NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 848 OF 2013

1. Smt. Shajila Kumar, W/o Late Dr. B. Ashok Kumar, aged 50 years, R/o New Sarkanda, Jabadapara, P.S. Sarkanda, Tah. & Bilaspur (C.G.)
2. Ku. Rashmi, D/o Late B. Ashok Kumar, aged about 22 years, R/o New Sarkanda, Jabadapara, P.S. Sarkanda, Tah. & Bilaspur (C.G.)

… Appellants

Versus

1. Balram Sahu (Driver of the vehicle), S/o Pardeshi Sahu, age 25 years, R/o Village Tiraiya, P.S. Bemetara, District Durg (now District Bemetara) (C.G.)
2. Smt. Jasbir Kaur Bhatiya (owner of the vehicle, W/o Gurudip Singh, R/o Village- Simga, Ward No. 10, Tilda Road, Simga, District Raipur (C.G.)
3. The Branch Manager, Shri Ram General Insurance Company Limited, Office E-8- Riko Industrial Area Sitapur, District Jaipur, Rajsthan (State) Pin 302022

… Respondents

MISC. APPEAL (C) NO. 265 OF 2014

Branch Manager, Shri Ram General Insurance Company Limited, through Authorised Officer, Shri Ram General Insurance Company Limited, E/8, RIICO, Industrial Area, Sitapur, District Jaipur, Rajsthan 302022

… Appellant

Versus

1. Smt. Shajila Kumar, W/o Late Dr. B. Ashok Kumar, aged 50 years, R/o New Sarkanda, Jabrapara, P.S. Sarkanda, Tah. & Bilaspur (C.G.)
2. Ku. A. Rashmi, D/o Late B. Ashok Kumar, aged about 22 years, R/o New Sarkanda, Jabrapara, P.S. Sarkanda, Tah. & Bilaspur (C.G.)
3. Balram Sahu, S/o Pardeshi Sahu, aged about 25 years, R/o Village Tiraiya, P.S. Bemetara, District Durg (now District Bemetara) (C.G.)
4. Smt. Jasbir Kaur Bhatia, W/o Gurudeep Singh, R/o Village- Simga, Ward No. 10, Tilda Road, Simga, District Raipur (C.G.)

… Respondents

- Mr. Raj Kumar Gupta, Advocate, for the Appellants in MAC No. 848/2013 and for Respondents No. 1 and 2 in MAC No. 265/2014.
- Mr. Sachin Singh Rajput, Advocate, for the Appellant in MAC No. 265/2014 and for Respondent No.3 in MAC No. 848/2013.
- Mr. Anil Gulati, Advocate, for Respondent No.1 in MAC No.848/2013 and for Respondent No.3 in MAC No.265/2014.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/08/2017

1. These are the two appeals under Section 173 of the Motor Vehicles Act, 1988, assailing the award dated 18.7.2013 passed by the Fourth Additional Member of the First Additional Motor Accident Claims Tribunal, Bilaspur, in Claim Case No. 28 of 2013.

2. Vide the impugned award, the Tribunal in a proceeding under Section 166 of the Motor Vehicles Act, 1988, has awarded a compensation of Rs. 42,55,000/- to the Claimants fastening the liability to pay the same upon the insurer, owner and driver of the offending vehicle, i.e. Truck No.CG06-A/9991. Hence, the present appeals.

3. M.A.C. No. 848 of 2013 has been filed by the Claimants seeking enhancement of the compensation awarded by the Tribunal while M.A.C. No. 265 of 2014 has been filed by the Insurance Company assailing the award.

4. I.A. No.1 has been filed in M.A.C. No. 265 of 2014 seeking condonation of delay occurred in the filing of the appeal which is barred by limitation of 102 days.

5. On due consideration and for the reasons assigned in the I.A. No.1 and finding them to be satisfactory and also for the reason that the Claimants appeal i.e., M.A.C. No. 848 of 2013, is also pending consideration before this Court, I.A. No.1 is allowed and the delay of 102 days occurred in the filing of M.A.C. No. 265 of 2014 is hereby condoned.

6. Both these appeals have been heard together and are being disposed of by this common order.

7. So far as the appeal of the Insurance Company, i.e. M.A.C. No. 265 of 2014, is concerned, their primary challenge is on the quantum of compensation. The Insurance Company assails the impugned order alleging that the deceased in the instant case was aged around 49 years at the time of accident and there was hardly any service left for his retirement and thereafter there would not had been a regular income that he was getting while in service, therefore the compensation ought to had been accordingly by the Tribunal. It is contended by the Insurance Company that the monthly salary which has been assessed by the Tribunal, i.e. Rs.

74,191/-, is also inclusive all of that which would otherwise not fall within the definition of wages for the purpose of quantifying the compensation.

