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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 815 of 2008

1. Rajkumar Sahu aged about 30 years S/o Bahoran, village Rasota, Tahsil Pamgarh, District Janjgir Champa (CG)
2. Chandrika Prasad, aged about 35 years, S/o Babulal, R/o Village Chustela, Post Rasota, Thana Pamgarh, District Janjgir Champa (CG)

---- Appellants

Versus

1. Chhail Bihari Dubey S/o late Rameshwar Prasad Dubey aged about 31 years
2. Ramabai, aged about 70 years, W/o Laxmiprasad Dubey, Village Rasota, Tah. & Thana Pamgarh, District Janjgir Champa (CG)
3. Manager, the United India Insurance Co. Ltd. Branch Rajendra Nagar Chowk, Bilaspur (CG)

---- Respondents

For Appellants	:	Shri Parag Kotecha, Advocate
For Respondents 1 & 2	:	Smt. Seema Singh, Advocate
For Respondent no.3	:	Shri H. B. Agrawal, senior Advocate along with Smt. Prabha Sharma, Advocate

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Misc. Appeal (C) No. 1048 of 2008

1. Chhail Bihari Dubey aged about 31 years, S/o late Rameshwar Prasad Dubey, R/o Village Rasota, P.S. & Tahsil Pamgarh, District Janjgir Champa (CG)
2. Rama Bai W/o Laxmi Prasad Dubey, aged about 70 years, resident of village Rasota, Tah. & P.S. Pamgarh, District Janjgir Champa (CG)

---- Appellants

Vs

1. Raj Kumar Sahu, aged about 30 years, S/o Bahoran, resident of village Rasota, Tahsil Pamgarh, District Janjgir Champa (CG)
2. Chandrika Prasad, aged about 35 years, S/o Babulal, R/o Village Chustela, Post Rasota, P.S. Pamgarh, District Janjgir Champa (CG)
3. The Manager, the United India Insurance Company Limited, Branch Rajendra Nagar Chowk, Bilaspur (CG)

---- Respondents

For Appellants	:	Smt. Seema Singh, Advocate
For Respondents 1 & 2	:	Shri Parag Kotecha, Advocate
For Respondent no.3	:	Shri H. B. Agrawal, senior Advocate along with Smt. Prabha Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

13/09/2017

These are the two appeals assailing the award dated 15.02.2008 passed by the Additional Motor Accident Claims Tribunal, Janjgir, District Janjgir Champa (CG) in Claim Case No. 89 of 2006. MAC No.815/2008 has been preferred by the owner and the driver and MAC No.1048/2008 is an appeal by the claimants. Vide the impugned award, the Tribunal in a proceeding under Section 166 of the Motor Vehicles Act has granted compensation of Rs.1,30,000/- to the claimants with interest @ 6% per annum. While passing the impugned award, the Tribunal has though directed the Insurance Company to pay the amount of compensation but it has granted liberty to the Insurance Company to recover the same from the owner and the driver. It is this observation of pay and recovery which has been challenged by the owner and the driver in MAC No.815/2008 whereas MAC No.1048/2008 has been preferred by the claimants seeking for enhancement of the compensation awarded by the Tribunal.

2. Counsel for the owner and the driver submits that the finding of pay and recovery is totally without any basis as there is no evidence which has been led by the Insurance Company before the Tribunal with which it could be said that the driver of the offending vehicle at the relevant point of time did not have a valid licence. He submits that it is a case where the driver of the offending vehicle had entered the witness box and also produced a photocopy of the licence that he was having and on a suggestion put by the counsel for the Insurance Company in cross-examination, he has categorically denied the fact that he was not having a licence at the relevant point of time. According to the counsel for the owner and the driver, the burden thereafter shifts upon the Insurance Company to disprove the contention made by the driver by leading proper and cogent evidence. It was also the contention of the counsel for the owner and the driver that the Insurance Company otherwise could have got the photocopy of the licence verified from the concerned RTO which having not been done, the order of pay and recovery is not proper and the same deserves to be set aside.

3. Counsel for the Insurance Company however opposing the said appeal submits that it is a case where the burden was upon the driver and the owner to produce sufficient evidence to show that there was no breach of policy condition and that the driver at the relevant point of time had a proper valid licence. He submits that the owner and the driver having not discharged the responsibility, the Insurance Company cannot be held responsible for the payment of compensation.

4. Having considered the contentions put forth on either side and on perusal of the record what clearly reflects is the fact that the Insurance Company has not led any evidence before the Tribunal to disprove the contention of the driver. The driver in the instant case had been examined as non-applicant no.1. He was cross-examined by the Insurance Company of not having a licence at the time of accident which was categorically denied by the driver. In addition, there was also a photocopy of the licnece which the driver had produced before the Tribunal. Unless it is otherwise proved to have been fake and forged licence, for all practical purposes, it has to be presumed that the driver had a licence. Only because, the original driving licence could not be produced by itself may not be the ground for disbelieving the same particularly when the Tribunal was predominantly considering the issue of just compensation payable to the claimants. Thus, the finding of the Tribunal to the extent of ordering for pay and recovery deserves to be and is accordingly set aside.

5. So far as the appeal of the claimants are concerned, the contention of the counsel for the claimants is that the notional income taken by the Tribunal in the instant case is unreasonably low. According to the claimants, the deceased was working as a priest and was earning sufficient amount from the said profession, therefore, the notional income of Rs.15,000/- taken by the Tribunal is extremely low. According to the claimants, under the normal circumstances also the deceased would have earned more than Rs.100 a day as the accident is of June, 2006 which would make the monthly income to be Rs.3,000/- and the yearly income Rs.36,000/-.

6. This Court has no hesitation in accepting the said argument of the counsel for the claimants as it is any body's guess that in June 2006, the income of a person would be much more than Rs.100 a day. Thus, for all practical purposes, the notional income ought to have been taken at Rs.36,000/- yearly.

7. Further contention of the counsel for the claimants is that the Tribunal ought to have taken income under future prospects while quantifying the compensation which has also not been done in the instant case.

8. Considering the judgments of the Supreme Court right for the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** to the case of **Rajesh and Others vs. Rajbir Singh and others** reported in **(2013) 9 SCC 54,** this Court is of the opinion that the future income also ought to have been taken into account for the purpose of quantifying compensation. Considering the fact that the deceased at the relevant point of time was aged about 50 years, income under future prospects would be 30% of his monthly income. Accordingly, accepting the yearly income of the deceased to be Rs.36,000/-, the amount under future prospects would be Rs.10,800/-. Thus, the annual income of the deceased would be Rs.46,800/- of which if 1/3rd is deducted towards personal expenses, the remaining amount comes to Rs.31,200/-. If the said amount is multiplied by applying the multiplier of 13, it comes to Rs.4,05,600/-. Thus, the claimants shall be entitled for a compensation of Rs.4,05,600/- as loss of dependency.

9. So far as the compensation under conventional head is concerned, considering the fact that the accident is about 11 years old this Court is of the opinion that a lump sum compensation of Rs.50,000/- towards conventional head would be just and reasonable. Accordingly, the claimants shall be entitled for total compensation of Rs.4,55,600/- in stead of Rs. 1,30,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

10. Accordingly, both the appeals stand allowed.

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

Bhola