

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1078 of 2014**

1. Rajlal Vatti S/o Shyamlal Vatti Aged About 40 Years R/o Ghotiyawahi, P.S. and Tah. Narharpur, Distt. Kanker (North Bastar) C.G.
2. Duryodhan Chandravanshi S/o Sudhdu Chandravanshi R/o Ghotiyawahi, P.S. And Tah. Narharpur, Distt. Kanker (North Bastar) C.G.

---- Appellants**Versus**

1. Smt. Farasbati W/o Birsingh Mandavi Aged About 40 Years
 3. Miss Malti D/o Birsingh Mandavi Aged About 25 Years
 4. Soman Singh S/o Birsingh Mandavi Aged About 23 Years
 5. Bhokaluram S/o Miluram Mandavi Aged About 75 Years
 6. Smt. Basanta W/o Bhokaluram Mandavi Aged About 70 Years
- All are R/o Tikarapara, Mandradahara, Post- Jamgaon, P.S. and Tah. Narharpur, Distt. North Bastar Kanker C.G.
7. National Insurance Co. Ltd. Through- Branch Manager, Branch Office, Above The Central Bank, Near R.M.S. Office, Jagdalpur, Distt. Bastar C.G.
 8. Bajaj Alliance General Insurance Co. Ltd. Shivmohan Bhawan, Vidhansabha Road, Pandari, Raipur C.G.

---- Respondents

For Appellant	:	Shri Kunal Das, Advocate.
For respondent No.1to5	:	Shri AL Singrul, Advocate.
For respondent No.6	:	Shri Shivendu Pandya, Advocate.
For respondent No.7	:	Shri DL Dewangan, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****27.10.2017.**

1. The present is an appeal filed by the driver and owner under Section 173 of the Motor Vehicles Act (for short, the MV Act) against the award dated 21.07.2014 passed by the Additional Motor Accident Claims Tribunal, Kanker (for short, the Tribunal) in Claim Case No.9 of 2012. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act has awarded a compensation of Rs.3,32,000/- to the claimants along with interest @ 6 percent per annum from the date of application. The liability of payment of

compensation has been fastened upon the appellants driver and owner exonerating the insurance company of its liability.

2. The facts of the case is that deceased Birsingh Mandavi, aged around 46-50 years while riding bicycle was hit by the tractor being driven by respondent No.1, owned by respondent N.2 and insured by respondent No.6-National Insurance Company and trolley attached to the Tractor was insured by the respondent N.7-Bajaj Alliance General Insurance Co. Ltd. The insurance company in the instant case was exonerated on the ground that the driver of the tractor at the time of accident was only having licence to drive light motor vehicle and that there was no endorsement of permission to drive transport vehicle and therefore liability of payment of compensation was fastened upon the appellants- driver and owner.
3. Learned counsel appearing for the appellants submits that the present is a case which is squarely covered by the decision of the Supreme Court in case of Mukund Dewangan Vs. Oriental Insurance Co. Ltd, AIR 2017 SC 3668 wherein it has been held that merely because there is no endorsement on the licence of the driver who otherwise has a licence to drive the Light Motor Vehicle by itself would not absolve the insurance company of its liability. Therefore, prayed for the award to be suitably modified.
4. Counsel for the respondents-insurance companies opposing the appeal submits that it is a case where the award was passed as early as in the year, 2014 and as such the award was just and proper on the basis of law as it stood in the year, 2014, and therefore, the appeal

deserves to be rejected.

