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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1120 OF 2008

ICICI Lombard General Insurance Co. Ltd., ICICI Towers, Bandra Kurla Complex, Bandra (East), Mumbai, through its Legal Manager, 3rd Floor, Lal Ganga, Shopping Complex, G.E. Road, Raipur (C.G.)

… Appellant

versus

1. Sheikh Ismail, S/o Shri Sheikh Ibrahim, aged about 62 years, R/o Shankar Chowk, Nayapara, Police Station Goal Bazar, Raipur, Tehsil Raipur, District Raipur (C.G.)
2. M/s Shukla Saw Mill, through Shri Harish Shukla, S/o Shri Amarnath Shukla, aged about 30 years, R/o Bajrang Chowk, Kumhari, District Durg (C.G.)

… Respondents

with

MISC. APPEAL (C) NO. 1199 OF 2008

Sheikh Ismile, S/o Shri Sheikh Ibrahim, aged about 62 years, R/o Shankar Chowk, Nayapara, Police Station Goal Bazar, Raipur, Tehsil Raipur, District Raipur (C.G.)

… Appellant

versus

1. M/s Shukla Saw Mill, through Harish, S/o Shri Amarnath Shukla, aged about 30 years, R/o Bajrang Chowk, Kumhari, District Durg (C.G.)
2. I.C.I.C.I. Lombard General Insurance Co. Ltd., through Authorized Officer, I.C.I.C.I. Lombard General Insurance Company Limited, R/o Lal Ganga Shopping Mall, G.E. Road, Raipur, Tehsil and District Raipur (C.G.)

… Respondents

- Mr. P. Acharya, Advocate, under instructions of Mr. Amrito Das, Advocate, for the ICICI Lombard General Insurance Co. Ltd.
- Mr. Suresh Tandan, Advocate, under instructions of Mr. K.K. Dewangan, Advocate, for the Claimant-Sheikh Ismile.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/08/2017

1. These are the two appeals under Section 173 of the Motor Vehicles Act, 1988.

2. Assail in both the appeals is to the award dated 27.6.2008 passed by the Chief Motor Accident Claims Tribunal, Raipur, in Claim Case No. 17/2008.

3. Vide the impugned award dated 27.6.2008, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.2,52,800/- in favour of the Claimant-Sheikh Ismile fastening the liability to pay the same, jointly and severally, upon owner and insurer of the offending Truck, with interest at the rate of 6% per annum from the date of filing of the claim application till realization of the compensation.

4. MAC No. 1120/2008 has been filed by the ICICI Lombard General Insurance Company assailing the liability of payment of compensation fastened upon it. MAC No. 1199/2008 has been preferred by the Claimant-Sheikh Ismile seeking for enhancement of the compensation awarded.

5. Facts of the case in brief are that, on 29.10.2007, the deceased-Suhail Ahmed was going on his bicycle from Tatibandh to Bhanpuri. At that time, Omprakash Chandrakar, the driver of the offending Truck (Registration No. CG04-G/2847), by rashly and negligently driving the said Truck dashed the another Truck (Registration No. CG07-C/4478) which was standing along side the road. That on account of which the offending Truck turned turtle and the deceased-Suhail Ahmed who was passing nearby the spot got crushed under the offending Truck and succumbed to the injuries sustained by him in the accident. The driver-Omprakash Chandrakar of the offending Truck also succumbed to the injuries sustained in the accident. This gave rise to the filing of the claim application by the Claimant-Sheikh Ismile, being the father of the deceased-Suhail Ahmed, before the Tribunal, out of which the present appeals arose.

6. So far as the appeal of Insurance Company is concerned, the first ground of challenge is that the driver-Omprakash Chandrakar of the offending Truck was not having a valid driving licence at the relevant point of time. The second ground of challenge is to the quantum of compensation awarded by the Tribunal, as according to the Insurance Company the multiplier applied by the Tribunal ought to had been keeping in view the age of the Claimant and not the age of the deceased.

7. Perusal of the record would show that the Insurance Company has not led any evidence to substantiate its contention pleaded by it before the Tribunal. In the absence of any evidence no case is made out calling for interference with the impugned award so far as the driver of the offending Truck not having a valid driving licence at the relevant point of time is concerned.

8. So far as the calculation of multiplier is concerned, the law in this regard stands settled by the land-mark judgment of the Hon'ble Supreme Court in the case of **Sarla Verma (Smt.) and others** v. **Delhi Transport Corporation and Another**[1] and all the subsequent judgments relying upon the said case.

