NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 12 of 2006

1. Jai Singh Ekam S/o Akbar Singh Ekam, aged about 45 years,
2. Smt. Keshar Bai Ekam W/o Jai Singh Ekam, aged about 40 years
   Both R/o village Aabejhar, Mahamai Road, Post Office, Nagar Tola, Police Station, Mahamaya, Dalli Rajhara, Tahsil Balod (CG).

---- Appellants

Versus

1. Hemant Kumar Sahu S/o Shri Rewaram Sahu, aged about 22 years, occupation Driver, R/o Arjun Nagar, Durga Chowk near Sheetla Mandir, Camp-1, Power House, Bhilai, Police Station, Chhawni, Tahsil and District Durg (CG).
2. Kashmira Singh S/o Deewan Singh, permanent address-Transport Nagar, Bhilai, District Durg (CG) present address Tatibandh, Raipur (CG).
3. The Oriental Insurance Company Ltd. 16, RSS Market Sough Gangotri, Supela, Bhilai, Tahsil and District Durg (CG).

---- Respondents

For Appellants : Shri Manish Upadhyay, Advocate.
For Insurance Company : Shri Raj Awasthi, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

05/09/2017

1. The present is an appeal by the claimants under Section 173 of the Motor Vehicles Act against the award dated 28.06.2006 passed by the 10th Additional Motor Accident Claims Tribunal (FTC) Raipur (in short, the Tribunal) in Claim Case 28/2006. Vide the impugned award, the Tribunal on an application filed under Section 166 of the Motor Vehicles Act, has awarded compensation of Rs.1,87,000/- along with interest @ 6 percent per annum from the date of application. While passing the award, the Tribunal has exonerated the insurance company and have fastened the liability of payment of compensation upon the owner and driver of the offending vehicle.

2. It is this award which is under challenge in this appeal. The challenge to the award is firstly the exoneration of the insurance company and secondly the amount of compensation awarded by the Tribunal is on the lower side which requires interference.
3. So far as the liability part is concerned, counsel for the appellants submits that it is a case where the insurance company has been wrongly exonerated of its liability. According to appellants, the witness of the insurance company entered into witness box and have specifically deposed admitting the fact that the signature which was found on the insurance policy was that of the said witness himself. He further admits the fact that it was the vehicle which involved in the accident which was insured by way of the said policy. Only because there was a discrepancy in the pleadings of the insurance company of the vehicle not being insured for the reason that insurance company having produced document Ex. D/4 which shows that the vehicle which is alleged to have been met with an accident was infact in the name of one Gurnam Singh and chassis and engine number of the vehicle insured was different, however, the registration number of the vehicle was the same. On this admission, the insurance company was exonerated by the Tribunal which is bad in law.
4. The contention of the appellant is that the insurance company has not been able to lead evidence sufficient enough to establish the fact that the policy which was produced before the Tribunal was not infact the policy covering the risk of vehicle involved in the accident. He further submits that the insurance company has also not led any evidence from the office of RTO, Durg, to establish that the actual registered owner of

the Truck involved in the accident i.e. CG 07-ZC-3614 was not in the name of Kashmira Singh, but was in the name of some other person. He further submits that in the absence of any evidence to prove that the policy was a fake or fabricated policy, the insurance company cannot be exonerated or discharged of its liability to pay compensation indemnifying the owner.

5. Counsel for the insurance company however opposing the appeal submits that the insurance company has led evidence of one Ramesh Kumar who had categorically stated before the Tribunal that there were two vehicles which appeared to have been the same registration number and the engine and chassis number of the two vehicles seem to be different. The name of the registered owner also seem to be different. Thus, the Tribunal has rightly exonerated the insurance company and the appeal therefore deserves to be rejected.

6. So far as claim of the claimants is concerned, the claim before the Tribunal was that the deceased was aged about 22 years bachelor and the income assessed by the Tribunal was only Rs.1500/- per month whereas in the year 2004, the minimum wages of an unskilled labor would had been somewhere Rs.100/- per day which would make it Rs.3000/- in a month. He further submits that the Tribunal has not awarded any compensation towards future prospects. Likewise, the amount of compensation under the conventional heads is also on lower side. Thus, prayed for suitable enhancement of compensation.

7. So far as the liability part is concerned, this court having perused the record finds that the witness of the insurance company himself had categorically deposed of his signature to be there on the policy which

was marked and exhibited accepting the policy pertaining to the offending vehicle. It also reflects that he has admitted issuance of policy being in the name of another person and the chassis and engine number also being different. There is no evidence from the office of RTO, Durg, to establish this fact. In the absence of which, accepting the contention of the witness of the insurance company of having duly issued the insurance policy which was produced before the Tribunal and marked as Ex.C/1, this court is of the opinion that the insurance company has failed to discharge its responsibility of proving their stand that the vehicle involved in the accident was not insured from the said insurance company. Thus, the finding of the Tribunal exonerating the insurance company of its liability is bad in law and the same deserves to be and is accordingly set aside. It is held that it shall be the responsibility of the insurance company to satisfy the amount of award.

8. So far as the quantum part is concerned, taking into account the fact that accident occurred in August, 2004, this court has no hesitation in reaching to the conclusion that the minimum wages of an unskilled labour during the year, 2004 would had been Rs.3000/- in a month, and therefore, for the purpose of quantifying the compensation, the income which ought to have been taken by the Tribunal should be Rs.3000/- instead of Rs.1500/-. It is ordered accordingly. Likewise, he was also entitled for 50 percent of income towards future prospects. The amount of compensation awarded under other heads also is too meager an amount which requires enhancement keeping in view the fact that it was an accidental death of the year, 2004.

9. Accepting Rs.3000/- as monthly income and adding 50 percent of it

towards future prospects, the monthly income would come to Rs.4500/- i.e. Rs.54,000/- yearly, of which if 50 percent is deducted towards personal expenses, the income would be Rs.27,000/-. If this amount is multiplied by applying the multiplier of 18 as has been prescribed by the Supreme Court in case of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. 2009 (6) SCC 121 instead of 15 as applied by the Tribunal, the compensation payable to the claimants for loss of dependency would be Rs.4,86,000/- instead of Rs.1,80,000/- as assessed by the Tribunal. It is ordered accordingly.

10. Likewise, if we take into account the compensation awarded under conventional heads also, this court considering that the accident was of the year, 2004 and the age of the deceased was only 22 years and the claimants were unfortunate mother and father of the deceased, this court is of the opinion that a lump sum compensation of Rs.1,00,000/- would make the compensation look just and proper.

11. Thus, the claimants shall now be entitled for compensation of Rs.5,86,000/- instead of Rs.1,87,000/- as awarded by the Tribunal. The appeal of the claimants thus allowed. The liability of payment of compensation shall be upon the insurance company. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal. Rest of the conditions mentioned in the award shall remain intact.

Sd/-
(P.Sam Koshy)
Judge

inder