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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 988 of 2017

Manager, United India Insurance Company Limited Near Bank of Maharastra, N.K.Vardhman Highway Petrol Pump, G.E.Road, Kumhari, Tahsil Patan, District Durg, Chhattisgarh, through its authorized Authority-Divisional Manager, Divisional Office 2nd Floor Gurukripa Towers, Vyapar Vihar Road, Bilaspur, District Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Smt. K. P. Mini Sanjeev Wd/o Late K. K. Sanjeev, Aged About 45 Years R/o Quarter No. 5-A, Street No.10, Sector 2, Bhilai, Tah. & Distt. Durg, Chhattisgarh ....(Applicant No.1)
2. Ku. K. S. Sumi D/o Late K. K. Sanjeev, Aged About 20 Years R/o Quarter No. 5-A, Street No.10, Sector 2, Bhilai, Tah. & Distt. Durg, Chhattisgarh ....(Applicant No.2)
3. Ku. K. S. Sini D/o Late K.K.Sanjeev, Aged About 18 Years R/o Quarter No. 5-A, Street No.10, Sector 2, Bhilai, Tah. & Distt. Durg, Chhattisgarh ....(Applicant No.3)
4. Sanjay Kumar Sahu S/o Subhaschandra Sahu, Aged About 22 Years R/o D-2/4-320, Indira Aawas, Kumhari, P.S. Kumhari, Tah. Patan, Distt. Durg, Chhattisgarh ....(Non-Applicant No.1)

---- Respondents

For Appellant : Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

20/07/2017

Present is an appeal under Section 173 of the Motor Vehicles Act by the Insurance Company assailing the award dated 03.05.2017 passed by the 2nd Additional Motor Accident Claims Tribunal, Durg in Claim Case No.17/2016.

2. The relevant facts in brief for deciding the appeal are that the deceased K. K. Sanjeev while crossing the road on 08.11.2015 was dashed by the motorcycle bearing registration No. CG07 AQ 8272 belonging to respondent no.4. On account of the said accident, the deceased is said to have sustained grievous injuries to which he later succumbed. The wife and children of the deceased filed a claim application under Section 166 of the Motor Vehicles Act before the Claims Tribunal claiming compensation.

3. The Tribunal considering the facts and circumstances of the case and also considering the wages which the deceased was receiving ordered for payment of compensation to the tune of Rs.71,69,431/- payable to the claimants.

4. It is this award which has been assailed by the Insurance Company in the present appeal.

5. Challenge to the award is on three grounds. Firstly, the claimants are getting substantial amount of financial assistance from the employer of the deceased and this aspect has not been considered by the Tribunal. Secondly, the Tribunal has erred in as much as taking 30% of income for the purpose of calculating future prospects. Lastly, it was contended that the accident itself is disputed as initially the FIR was lodged against unknown persons and therefore it cannot be authoritatively concluded that the accident did occur from the motorcycle belonging to respondent no.4 insured with the appellant.

6. So far as the first contention of the counsel for the appellant is concerned, if we look at the document dated 16.01.2016 which deals with the payment of mandatory assistance to the claimants, it would clearly reflect that the amount of Rs.54,475/- is being paid to the family members under the EFBS scheme that is applicable in the Bhilai Steel Plant for its employee. The said amount is not being paid as an ex-gratia payment or for the loss of income to the family. But the same has been provided after a huge amount of money is deposited by the claimants from the money which fell due to the deceased employee on his untimely death. As such, in lieu of the amount credited in the Company, they are releasing an amount of Rs.54,475/- a month. For this reason, the said amount could not have been taken into account by the Tribunal for the purpose of quantifying the compensation.

7. So far as the issue of adding 30% of his income under the head of future prospects for the purpose of quantifying the compensation is concerned, counsel for the appellant relied upon the decision 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** highlighting the fact that in the said judgment, the Supreme Court has held that in a case where the deceased was more than 60 years, the future prospects would not be added for the purpose of quantifying the compensation. It would be relevant at this juncture to refer to the same judgment wherein in paragraph-24 the Supreme Court has held that the factors which have been envisaged in the said judgment only to be accepted as guideline and the same cannot be applied as a straight jacket formula in each case and in a given case the Tribunal or for that matter the High Court can deviate also in the event of there being sufficient reasons from what has been laid down in the case of Salra Verma. The later part of the aforesaid paragraph clearly indicates that in a given exceptional case on there being reasons assigned, the Tribunal can grant compensation for future prospects for a deceased who was more than 50 years at the time of accident.

8. If we look at the facts of the present case the date of birth of the deceased as the service record is 24.06.1965 which shows that the appellant on the date of accident was just about 2 months 13 days more than 50 years. Thus, in all practical purposes, it has to be presumed that he was 50 years age. Another fact which cannot be lost sight is that the deceased was working with the Steel Authority of India Limited which is a Navratna Public Sector undertaking and was posted at Bhilai Steel Plant. In the said establishment, there is a revision of pay periodically and there would have been a definitely rise in his salary on account of the periodical revision of pay. Though the Supreme Court in the case of Sarla Verma has held that the future prospects for people more than 50 years should not be calculated but at the same time it has also held that, in a given case where exceptional reasons are available the same can be granted. Undisputedly, the deceased in the instant case was aged about 50 years and he had not attained the age of 51 years, therefore, the ratio laid down in the case of Sarla Verma would be applicable in the case of the deceased.

9. Taking into consideration the aforesaid factors and also considering the age of the widow and the children of the deceased, it cannot be said that the Tribunal has committed an error of law in adding income towards future prospects. Future prospects which has been taken into consideration by the Tribunal is of 30% which is again as has been laid down by the Supreme Court in the case of Sarla Verma wherein paragraph-24 itself it has been categorically held that where the age of the deceased was 40 to 50 years, the addition should be that of 30%. Thus, the said contention of the counsel for the Insurance Company stands negatived.

10. So far as the FIR lodged against an unknown person is concerned, the same is not much of consequence for the reason that the owner of the motorcycle himself has filed a reply stating that he was present at the time when the accident occurred and the public gathered there have falsely implicated in the said accident. This clearly gives sufficient strength to draw an adverse inference against the owner of being involved in the accident. For this reason also, the ground raised by the insurance Company stands negatived.

11. The appeal of the Insurance Company thus fails and is accordingly, dismissed.

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

Bhola