NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 881 of 2010

1. Sarve Miri S/o Bhagvani, aged about 45 years.
2. Smt.Phoolmoti W/o Sarve Miri, aged about 40 years.
   Both are R/o Village – Post Singhoda, Thana Saraypaali, Tehsil Saraypaali, Distt. Mahasamund (Chhattisgarh).

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Versus

1. Nepali Yadav S/o Sardari, aged about 22 years, R/o Bhavani Girish Mukhargi, Road No.5, Howda, Thana Bhavanipur, Distt.Howda.
2. Bulbul Shrimani S/o Late H.Shrimani, aged about 52 years, R/o 154, S.P.Banerjee Road, Kolkata 700035.
3. New India Insurance Company Ltd., 140 B.T.Road, Kolkata, Through – New India Insurance Co.Ltd., Madina Building, In front of Kachahari, Raipur, Distt.Raipur (Chattisgarh).

---Respondents

For Appellants	:	Shri R.R.Soni, Advocate
For respondent No.3/Insurance Company	:	Shri Deepak Gupta, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/09/2017

1. Present is an appeal preferred by the claimants assailing the award dated 09/03/2010 passed by the Motor Accident Claims Tribunal, Mahasamund (C.G) (for short – the Tribunal) in Claim Case No.22/2009.

2. Vide the said impugned award, the Tribunal has granted the compensation of Rs.1,27,000/- along with interest @ 6% per annum from the date of application. Respondents No.1 & 2 in spite of notices being send on repeated occasions are avoiding appearance and they also did not appear before the Tribunal and the case was decided ex-parti against them. Under the said circumstances, this court is not inclined to wait for the respondents No.1 & 2 and proceeds to decide the case on its merits.

3. Since the driver of the offending vehicle at the relevant point of time was not having a valid license and that the owner and driver also having failed to produce the license before the court below, the Insurance Company was exonerated of its liability and liability of payment of compensation fastened upon the respondents No.1 & 2.

4. The counsel for the appellants submits that, it is a case where the Insurance Company has been wrongly exonerated of its liability. It is also contended that, the income assessed by the Tribunal for quantifying the compensation also is on the lower side.

5. That so far as the liability wrongly having been fastened upon the owner, the contentions of the counsel for the appellants is that, the police authorities in the course of seizure of the offending vehicle had given

details of the driving license of the driver wherein the validity was shown to be till 31/12/2009. Therefore, the Insurance Company should have been fastened with the liability of payment of compensation as there is no evidence led by the Insurance Company to disprove this contention or to prove that the driver did not have a valid license.

6. However, perusal of record would show that the details of the driving license as per the seizure memo of the criminal case recored Exhibit-P5 which was produced before the Tribunal was a vague document in as much as it only had the observation of driving license being valid till 31/12/2009, but it did not reveal the details of the license such as the date of issuance, office from which it was issued, category of vehicle which he was permitted to drive, etc.

7. In the absence of any such details being provided by the police authorities or by the owner and driver, it would be difficult to fasten the liability upon the respondent No.3-Insurance Company and thus this court is of the opinion that, finding of the Tribunal to that extent does not warrant any interference.

8. However, so far as the claim for enhancement is concerned, this court is inclined to follow the ratio laid down by the Supreme Court in the case of ***Kishan Gopal & Anr. Vs. Lala & Ors. [{2014} 1 SCC 244]*** wherein in a case of a minor the Hon'ble Supreme Court held that, the notional income which ought to be considered is Rs.30,000/- and the compensation under the conventional head should be Rs.50,000/-. Further, multiplier to be applied is 15. In the instant case also, this court is inclined to accept the same and held that the notional income taken in the present case of Rs.15,000/- is at lower side and deserves enhancement and is accordingly enhanced to Rs.30,000/- and same is multiplied by applying multiplier of 15, the amount would reach to Rs.4,50,000/- and compensation under the conventional head also is awarded at Rs.50,000/-. Thus, making total compensation payable to the claimants at Rs.5,00,000/- instead of Rs.1,27,000/- as awarded by the Tribunal. The said amount shall also carry interest at the same rate as has been awarded by the Tribunal.

9. With the aforesaid observation, the appeal stands allowed. The liability of payment of compensation fastened upon the owner and driver of the vehicle as has been held by the Tribunal.

Sd/-
(P. Sam Koshy)
Judge

Sumit