9. Thus, the aforesaid two grounds of the Insurance Company are not tenable and the same are rejected.

10. It was also the contention of the Insurance Company that since the Claimant before the Tribunal was only the father of the deceased, the deduction towards the personal expenses which is made by the Tribunal ought to had been half of the income which the deceased was earning instead of 1/3rd which has been accepted by the Tribunal. According to the Insurance Company the Claimant in the instant case was living separately and was not residing along with the deceased-Suhail Ahmed. Therefore, in all probability, the deceased at the relevant point of time must not have been parting with more than half of his salary to his father-Sheikh Ismile and not 1/3rd of the salary, as he had to maintain himself also.

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1 2009 (6) SCC 121

11. This ground of the Insurance Company seems to be a reasonable ground, as the Claimant-Sheikh Ismile has not established before the Tribunal as to the fact that he was solely dependant upon the income of the deceased-Suhail Ahmed. It also reflects that the Claimant was not residing along with the deceased at the time of accident and, therefore, in the opinion of this Court, the deduction towards the personal expenses should had been one half of the income and not 1/3rd. It is ordered accordingly and the appeal of the Insurance Company stands allowed to this extent.

12. So far as the appeal of the Claimant-Sheikh Ismile regarding quantum of compensation is concenred, learned Counsel for the Claimant submits that in the instant case the deceased-Suhail Ahmed was working as a supervisor and which has also been accepted by the employer under whom the deceased was working, who has deposed before the Tribunal in respect of his employment and has also stated that he was paying Rs.6000/- a month to the deceased. However, the Tribunal has erroneously taken his income at Rs.1800/- a month for the purpose of calculating the compensation. According to the learned Counsel since it was an accident that took place in the year 2007, the minimum income of a casual labour at the relevant point of time would had been between Rs.150-200/- a day, that is, Rs.4500-6000/- a month, and therefore, the finding of the Tribunal in fixing the income of the deceased at Rs.1800/- is erroneous.

13. Learned Counsel for the Claimant further submits that the Tribunal has also not taken into consideration the future prospects as a component for quantifying the compensation. Likewise, it is also argued that the compensation awarded under the conventional heads is also on the lower side and the same also deserves for suitable enhancement.

14. Learned Counsel for the Insurance Company however opposes the appeal of the Claimant-Sheikh Ismile stating that the award of the Tribunal so far as quantum of compensation is concerned is just and reasonable and is based on the evidence which have come on record and the same does not warrant interference.

15. Having heard the rival contentions put forth on either side and on perusal of the record, undisputedly the employment of the deceased-Suhail Ahmed has been established and proved. All that we have to see is, what would be the just and proper income of the deceased at the time of accident.

16. Undisputedly, at the relevant point of time, an unskilled labour also was drawing an income between Rs.150-200/- a day, that makes a monthly income to be Rs.4500-6000/-. If we accept the lowest of the same of Rs.150/- as daily income, the montly income would be Rs.4500/- and which should be the minimum wages which the Tribunal should have accepted for quantifying the compensation. It is ordered accordingly.

17. Likewise, so far as the grant of future prospects as a component of compensation is concerned, the said issue also has been by now well settled by a catena of decisions of the Hon'ble Supreme Court starting from Sarla Verma (supra) till **Rajesh and Others** v. **Rajbir Singh and Others**[2] wherein in the event of the age of the deceased being less than 40 years, 50% of his actual income should be added as a component for quantfying the monthly income.

18. Accordingly, if we accept Rs.4500/- as the monthly income of the deceased-Suhail Ahmed and add 50% of it towards the future prospects, that is Rs.2250/-, the monthly income of the deceased would be Rs.6750/- which if multiplied by 12 would make the yealy income of Rs.81,000/- of

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2 2013 (9) SCC 54

which if 50% is deducted towards the personal expenses, as has been decided by this Court while deciding the appeal of the Insurance Company, the yearly income of the deceased would come to Rs.40,500/-. If the said figure is multiplied by applying the multiplier of 17, the amount would reach to Rs.6,88,500/-. It is thus ordered that the Claimant-Sheikh Ismile shall be entitled for loss of dependency of Rs.6,88,500/- instead of Rs.2,44,800/- as assessed by the Tribunal.

19. In addition, this Court is also of the opinion that the amount of compensation payable under the conventional heads also deserves appropriate enhancement and it should have been Rs.1,00,000/- for the loss of love and affection instead of Rs.2000/- as awarded by the Tribunal and Rs.25,000/- towards the expenses for funeral instead of Rs.5000/- as awarded by the Tribunal. Thus, the Claimant-Sheikh Ismile shall be entitled for a total compensation of Rs.8,13,500/- instead of Rs.2,52,800/- as awarded by the Tribunal.

20. It is, therefore, ordered that the Claimant-Sheikh Ismile shall be entitled for an additional compensation of Rs.5,60,700/- with interest thereon at the same rate as has been awarded by the Tribunal.

21. Both the appeals are allowed to the extent indicated above.

Sd/-
(P. Sam Koshy)
Judge

/sharad/