

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 448 OF 2009

1. Shanti Bai, Wd/o Suresh Singh, aged about 24 years
2. Divya alias Deepika, D/o Late Suresh Singh, aged about 5 years, through her natural guardian mother Shanti Bai, Wd/o Suresh Singh, aged about 24 years

Both by caste- ST, Bilaspur (Upartola), P.S. Amarkantak, Tahsil- Pushprajgarh, District Anuppur (M.P.), at present Bharrapara, New Bus Stand Pendra, P.S. Pendra, Tahsil- Pendra, District Bilaspur (C.G.)

... Appellants

versus

1. Raju alias Rajkumar, S/o Ramkumar Sahu, aged 22 years, R/o Lalpur, P.S. Bajag, District Dindori (M.P.)
2. Siyaram Sahu, S/o D.P. Sahu, R/o 1427, Gorakhpur, Jabalpur (M.P.) at present R/o Village- Rusa, P.S.- Karanjiya, District Dindori (M.P.)
3. National Insurance Company Limited, Branch Jabalpur (M.P.) through National Insurance Company Limited, Branch Bilaspur (C.G.)
4. Siddhu Singh (father name- not known), aged about 50 years, (father of the deceased Suresh Singh)
5. Chandravati, W/o Siddhu Singh, aged about 48 years, (Mother of the deceased Suresh Singh)

Both Respondents No. 4 & 5 R/o Bhimkundi, P.S. Amarkantak, Gram Panchayat- Karoundatola, District Anuppur (M.P.)

... Respondents

MISC. APPEAL (C) NO. 1066 OF 2009

1. Siyaram Sahu, S/o D.P. Sahu, aged about 43 years, R/o 1427, Gorakhpur, Jabalpur (M.P.) at present R/o Village- Rusa, P.S.- Karanjiya, District Dindori (M.P.)
2. Raju @ Rajkumar, S/o Ramkumar Sahu, aged 22 years, R/o Lalpur, P.S. Bazag, District Dindori (M.P.)

... Appellants

versus

1. Shanti Bai, W/o Suresh Singh, aged about 24 years
2. Minor, Divya @ Deepika, D/o Suresh Singh, aged about 5 years, through her natural guardian mother- Shanti Bai, W/o Suresh Singh, aged about 24 years

Both caste- Netam (Adivasi), R/o Bilaspur (Uppartola), P.S. Amarkantak, Tahsil- Pushprajgarh, District Anuppur (M.P.), present R/o Barrapara, New Bus Stand Pendra, P.S. Pendra, Tahsil- Pendra, District Bilaspur (C.G.)

3. National Insurance Company Limited, Branch Jabalpur (M.P.) through its Branch Manager, National Insurance Company Limited, Branch Bilaspur (C.G.)
4. Siddhu Singh, S/o not known, aged about 50 years
5. Chandravati, W/o Siddhu Singh, aged about 48 years

Respondents No. 4 & 5 R/o Bhimkudi, P.S. Amarkantak, Gram Panchayat- Karondatola, District Anuppur (M.P.)

... Respondents

- Mr. F.S. Khare, Advocate, for the Appellants in MAC No.448/2009 and for Respondents No. 1 and 2 in MAC No.1066/2009.
- Mr. Varunendra Mishra, Advocate, for the Appellants in MAC No.1066/2009 and for Respondents No. 1 and 2 in MAC No. 448/2009.
- Mr. Raj Awasthi, Advocate, for Respondent No.3 in both the appeals.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/11/2017

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of the award dated 30.12.2008 passed by the Motor Accident Claims Tribunal (F.T.C.), Pendraroad, District Bilaspur, in Claim Case No. 40/2006.
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.2,23,500/-, with interest at the rate of 10% per annum from the date of presentation of the claim application. While passing the award, the learned Tribunal has fastened the liability of payment of compensation upon the insurance company to the extent of Rs.1,00,000/- and the liability for payment of the balance amount of Rs. 1,23,500/- has been fastened upon the owner and driver of the offending vehicle.
3. MAC No.448/2009 is an appeal preferred by the claimants seeking enhancement of the compensation awarded and MAC No.1066/2009 is an appeal by the owner and driver of the offending vehicle challenging the liability which has been fastened upon them to pay the compensation of Rs.1,23,500/-.
4. In the instant case, the deceased-Suresh Singh, aged about 24 years, met with an accidental death on 24.10.2003 when he was travelling in the offending vehicle i.e. Mahindra Jeep No. MP20-H-9804 which was driven by Raju @ Raj Kumar, owned by Siyaramsahu and was insured with National Insurance Company Limited.

