aged about 19 years have received burn injuries in their body for which the Tribunal has quantified a compensation of only Rs.25,000/- & Rs.22,500/- respectively. Considering the total tacts and circumstances of the case this Court is of the opinion that ends of justice would meet if an additional amount of Rs.25,000/- is granted to each of the injured claimants i.e. Harischand and Ku. Ishwari in addition to what has already awarded by the Tribunal. It is ordered accordingly. The injured Mulchand in Claim Case No.24/07 has not preferred any appeal for enhancement.

12. So far as the death case of Durpat Ram, aged about 18 years old boy in Claim Case No. 22/07 is concerned, the income calculated by the Tribunal as Rs.15,000/- yearly in the opinion of this Court is highly unreasonable as during the said period the notional income ought to have been Rs.36,000/- in stead of Rs.15,000/-. Thus, assessing Rs.36,000/- as the annual income, 50% of the said amount when added towards future prospects, the amount would come to Rs.54,000/- of which if 50% is deducted towards personal expenses, the amount reduces to Rs.27,000/-. If the said amount is multiplied applying the multiplier of 18, the amount reaches to Rs.4,86,000/-. The claimants thus shall be entitled for loss of dependency at Rs.4,86,000/-. Further towards conventional head, an amount of Rs.50,000/- would meet the ends of justice. Thus, the claimants in Claim Case No.22/2007 shall be entitled for a total compensation of Rs.5,36,000/- in stead of Rs.1,04,500/- as awarded by the Tribunal.

13. So far as the death case of Pushpa Kanwar, aged about 19 years in Claim Case No.25/07 is concerned, the income calculated by the Tribunal as Rs.15,000/- yearly in the opinion of this Court is also unreasonable as during the said period the notional income ought to have been Rs.36,000/- in stead of Rs.15,000/-. Thus, assessing Rs.36,000/- as the annual income, 50% of the said amount when added towards future prospects, the amount would come to Rs.54,000/- of which if 1/3rd is deducted towards personal expenses, the amount reduces to Rs.36,000/-. If the said amount is multiplied applying the multiplier of 18, the amount reaches to Rs.6,48,000/-. The claimants shall be entitled for loss of dependency at Rs.6,48,000/-. Further towards conventional head, an amount of Rs.52,000/- would meet the ends of justice. Thus, the claimants in Claim Case No.25/2007 shall be entitled for a total compensation of Rs.7,00,000/- in stead of Rs.85,000/- as awarded by the Tribunal. From the said amount, the parents, sisters and brother of the deceased will receive compensation of Rs.5,00,000/- and the husband of the deceased will receive compensation of Rs.2,00,000/-.

14. Considering the total facts and circumstances of the case particularly the fact that the date of accident in the instant case being 30.03.2007 i.e. for more than 10 ½ years ago, the claimants right from the beginning till now have not received any compensation by virtue of the pendency of the appeals before this Court and also considering the view taken by the Supreme Court in the case of **Manuara Khatun and others Vs. Rajesh Kumar Singh and others** reported in (**2017) 4 SCC 796**, this Court is of the opinion that ends of justice would meet if the Insurance Company is directed to deposit the compensation awarded in all the cases and wherever the amount exceeds Rs.50,000/- the difference of the amount shall be recovered by the Insurance Company from the owner Arjun Lal by initiating proper recovery proceedings. It is ordered accordingly.

15. The enhanced amount in all the cases shall carry interest @ 6% per annum from the date of application and the order of penal interest, if any, awarded by the Tribunal shall not be applicable in the given facts and circumstances of the case.

16. Thus, the appeals preferred by the claimants stand allowed and the appeals preferred by the owner stand partly allowed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola