NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 186 of 2010

1. Dilesh, S/o. Khilawan Ram Sahu, aged 30 years, R/o. Village Kodia, P.S. Utai, District Durg, Chhattisgarh
2. Khilawan Ram Sahu, S/o. Kheduram Sahu, aged about 50 years, R/o. Village Kodia, P.S. Utai, District Durg, Chhattisgarh

---- Appellants

Versus

1. Sanjay Prakash Soni, S/o. Sahas Ram Soni, aged 29 years,
2. Ku. Sandhya, D/o. Sanjay Prakash Soni, aged ab out 7 years,
3. Ku. Pooja, D/o. Sanjay Prakash Soni, aged about 4 years,
4. Ku. Poonam, D/o. Sanjay Prakash Soni, aged about 8 months,

   Respondents. No. 2 to 4 are Minor, through their Guardian/Father Sanjay Prakash Soni (Respondent No.1)

   All above R/o. Village Minoda, Tahsil Bilaigarh, District Raipur, Chhattisgarh
5. The Oriental Insurance Company Limited, through: the Regional Manager, The Oriental Insurance Company Limited, Jail Road, Raipur, District Raipur Chhattisgarh

----Respondents

MAC No. 187 of 2010

3. Dilesh, S/o. Khilawan Ram Sahu, aged 30 years, R/o. Village Kodia, P.S. Utai, District Durg, Chhattisgarh
4. Khilawan Ram Sahu, S/o. Kheduram Sahu, aged about 50 years, R/o. Village Kodia, P.S. Utai, District Durg, Chhattisgarh

---- Appellants

Versus

1. Sanjay Prakash Soni, S/o. Sahas Ram Soni, aged 29 years,
2. Ku. Sandhya, D/o. Sanjay Prakash Soni, aged ab out 7 years,
3. Ku. Pooja, D/o. Sanjay Prakash Soni, aged about 4 years,
4. Ku. Poonam, D/o. Sanjay Prakash Soni, aged about 8 months,

   Respondents. No. 2 to 4 are Minor, through their Guardian/Father Sanjay Prakash Soni (Respondent No.1)

   All above R/o. Village Minoda, Tahsil Bilaigarh, District Raipur, Chhattisgarh
5. The Oriental Insurance Company Limited, through: the Regional Manager, The Oriental Insurance Company Limited, Jail Road, Raipur, District Raipur Chhattisgarh

----Respondents

MAC No. 282 of 2010

1. Sanjay Prakash Soni, S/o. Sahas Ram Soni, aged 29 years,
2. Ku. Sandhya, D/o. Sanjay Prakash Soni, aged ab out 7 years,
3. Ku. Pooja, D/o. Sanjay Prakash Soni, aged about 4 years,
4. Ku. Poonam, D/o. Sanjay Prakash Soni, aged about 8 months,

   Appellants No. 2 to 4 are Minor, through their Guardian/Father Sanjay Prakash Soni (Appellant No.1)

   All above R/o. Village Bhinoda, Tahsil Bilaigarh, District Raipur, Chhattisgarh

---- Appellants

Versus

1. Dilesh, S/o. Khilawan Ram Sahu, aged 30 years, R/o. Village Kodiya, P.S. Utai, District Durg, Chhattisgarh

1. Khilawan Ram Sahu, S/o. Kheduram Sahu, aged about 50 years, R/o. Village Kodiya, P.S. Utai, District Durg, Chhattisgarh
2. The Regional Manager, The Oriental Insurance Company Limited, through: Divisional Manager, Divisional Office, Jail Road, Raipur, District Raipur Chhattisgarh

----Respondents

For Appellants	:	Mr. N.L. Soni, Advocate
For Claimants	:	Mr. Shivendu Pandya, Advocate
For Insurance Company	:	Ms. Chitra Shrivastava, Advocate

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

22/09/2017

1. These are three appeals arising out of a common award dated 19.11.2009, passed in Claim Case Nos. 42/2009 and 44/2009, by the Additional Motor Accident Claims Tribunal, Gariyaband, District Raipur, Chhattisgarh. Vide the said impugned award the Tribunal has allowed the compensation of Rs.50,000/- in Claim Case No. 42/2009 and an amount of Rs.3,61,400/- in Claim Case No. 44/2009 with interest @ 7.5% per annum from the date of application. While passing the said impugned award the Tribunal has exonerated the Insurance Company of its liability and has fastened the liability of payment of compensation upon the owner and driver.

2. MAC Nos. 186/2010 and 187/2010 are the appeals preferred by the driver and owner of the offending vehicle assailing the liability which has been fastened upon the owner. MAC No. 282/2010 is an appeal

preferred by the claimants seeking for enhancement of compensation of the award passed in Claim Case No. 44/2009.

