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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.220 of 2010

1. Smt.Pavitra Rai Choudhary W/o Late Alok Rai, aged about 26 years, R/o Main Road Barsur, Tahsil and District Dantewada (C.G.).
2. Ku.Amiya Rai D/o Late Alok Rai, aged about 05 years, R/o Main Road Barsur, Tahsil and District Dantewada (C.G.).
3. Baburam Rai S/o Late Hridayanath Rai, aged about 55 years, R/o Village Saroda, via Bande, Tahsil Pankajore, Police Station Bande, District Kanker (C.G.).
4. Smt.Urmila Rai W/o Baby Ram Rai, aged about 50 years, R/o village Saroda, via Bande, Tahsil Pankajore, Police Station Bande, District Kanker (C.G.).

---Appellants

Versus

1. Maniram S/o Hariram, caste Halba, aged about 28 years, R/o Pusnar, Police Station Bairamgarh, Tahsil Bijapur, District Dantewada (C.G.).
2. Samboo Mishra S/o Gayaprasad, aged about 48 years, R/o village Bairamgarh, Tahsil Bijapur, District Dantewada (C.G.).
3. The Oriental Insurance Company Limited, Through Branch Manager Office, Main Road, Jagdalpur, District Bastar (C.G.).

---Respondents

For the appellants	:	Shri C.Jayant K.Rao, Advocate.
For respondent No.3/ Insurance Company	:	Shri Hanuman Prasad Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

30/10/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act assailing the award dated 26/11/2009 passed by the Additional Motor Accidents Claims Tribunal, Dantewada (C.G.) in Motor Accident Claim Case No.52/2008.

2. Vide the said impugned award, the Tribunal in a Claim Case under Section 166 of the Motor Vehicles Act has awarded the compensation of Rs.2,89,000/- with interest @ 7.5% per annum from the date of application.

3. While passing the said impugned award, the Tribunal had exonerated the Insurance Company of its liability and had fastened the liability of payment of compensation upon the owner and the driver of the offending vehicle. The ground for exonerating the Insurance Company was that the driver of the

offending vehicle was not having proper endorsement to drive the Transport Vehicle.

4. It is this award which is under challenge by the claimants. The ground of challenge is that, the Insurance Company has been wrongly exonerated of its liability and that the liability should had been fastened upon the Insurance Company jointly and severally as the vehicle involved in the accident was duly insured and also the driver of the vehicle had a valid license for driving the Light Motor Vehicle. According to the counsel for the appellant, the vehicle involved in the accident is TATA-407 which also falls within the category of Light Motor Vehicle and therefore the finding of the Tribunal is erroneous and same deserves to be suitably modified. It was further contended, that the amount of income assessed by the Tribunal at Rs.1,500/- per month considering the period of the death i.e. year 2006 is extremely on the lower side. During the said period, the minimum income of even an unskilled labour would be Rs.150/- per day which makes monthly income at Rs.4,500/-. He further submits, that the Tribunal also should have considered the income under future prospects while quantifying the compensation and that the compensation under the conventional head also is on the lower side.

5. The counsel for the Insurance Company however opposing the appeal submits, that the judgment of the Tribunal cannot be said to be bad in law for the reason, that the judgment passed was in the light of the legal position as it stood at the time of passing of the award and therefore the same does not require any interference. He further submits that even the compensation awarded is just and reasonable considering the evidence which have come on record and thus prayed for the rejection of the appeal.

6. Having heard the contentions put forth on either side and on perusal of record the undisputed fact in the instant case is the accident that took place on 13/07/2006, the resultant death of deceased Alok Rai, aged around 28 years, the vehicle involved in the accident belonging to the respondent No.2 and was driven by the respondent No.1. It is also not in dispute, that the vehicle involved

in the accident was a TATA-407 bearing registration No.CG-17-ZB-0122 duly insured with respondent No.3/Insurance Company. What is also not in dispute is the fact, that the respondent No.1 – the driver of the offending vehicle at the relevant point of time had a valid license to drive the Light Motor Vehicle.

7. The aforesaid being the factual matrix of the case whether the exoneration of the Insurance Company of its liability is proper need not further be delved into by this court as this issue stands squarely covered by recent larger bench decision of the Hon'ble Supreme Court reported in the case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited [AIR 2017 SC 3668]*** and also in the case of ***Sant Lal Vs. Rajesh & Ors. [AIR 2017 SC 4054]***.

8. In the light of the said judgments, the finding of the Tribunal deserves to be and is accordingly modified to the extent, that the liability of payment of compensation shall jointly and severally upon the owner, the driver and the Insurance Company with the liability of payment of compensation upon the Insurance Company.

9. So far as the appeal of the claimants for enhancement of compensation is concerned, considering the date of accident i.e. 13/07/2006 it is anybody's guess, that even an unskilled labour would have got an income of around Rs.4,500/- per month considering the daily income of a worker at Rs.150/- per day. Thus, this court has no hesitation in assessing the income of the deceased at Rs.4,500/- instead of Rs.1,500/- as assessed by the Tribunal.

10. Likewise the compensation under the future prospects also is by now well settled while computing the compensation right from the judgment of the Hon'ble Supreme Court in the case of ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [2009 {6} SCC 121]***.

11. If we take Rs.4,500/- as the monthly income of the deceased and adding 50% of it towards future prospects, the amount would becomes Rs.6,750/- per month and Rs.81,000/- yearly and if 1/3rd is deducted from it towards personal expenses, the amount would be Rs.54,000/- which if multiplied by applying multiplier of 17, the amount would becomes 9,18,000/-. It is ordered

accordingly, that the claimants shall be entitled for an amount of Rs.9,18,000/- towards loss of dependency.

12. So far as the compensation under the conventional head is concerned, considering the judgment passed by the Supreme Court in the recent post, this court feels it proper that ends of justice would meet if a lump-sum compensation of Rs.82,000/- is awarded under this head to make the total compensation payable to the claimants at Rs.10,00,000/-. It is ordered accordingly, that the claimants shall be entitled for total compensation of Rs.10,00,000/- instead of Rs.2,89,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal. It shall be the liability of the Insurance Company i.e. respondent No.3 to pay the entire compensation awarded.

13. The appeal stands allowed and disposed off.

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Sd/-
(P. Sam Koshy)
Judge

Sumit