8. At the same time, learned Counsel for the Claimants in M.A.C. No. 848 of 2013 has assailed the impugned award on the ground that the compensation awarded to the claimants is on the lower side and deserves to be enhanced on more than one count. According to him, the calculation of compensation assessed taking note of the salary of the deceased of Rs. 74,191/- is not proper. The gross salary of the deceased as per his salary slip of the previous month of accident itself shows that the salary of the deceased was more than Rs.1,00,000/- and therefore the compensation ought to have been calculated taking the gross salary into consideration and the amount deserves to be enhanced accordingly. Likewise, it is also contended by the Counsel for the Claimants that the compensation granted under the other heads also is to meagre an amount particularly taking into consideration the fact that the accident is of the year 2011. He submits that the grant of compensation of Rs.2400/- towards love and affection and Rs.5000/- for loss of consortium is definitely on the lower side and it deserves for enhancement suitably. He further contended that the funeral expenses of Rs.5000/- as awarded is also on the lower side looking to the year of accident being 2011 as compared to the expenses and rise in the cost of living then, therefore the said amount of Rs.5000/- also deserves enhancement.

9. Learned Counsel for the Insurance Company however opposes the appeal of the Claimants on the ground that the appeal of the Claimants does not have any merit for the reason that the Tribunal as it is has taken the net salary and other allowances for the purpose of quantifying the compensation and thus there is no scope of interference and the appeal of the Claimants deserves rejection.

10. Having considered the rival contentions put forth on either side and on perusal of the record, so far as the accident which has arisen, the resultant death of Dr. B. Ashok Kumar who was the Principal of a reputed school in the said accident, the offending vehicle involved in the accident are not in dispute. The offending vehicle being insured by the Insurance Company i.e. Shriram General Insurance Company Limited also is not disputed. Thus, this Court has refrained itself from narrating the entire factual details of the instant case. The only issue which is put to challenge before this Court, is whether the quantum of compensation awarded by the Tribunal is proper, justified and reasonable.

11. At this juncture, learned Counsel for the Insurance Company has also raised a contention so far as there being contributory negligence in the accident which has arisen. He relies on the deposition of the driver of the offending vehicle. However, apart from the statement of the driver of the offending vehicle there is no other material substantive enough to accept the said contention of the Insurance Company and the same is thus negated.

12. Now, so far as the quantum of compensation is concerned, if we take into consideration Exhibit P-9 which is the salary slip of the deceased for the month of February, 2011, that is to say, the salary which the deceased received in the previous month of his death in the accident which has arisen, it would reveal that the net salary of the deceased was Rs.74,191/- and that there were two contributory deductions also which were being made, that is, an amount of Rs.10,117/- each towards the provident fund by the employer and employee and the amount of Rs. 4215/- which was towards the gratuity. These are the amounts which the deceased ultimately would have received on his superannuation. Thus, for all practical purposes, these amounts have to be taken as part of the wages of the deceased inclusive of the employees contribution in provident fund head, which makes the figure to be Rs.98,640/- as the monthly wage of the deceased. Thus, this Court holds that for the purpose of calculation of the compensation the monthly salary of the deceased ought to have been taken as Rs.98,640/- instead of Rs.74,191/-, which would make it to Rs. 11,83,680/- per annum. Further, from the said amount of Rs.11,83,680/-, if we deduct income tax i.e. Rs.2,00,000/- as per the income tax slab of the relevant period, the net annual salary would be Rs. 9,83,680. If we deduct 1/3rd (Rs. 3,27,893/-) from the said amount of Rs.9,83,680/-, the same would come to Rs. 6,55,787/-, which if multiplied by applying the multiplier of 8, the net amount would be Rs.52,46,296/-. It is thus ordered that the Claimants would be entitled for compensation of Rs. 52,46,296/- instead of Rs. 42,42,600/- as awarded by the Tribunal.

13. Further, if we take into consideration the year of the death of the deceased i.e. 2011, the status of the deceased and other facts and circumstances of the case, the amount of Rs.2400/- awarded by the Tribunal for love and affection is definitely on the lower side. Likewise, the amount of Rs.5000/- awarded for loss of consortium is also extremely on the lower side. Thus, under these two heads, in the opinion of this Court, relying upon the judgment of the Hon'ble Supreme Court in the case of **Rajesh and Others** v. **Rajbir Singh and Others** [2013 (9) SCC 54], a lump sum amount of Rs.1,00,000/- would be just and reasonable. Similarly, the amount of Rs.5000/- as has been awarded by the Tribunal under the head of funeral expenses also deserves enhancement and the same is enhanced to Rs.25,000/-. Thus, in all, the Claimants shall be entitled for a compensation of Rs.53,71,296/- instead of Rs.42,55,000/-.

14. In the result :

(1) The appeal of the Insurance Company, i.e., M.A.C. No. 265 of 2014, being devoid of merits the same is dismissed.

(2) The appeal preferred by the Claimants, i.e. M.A.C. No. 848 of 2013, is allowed and the impugned award is modified to the extent that the Claimants shall be entitled for an enhanced compensation of Rs. 11,16,296/- in addition to what has already been awarded by the Tribunal. The enhanced amount of compensation shall also carry the interest at the same rate as has been awarded by the Tribunal. All the other directions and conditions, as awarded by the Tribunal, shall remain intact.

Sd/-
(P. Sam Koshy)
Judge

/sharad/