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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1168 of 2008

1. Smt Shivani Bai Yadav, Wd/o late Vikram Singh Yadav (wrongly mentioned in order sheet Tikam Singh Yadav), aged about 25 years.
2. Harpal Singh Yadav S/o Late Vikram Singh Yadav, aged about 7 years.
3. Ku. Prabhalata Yadav D/o Late Vikram Singh Yadav, aged about 4 years, Appellants No.2&3 are Minor Through Natural Guardian Mother Smt. Shivani Bai Yadav Wd/o Virkam Singh Yadav R/o 256 Chowk, Dallirajhara, PS Dallirajhara, Durg (CG).

---- Appellants

Versus

1. Ramesh Kumar S/o Mattu Lal Jain, aged about unknown, R/o Naya Bazar, Dallirajhara, Police Station & Tehsil, Dallirajhara, Distt. Durg (CG) (owner of the offending vehicle).
2. The Oriental Insurance Co. Ltd. Through Divisional Manager, Malviya Nagar, Durg (CG).

---- Respondents

MAC No. 1204 of 2008

The Oriental Insurance Co. Ltd. Through the Divisional Manager, Oriental Insurance Co. Ltd. Malviya Nagar Road, Durg (CG).

---- Appellant

Versus

1. Smt Shivani Bai Yadav, W/o of Tokan Singh Yadav, aged about 25 years.
2. Harpal Singh Yadav S/o Tokan Singh Yadav, aged about 7 years.
3. Ku. Prabhalata Yadav D/o Tokan Singh Yadav, aged about 4 years, Appellants No.2&3 are Minor Through Natural Guardian Mother Smt. Shivani Bai Yadav Wd/o Virkam Singh Yadav R/o 256 Chowk, Dallirajhara, PS Dallirajhara, Durg (CG).
4. Ramesh Kumar S/o Mattu Lal Jain, aged about unknown, R/o New Bazar, Dallirajhara, Police Station & Tehsil, Dallirajhara, Distt. Durg (CG) (owner of the offending vehicle).

---- Respondents

For Appellant/Claimants :	Dashrath Kushwaha, Advocate.
For respondent/Insurance Co.	Shri Abhishek Sinha and Shri Ghanshyam Patel.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

30.08.2017.

1. By this common judgment both the appeals are being disposed of, as common facts & issues are involved in these appeals and arise out of

the same accident.

2. Both the appeals under Section 173 of the Motor Vehicles Act have been filed against the award dated 01.04.2008 passed by the Additional Motor Accident Claims Tribunal (FTC), Balod, District Durg (as it then was) in Claim Case No.50/2007. MAC No. 1168 of 2008 has been filed by the claimants seeking for enhancement of compensation whereby, MAC No.1204 of 2008 has been filed by the insurance company challenging the liability part which has been fastened upon the insurance company.
3. Brief facts of the case is that, the deceased Vikram Singh Yadav, aged about 28 years, met with an accident when he was driving a Discover motorcycle bearing registration No.CG-07-LF-7536, owned by Ramesh Kumar Jain, respondent No.1 in the appeal preferred by the claimants. As a result of said accident, said Vikram received grievous injuries to which he later succumbed. The accident occurred when the deceased was returning back to Dalli Rajhara from Dondi and because of the technical fault of the headlight the motorcycle getting fused and break shoes also getting jammed as a result of which it became dark and he could not control over the motorcycle and in the process he lost his balance and fell into a nearby Nala resulting in grievous injuries and his death later.
4. The claimants were the widow and two minor children of the deceased who had filed the claim application before the Tribunal under Section 163-A of the Motor Vehicles Act. The Tribunal vide impugned order granted compensation of Rs.2,14,792/- along with

interest @ 6 percent per annum from the date of application. It is this award which is under challenge in these appeals.

5. For the sake of convenience, we take up the appeal of the insurance company first.

6. The contention of the counsel for the insurance company is that it is a case where the accident has occurred because of the negligence on the part of the deceased himself as it was he who was driving the motorcycle when the accident occurred. It was also the contention of the insurance company that there was no involvement of another vehicle by which negligence could have been attributed on the driver of the opposite vehicle. According to counsel for the insurance company, since the deceased was himself driving the motorcycle and himself lost his balance and fell in the Nala, he had stepped into the shoes of the owner, and therefore, he would not be entitled for any compensation.

7. According to insurance company, the claimants shall also not be entitled for any compensation for the reason that policy which was taken by the owner was act only policy and did not cover the risk of owner, but had covered the risk of only a third party and on this ground also the claim application should have been rejected or at-least insurance company should have been exonerated from its liability of payment of compensation.

8. Likewise, it was also contended by the insurance company that extra premium of Rs.50/- for contractual liability has been taken, but there is a limited liability for which the insurance company would be liable

to indemnify and which in the instant case is only Rs.1,00,000/- and not for any compensation beyond that. Thus, for all the aforesaid reasons, the counsel for insurance company sought for the impugned award to be set aside and ordered for dismissal of the claim application as not maintainable.