5. Having heard the rival contentions put forth on either side and on perusal of records, this court is of the opinion that in addition to recent larger Bench decision of Supreme Court in case of Mukund Dewangan (Supra) the Supreme Court has also in a recent decision in case of Sant Lal Vs. Rajesh & Ors., AIR 2017 SC 4054 in relation to the use of tractor and trolley has applied the judgment of Mukund Dewangan (Supra) and have ordered that the liability of payment of compensation under the said circumstances would be that on the insurance company.
6. Keeping in view the aforesaid two decisions of the Supreme Court, this court is of the opinion that the instant case is squarely covered by the aforesaid two decisions and therefore, the findings of the Tribunal exonerating the insurance company is set aside and the award is modified and ordered to the extent that the liability of payment shall be jointly and severally upon the owner, driver and the insurer of vehicle involved in the accident. Since the tractor and trolley was insured by two different insurance companies, the liability shall be equally borne by the two insurance companies.
7. The claimants in the instant case have also filed cross objection under Order 41 Rule 22 CPC seeking for enhancement of compensation awarded.
8. Learned counsel for the claimants submits that it is a case where the accident arose in November, 2011 and in the income assessed by the Tribunal was only Rs.3000/- which is unreasonably low as the

deceased was earning much more than Rs.3000/-. He has claimed the income of the deceased at Rs.9000/- as he was working as Mason and was earning Rs.300/- a day. He further submits that the award also deserves to be modified inasmuch as compensation under the future prospects has not been taken into consideration by the Tribunal while quantifying the compensation. Likewise, it was also contended that deduction made in the instant case considering the total number of claimants would have been $\frac{1}{4}$ but the Tribunal has deducted only $\frac{1}{3}$ rd towards personal expenses.

9. Learned counsel appearing for the insurance company opposes the cross objection on the ground that no substantial proof has been made by the claimants to establish the income and therefore the income assessed by the Tribunal cannot be said to be bad or on the lower side and the award does not warrant any interference.
10. Having heard the rival contentions put forth on either side on the cross objection filed by the claimants, if we look into the facts what is undisputed is the date of accident being 26.11.2011, the deceased at the time of accident was working as Mason and that he was aged around 46-50 years. What is also not in dispute is the total number of claimants which are 5. Considering the fact that it is an accident of the year, 2011, indisputably a Mason at the relevant time must have been earning money much more than what has been assessed by the Tribunal. Though the claimants have not led any evidence in this regard to substantiate their contention, but indisputably the deceased would have been earning more than Rs.150/- a day which would make

it Rs.4500/- per month. Therefore, this court is of the opinion that for the purpose of quantifying the compensation, the income assessed by the Tribunal is on the lower side and that the same is assessed at Rs.4500/- per month instead of Rs.3000/-. It is ordered accordingly.

11. So far as future prospects is concerned, this court has no hesitation in reaching to the conclusion that consideration of future prospects while quantifying the compensation becomes part and parcel of the award passed by the Tribunals in view of a catena of decisions of Supreme Court starting from the landmark judgment in the case of Sarla Verma and Ors. Vs. Delhi Transport Corporation & Anr. 2009 (6) SCC 121 and all subsequent decisions. Thus, considering the age of the deceased, the income added towards future prospects would be 30 percent of Rs.4500 i.e. Rs.1350/-. Thus, the total monthly income would be Rs.5850/- i.e. Rs.70,200/- yearly.

12. Thus, accepting the yearly income of Rs.70,200/-, of which if $\frac{1}{4}$ th is deducted towards personal expenses, the amount would come to Rs.52,650/- which if multiplied applying the multiplier of 13, the amount would reach to Rs.6,84,450/-. Thus, it is ordered accordingly that the claimants shall be entitled for Rs.6,84,450/- for loss of dependency instead of Rs.3,12,000/- as assessed by the Tribunal.

13. So far as compensation under conventional heads are concerned, keeping in view the decision of the Supreme Court in case of Rajesh & Ors. Vs. Rajbir Singh & Ors. 2013(9) SCC 54, this court is of the opinion that ends of justice would meet if a lump sum compensation of Rs.1,00,000/- is awarded to the claimant. Thus, the total compensation

payable to the claimants would become Rs.7,84,450/- instead of Rs.3,32,000/-. It is ordered accordingly.

14. The said enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal. The liability of payment of compensation shall be equally upon the two insurance companies i.e. respondent No.6&7.

15. Accordingly, the appeal of the driver and owner as well as the cross objection of the claimants stand allowed and disposed off.

Sd/-
(P.Sam Koshy)
Judge

inder