3. The two appeals preferred by the driver and owner is on the ground that the Tribunal has wrongly fastened the liability upon the owner when the vehicle involved in the accident was duly insured with the respondent No.5-Insurance Company. According to the counsel for the appellant-driver, the finding of the Tribunal so far as there being a breach of policy condition discharging the liability of the Insurance Company is erroneous for the reasons that the claim which has been raised by the claimants was in respect of 3rd party claim for the reason that the claimants were travelling on a motor cycle when the Matador belonging to the present appellant-owner dashed against them resulting in the death of one Sanjeev Kumar Soni, aged around 5 years and Savita Soni, aged around 23 years. It is not a case where the deceased persons were travelling in the Matador involved in the accident and therefore the finding of there being a breach of policy condition for exonerating the Insurance Company is not sustainable.

4. The counsel for the Insurance Company however opposes the appeal and submits that there is an evidence, which have come on record to show that on the Matador at the time of accident, there were about 23 persons travelling and therefore there was a breach of policy condition to the extent that the Matador was a goods carrying vehicle and carrying passenger was not permissible and on account of this breach, the Insurance Company has been rightly exonerated and therefore the appeal deserves to be rejected.

5. Having considered the contentions put for on either side, particularly taking note of the admitted factual position that the deceased persons died when they were travelling on a motor cycle and were hit by a Matador owned by the appellant No.2 and driven by the appellant No.1. The deceased persons in the instant case would squarely fall within the ambit of 3rd party and for which the Insurance Company has duly indemnified the appellant-owner. This being the factual position, the findings arrived at by the Tribunal of exonerating the Insurance Company, is not sustainable and same deserves to be

and is accordingly set-aside and it is ordered that it shall be the liability for payment of compensation jointly and severally upon the owner, driver and the Insurance Company and the liability of payment of compensation would fall upon the Insurance Company.

6. As regards the amount which has been deposited by the appellant-owner before the Tribunal, it is directed that they shall be entitled for refund of the same from the Insurance Company. The balance amount shall be deposited by the Insurance Company before the Tribunal.

7. So far as MAC No. 282/2010 which is an appeal by the Claimants seeking enhancement, the contentions of the counsel for the appellant is that the finding of the Tribunal in assessing Rs.2400/- as the monthly income for quantifying the compensation is on extremely lower side, the same deserves suitable enhancement.

8. According to the counsel for the appellant, the accident is of October 2008, where even an unskilled labour would be getting an income of more Rs.4,500/- per month and therefore the amount deserves to be enhanced suitably. He further submitted that the Tribunal has also not considered the income towards future prospects while quantifying the compensation. Likewise, the compensation under the conventional head is also on the lower side.

9. Having heard the counsel for the parties and taking note of the decision of the Hon'ble Supreme Court in case of "***Arun Kumar Agrawal and another v. National Insurance Company Limited" 2010(9) SCC 218***, which pertained to the services rendered by a house wife and considering a ratio laid down in the said judgment, this Court is of the opinion that ends of justice would meet, if the income of the deceased Savita in the instant case is assessed at Rs.4,500/- instead of Rs.2,400/- as assessed by the Tribunal for quantifying the compensation. In addition, considering the decisions of the Hon'ble Supreme Court in the case of ***"Sarla Verma & Ors vs Delhi Transport Corp. & Anr" (2009) 6 SCC 121)*** and all the subsequent decisions i.e. ***"Rajesh and others vs. Rajbir Singh and others" (2013(9) SCC 54)*** it has been by now settled position of

law of taking the future prospects also for quantification of compensation. Considering the age of the deceased, it shall be 50% of the monthly income which has to be taken towards future prospects while calculating the compensation. 50% of Rs.4,500/- is Rs.2,250/-, which added with the monthly income becomes Rs.6,750/- and which multiplied by 12 would make the yearly income at Rs.81,000/- of which if 1/4 is deducted towards personal expenses as per the decision of Sarla Verma (supra), the income would come to Rs.60,750/-, which if multiplied by applying the multiplier of 17 as has been assessed by the Tribunal would reach to Rs.10,32,750/-.

10. Further, taking into consideration the year of the accident the number of claimants, who are the husband and minor children, this Court is of the opinion that under conventional heads the appellants shall be entitled for lump sum amount at Rs.1,00,000/- instead of Rs.35,000/- as awarded by the Tribunal. Thus, the total compensation payable by the Insurance Company to the claimants shall be Rs.11,93,500/- instead of Rs.3,61,400/-. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

11. As a result, the two appeals preferred by the owner as well as by the claimants stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Ved