NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 476 of 2012

Divisional Manager, the New India Insurance Company Limited, Budhar Road Shahdol, through Divisional Manager, the New India Insurance Company Limited, UTI Bank, Bus Stand Bilaspur (CG)

---- Appellant

Versus

1. Agasiya Bai Sahu, aged about 22 years, Wd/o late Bhola Singh
2. Ram Singh, aged about 42 years, S/o Shri Paksuram, Caste-Gond.
3. Kapasi Bai, aged about 40 years, W/o Shri Ram Singh Gond,

   All are permanent resident of village Kohka, Police Station Ramnagar, District Anuppur at present R/o near Chingrajpara Mandir, Tahsil Bilaspur, District Bilaspur (CG) Claimants
4. Ramkhilawan Gond, aged about 42 years, S/o Punwa Singh Gond, R/o Double Story Qtr. No.693, Jamuna Colliery, P.S. Bhalumada, District Shahdol (C.G.)

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate
For Respondents 1 to 3	:	Smt. M. Asha under instruction of Shri S. K. Kashyap, Advocate

---

Hon'ble Shri Justice P. Sam Koshy

Order On Board

27/07/2017

The present is an appeal preferred by the Insurance Company assailing the award dated 25.01.2012 passed by the 2nd Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.270 of 2011.

2. The claimants who are the respondents 1 to 3 before this Court have also filed a cross objection under Order 41 Rule 22 seeking for enhancement of the compensation awarded by the Tribunal. There is an application i.e. I.A. 04/17 for condonation of delay in filing the cross objection. For the reasons assigned in the said application and the fact that it is a death case, I.A. No.04 is allowed and the delay in filing the cross objection stands condoned.

3. Brief facts of the case are that the deceased Bhola Singh met with an accidental death on 19.05.2004 when he was travelling as a pillion rider on a motorcycle bearing registration No. M.P. 18E 6150 belonging to Ramkhilawan.

While travelling along with Ramkhilawan, the deceased fell from the motorcycle and received grievous injuries to which he later succumbed. The family members of the deceased i.e. the widow and the parents of the deceased had filed a claim application under Section 166 of MV Act before the Tribunal seeking for compensation.

4. Initially, vide order dated 07.02.2007 the Tribunal had dismissed the claim application which was subjected to challenge in MAC No. 844/2008 before this Court. The said appeal was allowed on 16.06.2011 and the matter was remitted back to the Tribunal for deciding the claim application afresh. Considering the evidences which have come on record and the pleadings the Tribunal vide impugned award dated 25.01.2012 allowed the claim application and held that the claimants are entitled for compensation of Rs.1,79,500/- with interest @ 6% from the date of application.

5. It is this award which is under challenge by the Insurance Company as well as by the claimants.

6. The contention of the counsel for the appellant is that it is a proved case where the owner and driver of the motorcycle i.e. Ramkhilawan on the date of accident did not have a licence at all to drive the motorcycle and therefore the Insurance Company for want of breach of policy condition cannot be held liable to indemnify the owner of the vehicle who did not possess a licence. He submits that so far as the liability upon the Insurance Company is concerned, it has already been held that the Insurance Company is not liable for payment of compensation vide earlier order passed by the High Court in MAC No. 844 of 2008 decided on 16.06.2011. He submits that contrary to the said finding, the Tribunal without dealing with the issue as to whether the owner had a licence at the relevant time or not simply fastened the liability upon the Insurance Company only on the ground that the Insurance Company had covered the risk of the motorcycle by issuing a comprehensive policy thereby covering the risk of third party which includes the deceased Bhola Singh, the pillion rider.

7. Having considered the contention of the counsel for the appellant, the fact which needs appreciation is the finding of the High Court in MAC No. 844 of 2008 decided on 16.06.2011. The relevant portion of the said award i.e. paragraph-7 is reproduced hereinunder:

> "It is also admitted fact that owner himself was driving motorcycle and he had filed only learner's licence which too expired on 17.12.2003 i.e. much before the date of accident i.e. 19.05.2004 and thus findings of the Claims Tribunal regarding breach of insurance policy and absolving insurance company from any liability are proper."

8. Though the said finding was given by the Tribunal setting aside the order, the case was remitted to the Claims Tribunal for deciding afresh. When the matter was sent back to be decided afresh, it was the duty of the Tribunal to have dealt all the issues which were framed earlier and to decide all those issues but for the reasons best known to it, the Tribunal has not taken into consideration the finding of the High Court in MAC No.844 of 2008 and also not dealt with the issue of the driver not having licence at the time of accident. The Tribunal has also not considered the issue of breach of policy condition though the Insurance Company has led evidence of its Officer to establish the ground of the driver not having the licence and that in the absence of valid licence, the same would amount to breach of policy condition.

9. In view of the same, the finding of the Tribunal to the extent that the Insurance Company is liable to indemnify the owner is not proper and justified. Taking into consideration the factual matrix of the case and the fact that it is a case where the death of the deceased took place in the year 2004 i.e. almost about 13 years ago, ends of justice would meet if the appellant Insurance Company is directed to pay the entire amount as of now and to initiate appropriate proceeding for recovery of the same from the owner Ramkhilawan i.e. respondent no.4 applying the principle of "pay and recovery".

10. Thus, the appeal of the appellant i.e. Insurance Company stands partly allowed to the extent that the Insurance Company shall not be legally liable to pay

the compensation but in the peculiar facts of the case, the Insurance Company is directed to pay the amount and recover the same from the owner.

11. So far as the cross objection filed by the claimants i.e. respondents 1 to 3 is concerned, the challenge by the claimants is that the notional income of Rs.15,000/- that has been taken by the Tribunal is on the lower side. The future prospects has also not been taken into consideration and therefore the impugned award deserves to be modified suitably.

12. The evidence which has come on record would show that the deceased at the relevant point of time was a painter. Under no circumstances in the year 2004 a daily wager or an unskilled labour would have got Rs.100/- per day. Therefore, the notional income taken by the Tribunal as Rs.15,000/- per month is on the lower side. Thus, this Court holds that for the purpose of grant of compensation the wage of the deceased ought to have been accepted at Rs.100 a day which comes to Rs.3,000/- a month i.e. Rs.36,000/- a year. In view of the land mark judgment of the Supreme Court in the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** 50% of his yearly income shall also have to be taken towards future prospects. The amount thus would be Rs.54,000/-. If 1/3 is deducted towards personal expenses, the yearly income for the purpose of calculating compensation would be Rs.36,000/-. If the same is multiplied by applying the multiplier of 17, the amount reaches to Rs.6,12,000/-. The claimants in the instant case would therefore be entitled for compensation of Rs.6,12,000/- in stead of Rs.1,79,500/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the rate as has been awarded by the Tribunal. Rest of the compensation as awarded by the Tribunal shall remain in tact.

Sd/-

(**P. Sam Koshy)**
JUDGE

Bhola