5. The father of deceased-Suresh Singh, namely, Siddhu Singh, filed a claim case before the Motor Accident Claims Tribunal at Mandla, which was registered as Claim Case No. 19/2005 and which stood adjudicated upon on 5.7.2006 where an award was passed to the tune of Rs.1,20,000/- in favour of the father of the deceased. Against the said award, an appeal was preferred by the father of the deceased before the High Court of Madhya Pradesh at Jabalpur vide M.A. No. 3454/2006. The said appeal also got settled in the Lok Adalat that was held in February, 2007 wherein the Madhya Pradesh High Court had settled the matter for an additional amount of Rs.1,20,000/- in addition to the award of Rs.1,20,000/- passed by the Tribunal at Mandla, thus totaling at Rs.2,40,000/-. Unaware of the said development, the widow and daughter of the deceased, i.e., the appellants in MAC No.448/2009, filed a claim application under Section 166 of the Motor Vehicles Act before the Tribunal at Pendraroad and it is on this application that the impugned award has been passed.

6. Before the Tribunal at Pendraroad it was brought to the notice of the Tribunal in respect of the claim application which was filed by the father of the deceased and which stood adjudicated upon by the Tribunal at Mandla and later by the Madhya Pradesh High Court. However, considering the facts and circumstances of the case, the learned Tribunal at Pendraroad held that the claimants since were the widow and minor daughter of the deceased, they would also be entitled for compensation and accordingly their claim was allowed. The learned Tribunal however considering the fact that the policy issued in the instant was an Act Only policy and the coverage also was limited to the extent of Rs.1,00,000/- in respect of unnamed occupant, apportioned the liability of compensation at Rs.1,00,000/- upon the insurance company and the balance amount was ordered to be paid by the owner and driver.

7. So far as the appeal of the owner and driver is concerned, i.e. MAC No.1066/2009, it was contended by the learned counsel appearing for the owner and driver, that the finding of the learned Tribunal is erroneous for the reason that the same insurance company when the matter was decided before the Tribunal at Mandla had accepted the entire liability and had also settled the matter and without taking such an objection for an amount of Rs.2,40,000/- the insurance company cannot now turn around and seek for a limitation which has been prescribed in the policy. He further submits that the insurance company should be held liable for payment of the entire amount in the light of the insurance company accepting its entire liability before the Tribunal at Mandla and the Madhya Pradesh High Court.

8. Learned counsel for the insurance company however opposing the appeal submits that the finding arrived at by the learned Tribunal in the present case was based on the evidence brought before the Tribunal and the same cannot be found fault with. He further submits that admittedly the policy in the instant case was an Act Only policy where the coverage of risk of an occupant would have been maximum of Rs.1,00,000/- and the appeal thus deserves to be rejected.

9. Having considered the contentions put forth on either side and on perusal of record, undisputedly, an accident had occurred on 24.10.2003 and as a result of the said accident Suresh Singh had died who was aged around 24 years and that the vehicle involved in the accident was owned and driven by respondent no.1-Siyaram Sahu and respondent no.2-Raju @ Raj Kumar respectively.

10. This Court considering the facts and circumstances of the case does find force in the argument advanced by the learned counsel for the owner and driver to the extent that the insurance company having already accepted its liability for payment of entire compensation before the Tribunal

at Mandla as well as in the proceeding before the High Court of Madhya Pradesh, more particularly when the insurance company has not challenged or questioned the liability part beyond Rs.1,00,000/-, they cannot now be permitted to take such a ground when the claim has been raised by the widow and minor daughter of the deceased. The ground so raised by the owner and driver of the offending vehicle deserves to be and is allowed.

11. The appeal of the owner and driver thus deserves to be and is accordingly allowed and it is ordered that the insurance company shall be responsible for indemnifying the owner and driver in its entirety and it shall be responsibility of the insurance company to pay the entire amount of compensation awarded.

12. So far as the appeal of the claimants for enhancement is concerned, i.e. MAC No. 448/2009, taking into consideration the award which has already been passed in favour of the father of the deceased and the present award which has been passed in the instant case, this Court does not find any scope of interference with the amount of compensation awarded in the instant case towards the loss of dependency, i.e. Rs.2,04,000/-, and the same is ordered to be remain intact.

13. The only area which could be interfered by this Court is the compensation awarded under the conventional heads. Considering the factual matrix of the case, particularly keeping in view the recent Larger Bench decision of the Hon'ble Supreme Court in the case **National Insurance Company Limited v. Pranay Sethi & Others**¹, this Court quantifies the compensation under the conventional heads at Rs.70,000/- instead of Rs.19500/- which was awarded by the Tribunal.

¹ SLP (Civil) No. 25590 of 2014, decided on 31.10.2017

14. It is accordingly ordered that the claimants shall be entitled for a total compensation of Rs.2,74,000/- instead of Rs.2,23,500/- which has already been awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been imposed by the Tribunal. It is made clear that the entire amount of compensation shall be paid by the insurance company.

15. As a result, the appeal preferred by the owner and driver as well as the appeal preferred by the claimants, both stand allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge