NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.927 of 2010

1. Smt.Koushilya Bai W/o Pahar @ Pahad Singh Sahu, aged 35 years.
2. Hemant Kumar S/o Pahar @ Pahad Singh Sahu, aged 20 years.
3. Indrasen Sahu S/o Pahar @ Pahad Singh Sahu, aged 17 years.
4. Gajanand Sahu S/o Pahar @ Pahad Singh Sahu, aged 16 years.
5. Nathuram Sahu S/o Late Mahettar Sahu, aged about 65 years.
6. Smt.Leela Bai W/o Nathu Ram Sahu, aged about 60 years.

   All are R/o Village Chiraigodi, Post Jamgaon, Tahsil Balod, District Durg (C.G.).

   Appellant Nos.3 & 4 are minor, through their natural guardian Appellant No.1.

---Appellants

Versus

1. Raviraj Sahu S/o Keshavram Sahu, aged about 43 years, R/o village Bafra (Jalbandha) P.S.Khairagarh, District Rajnandgaon (C.G.).
2. Shailesh Kumar Yadav, Prabhunath Yadav, aged about 33 years, R/o Qtr.No.HIG-9, Kabir Nagar, District Raipur (C.G.).

   And ward No.07, Kirandul, Bacheli, District Dantewada (C.G.).
3. Bajaj Alliance General Insurane Company Limited, Office – G.E.Plaza Airport Road, Airbada Pune – 411006.

   Through :- The Manager, Branch Office, Bajaj Alliance General Insurance Company Limited, behind H.D.F.C.Bank, Gurudwara Road, P.S.Mohannagar, District Durg (C.G.).

---Respondents

For appellants	:	Shri Shobhit Koshta, Advocate.
For respondent No.3/ Insurance Company	:	Shri S.S.Rajput , Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/11/2017

1. Present is an appeal by the claimants under Section 173 of the Motor Vehicle Act assailing the award dated 26/06/2010 passed by the Additional Motor Accidents Claims Tribunal (F.T.C.), Balod, District Durg in Motor Accident Claim Case No.54/2009.

2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded the compensation of Rs.4,24,000/- with interest @ 6% per annum from the date of application.

3. While passing the said impugned award, the Tribunal had exonerated the Insurance Company of its liability and have fastened the liability of payment of compensation upon the owner cum driver. The claimants have assailing firstly the exoneration of the Insurance Company of its liability. Further they have also questioned the amount of compensation granted.

4. The contention of the counsel for the appellant is that, the driver at the time of accident that took place on 09/03/2009 had a license which was duly renewed from the RTO and which has not been controverted or disputed by the Insurance Company. If that be so, the Insurance Company cannot be absolved of its liability from indemnifying the owner as he had taken all the necessary precautions and therefore the payment of compensation should be fastened upon the Insurance Company jointly and severally along with the owner cum driver.

5. The claimants have also challenged, that the income assessed by the Tribunal to be on the lower side plus the Tribunal has not taken into account the income from future prospects while computing the compensation and prayed for the award to be suitably modified.

6. The counsel for the Insurance Company however opposing the appeal submits, that once when it is the finding of the Tribunal, that the license is a fake license in as much as the original which has been produced was found to be a fake license, the subsequent renewal by a competent authority will not give it a legal sanctity and the license would remain a fake license and therefore the award does not warrant any interference.

7. So far as the quantum is concerned the counsel for the Insurance Company submits, that the finding of the Tribunal is based upon the evidence which have come on record and there is no scope of enhancement of the award and prayed for the dismissal of the appeal.

8. Having heard the rival contention put forth on either side and on perusal of record this court is of the opinion, that since, admittedly the driver involved in an accident had a license which was duly renewed from the office of R.T.O.,

Raipur which is also the finding of the Tribunal as is reflected from paragraph 9 of the impugned judgment, the Insurance Company cannot be absolved of its liability indemnifying the owner.

9. Thus, the impugned award is modified to the extent, that the liability of payment of compensation shall be upon the Insurance Company with liberty, that they shall recover the same from the owner cum driver accordingly.

10. In the instant case, the owner cum driver have not prefer any appeal against the impugned judgment whereby the liability was fastened upon him and the Insurance Company was exonerated of its liability.

11. As regards the enhancement of compensation is concerned, if we take into consideration the date of accident which is 09/03/2009 where indisputedly, the minimum income of even an unskilled labour would be more than Rs.150/- per day which would bring the monthly income to Rs.4,500/-, but the income assessed by the Tribunal in the instant case is only Rs.3,000/- per month.

12. Thus, this court assesses the monthly income of the deceased at Rs.4,500/- for quantifying the compensation. Considering the age of the deceased, she was also be entitled for 50% of the same towards future prospects.

13. Thus, if Rs.4,500/- is taken as the monthly income of the deceased and adding 50% of the said amount towards future prospects, the amount would come to Rs.6,750/- which would make it Rs.81,000/- annually. If 1/4th of the same is deducted towards personal expenses, the remaining amount would become Rs.60,750/- which if multiplied by applying multiplier of 15, the amount would come to Rs.9,11,250/-. It is ordered accordingly that the claimants shall be entitled for the compensation of Rs.9,11,250/- towards loss of dependency.

14. Coming to the issue of compensation under the conventional head, considering the facts and circumstances of the case this court is of the opinion, that ends of justice would meet if a lump sum amount of Rs.89,000/- is awarded under this head to make the total compensation at Rs.10,00,250/- which for convenience sake is rounded off at Rs.10,00,000/-.

15. Thus, the claimants shall be entitled for total compensation of Rs.10,00,000/- instead of Rs.4,24,000/- as awarded by the Tribunal .

16. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

17. It shall be the liability of the Insurance Company to deposit the amount first and then recover the same from the owner cum driver of the offending vehicle.

18. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Sumit