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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 489 OF 2008

1. Indrajeet Singh, S/o Rajendra Kumar Singh, aged about 17 years
2. Ku. Saumya Singh, D/o Rajendra Kumar Singh, aged about 25 years

Appellant No.1 is (minor) through her friend Gajadhar Singh, S/o Late Top Singh, aged about 63 years, R/o Manikpur, Korba, District Korba (C.G.)

… Appellants

versus

1. Rajendra Kumar Singh, S/o Gajadhar Singh, aged about 37 years, R/o near Quarter No. C.H.144, R.K. General Stores, Manikpur, Korba, District Korba (C.G.)
2. National Insurance Company Limited, through Branch Manager, Korba, District Korba (C.G.)

… Respondents

For Appellants	:	Mr. Vivek Tripathi, Advocate, under instructions of Mr. Awadh Tripathi, Advocate.
For Respondent No.2	:	Mr. Raj Awasthi, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/11/2017

1. The present is a claimants' appeal under Section 173 of the Motor Vehicles Act, 1988, assailing the award dated 31.12.2007 passed by the Second Additional Motor Accident Claims Tribunal (F.T.C.), Korba, in Claim Case No. 134/2006.

2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.4,00,000/- to the claimants with interest thereon at the rate of 9% per annum from the date of filing of the claim application i.e. 10.3.2006.

3. It is this award which has been challenged by the claimants seeking enhancement of the compensation awarded.

4. Learned counsel for the appellants-claimants submits that the income assessed by the learned Tribunal is on the lower side and that the finding of contributory negligence is also erroneous and that no amount has been awarded under the conventional heads.

5. Contention of the learned counsel for the appellants-claimants is that to prove the income of the deceased they had produced a Saral Form, the income tax return of deceased-Smt. Bhuneshari Singh, which shows that the yearly income of the deceased was more than Rs. 63,000/- and therefore the Tribunal should have accepted the details given in the income tax return for assessing the income of the deceased.

6. So far as contributory negligence is concerned, learned counsel for the appellants-claimants contended that the said finding is bad in law, for the reason that it is not a case where there can be said to be a contributory negligence on the part of the deceased in the instant case, who was an occupant, and that it would be a case of composite negligence. The said finding therefore deserves to be set aside and it may be held that the claimants shall be entiteld for the whole amount.

7. Further contention raised by the appellants-claimants is that the insurance policy which was issued was a comprehensive policy i.e. a package policy, which is Exhibit D-1, and which would also cover the risk of an occupant. Therefore, the finding of the learned Tribunal of limiting the compensation payable by the insurance company at Rs. 50,000/- is erroneous, as the limit under the personal accident coverage is an additional benefit which is provided to the insured and for which an additional premium is charged, but since the premium is paid for a package policy that would include the occupant also.

8. Learned counsel for respondent no.2-insurance company does not dispute the fact that the policy is a package policy and he would also not dispute to the fact that the coverage under the personal accident is only an additional benefit provided to the insured.

9. In view of the same, the finding of the learned Tribunal limiting the liability of insurance company at Rs.50,000/- is held to be bad in law and it is also held that the entire liability of payment of compensation shall be upon the insurance company.

10. Likewise, the finding of contributory negligence is also incorrect, as the deceased was travelling as an occupant in the offending vehicle and that she was not in fact driving the vehicle, by which contributory negligence can be attributed on her. Thus, the finding of contributory negligence is erroneous as the same would fall within the ambit of composite negligence.

11. So far as the income of the deceased is concerned, though the income tax return shows that the income of the deceased is more than Rs. 63,000/-, this Court for the purpose of assessing the income has no hesitation that taking into account the period of accident the deceased must have been earning at least Rs.5000/- a month which would make the yearly income at Rs.60,000/-, instead of Rs.50,000/- as assessed by the learned Tribunal.

12. Now, we proceed to compute the compensation accordingly. Taking Rs.60,000/- as yearly income if 50% of the same is added towards future prospects, the amount would be Rs. 90,000/- of which if 1/3rd is deducted towards personal and living expenses, the remaining figure which would come that would be Rs. 60,000/- and which if multiplied applying the multiplier of 16, the amount would reach to Rs. 9,60,000/-. It is thus ordered that the claimants shall be entitled for Rs. 9,60,000/- for the loss of dependency. Further, considering the recent decision of the Hon'ble Supreme Court insofar as compensation under the conventional head is concerned, in the factual matrix of the present case, this Court is of the opinion that ends of justice would meet if a lump sum amount of

Rs.40,000/- is awarded to the claimants under the conventional head and it is accordingly ordered so. Thus, the total compensation payable would become Rs. 10,00,000/- which the claimants shall be entiteld for. Since the finding of contributory negligence has already been set aside by this Court, the claimants shall be entiteld for the entire amount of Rs.10,00,000/- as assessed by this Court.

13. As a result, the appeal is allowed and the impugned award stands modified to the extent that the appellants-claimants shall be entitled for a total compensation of Rs. 10,00,000/- with interest thereon at the same rate as has been imposed by the learned Tribunal.

Sd/-
(P. Sam Koshy)
Judge

/sharad/