9. Learned counsel for the claimants however opposes the appeal and submits that it is a case where there is a policy admittedly issued by the insurance company and that in addition the premium of Rs.50/- towards contractual liability also has been received by the insurance company. Further, the deceased in the instant case has led sufficient evidence to show that on the fateful day he was sent to work by the respondent No.1 on his own motorcycle when the accident occurred and as such there is a specific contract entered into by the insurance company in favour of the respondent No.1 indemnifying them, and therefore, the insurance company is liable to pay the compensation as awarded by the Tribunal and the appeal of the insurance company thus, deserves to be rejected.

10. Having heard the rival contentions put forth on either side and on perusal of record what clearly comes out from the evidence which have come on record is the fact that the claimants had adduced evidence of the widow wherein she has stated the accident to have occurred on account of mechanical failure inasmuch as the accident occurred because of failure of brake as also the headlight of motorcycle getting fused. This statement of the widow has been corroborated by a motorcycle mechanic Devilal, AW-3. Thus, it

appears that the accident occurred not because of the fault of the deceased, but because of mechanical failure of the motorcycle.

11. Further, it is the contention of the claimants that deceased was working for respondent No.1 and that he had gone for some work assigned to him when the accident occurred which further would establish the fact that there were employer and employee relationship between the deceased and the owner of motorcycle. Therefore, the case cannot be treated to be one where the deceased had stepped into the shoes of the owner. Further, when the policy is undisputed and the payment of extra premium also is not disputed, the insurance company cannot escape of its liability of payment of compensation.

12. Any insurance policy would always cover the risk of driver driving the vehicle. In the instant case also since the deceased was neither owner of the motorcycle nor had he stepped into the shoes of the owner, therefore, the claim raised by the widow and children of the deceased was maintainable under the provisions of Section 163-A of the Motor Vehicles Act. Further, when the claim application under Section 163-A of the Motor Vehicles is raised, admittedly the legal position is that of non requirement of establishing the negligence, at the same time when such claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving.

13. In the instant case, the evidence of the claimant supported by the statement of motor mechanic clearly proves the technical fault in the accident to occur. Thus, on the aforesaid facts and circumstances of

the case, this court is of the opinion that the appeal of the insurance company being devoid of merit deserves to be and is hereby dismissed.

14. So far as the appeal of the claimants are concerned, since it is a claim under Section 163-A of the Motor Vehicles Act, the calculation for payment of compensation can only be done as per IInd Schedule of the Motor Vehicles Act. In the instant case, the contention of the claimants is that, the Tribunal has not assessed the income of the deceased properly while quantifying the compensation. Likewise, it was also contended that the multiplier applied by the Tribunal is also not just and in accordance with law as is laid down by the Supreme Court in case of Sarla Verma & Others Vs. Delhi Transport Corporation and Another,2009 (6) SCC 121 and the subsequent decisions and that the Tribunal has also not considered the future prospects while quantifying the compensation and prayed for the award to be suitably modified.

15. If we take into consideration the facts and circumstances of the case, the deceased at the time of accident was aged about 28 years, the claimants are widow and minor children of deceased and that at the time of accident, the deceased was working under the respondent No.1. Though the claimants have stated that deceased was earning Rs.3000/- per month, but the Tribunal has accepted his income to be only Rs.2000/-. The fact that accident arose in the year, 2007 itself is sufficient to reach to the conclusion that in the year, 2007, the minimum wages of an unskilled labour would have been more than

Rs.100/- a day. Under such circumstances, it cannot be said that what the claimants have pleaded of the deceased earning Rs.3000/-a month to be on higher side or exorbitant in any manner.

16. If Rs. 3000/- is accepted as monthly wages, the annual income would be Rs.36,000/-. As per law laid down by the Supreme Court in case of Sarla Verma (Supra) which has been followed in all subsequent decisions by the Supreme Court as well as by this court considering the age of the deceased, 50 percent of monthly wages also should be taken into consideration under future prospects while quantifying the compensation. 50 percent of yearly income of the deceased would be Rs.18,000/-. Thus, if we add this amount towards future prospects, the yearly income of the deceased would be Rs.54,000/-. If 1/3rd of this amount is deducted towards personal expenses, the balance amount comes to Rs.36,000/-. If this amount is multiplied by applying the multiplier of 18 as per Schedule of the Act, the amount would reach to Rs.6,48,000/-.

17. Thus, it is ordered that the claimants are entitled for compensation for loss of dependency at Rs.6,48,000/- in place of Rs.2,07,792/-as awarded by the Tribunal. In addition, the claimants shall also be entitled for compensation of Rs.2000/- towards funeral expenses, Rs.5000/-towards loss of consortium and Rs.2500/-towards loss of estate. Thus, the claimants shall be entitled for a total compensation of Rs.6,57,500/- instead of Rs.2,14,792/- as awarded by the Tribunal.

18. Thus, MAC No.1204 of 2008 filed by the Insurance Company is dismissed.

19. MAC No.1168 of 2008 filed by the claimants is allowed. The claimants shall be entitled for a total compensation of Rs.6,57,500/-in place of Rs.2,14,792/- as awarded by the Tribunal.

20. The above enhanced amount of compensation shall also carry the interest at the rate quantified in the award. Rest of the conditions mentioned in the award shall remain intact.

21. Any interim relief granted by this court in these two appeals, in between, would get merged with this order and stand vacated.

Sd/-
(P. Sam Koshy)
Judge

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