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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 954 of 2010

Sheshnah Tiwari S/o Shri Rajendra Tiwari, aged about 41 years, R/o village Bhanpuri, Tahsil and District Raipur (CG)

---- Appellant

Versus

1. Smt. Meera Bai Wd/o late Shri Santara Khalko, aged about 24 years. Resident of village Jajga, Thana Sitapur, District Saguja (CG)
2. Munna Yadav S/o Ram Bihari Yadav, aged about 35 years, R/o village Diyu, District Ara (Bihar) present residence of Tirupati Balaji Transport Raipur, Tahsil and District Raipur (CG)
3. I.C.I.C.I. Lombord Motor Insurance Company Raipur, District Raipur (CG)

---- Respondents

For Appellant	:	Shri Vivek Tripathi, Advocate
For Respondent no.1	:	Shri O. P. Sahu, Advocate
For Respondent no.3	:	Shri Amrito Das with Shri P. Acharya, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

22/09/2017

Present is an appeal under Section 173 of the Motor Vehicles Act assailing the order dated 31.08.2010 passed by the Additional Motor Accident Claims Tribunal, Janjgir (CG) in Claim Case No. 22 of 2009. Vide the impugned award the Tribunal has awarded compensation of Rs. 1,87,000/- with interest @ 9% per annum from the date of application to the claimant. While passing the said award, the Tribunal has fixed the liability of payment of compensation upon the owner of the offending truck bearing registration no. CG 04 JA 9296 and has exonerated the Insurance Company of its liability.

2. The claimant i.e. respondent no.1 in the instant case has also filed a cross objection under Order 41 Rule 22 of CPC seeking for enhancement of the compensation.

3. Counsel for the appellant submits that it is a case where the appellant-owner had got his vehicle duly insured and the accident occurred during the validity of the insurance policy. He submits that the ground assigned for exonerating the Insurance Company is not sustainable for the reason that the deceased in the instant case namely Santara Khalko aged around 25 years was travelling in a vehicle coming from the opposite side and therefore he would fall within the definition of a third party. He further submits that the vehicle to which the present appellant's vehicle had dashed was carrying passenger which they were not supposed to under the policy condition cannot be accepted as a ground for exonerating the Insurance Company. According to the counsel for the appellant, it is a case where the deceased falls within the definition of a third party as he was not travelling in the offending vehicle i.e. the vehicle owned by present appellant. Thus, prayed for shifting the liability of payment of compensation upon the Insurance Company.

4. Counsel for the Insurance Company, however, opposing the appeal submits that the finding of the Tribunal is on the basis of the evidences which have come on record from which it is clear that the deceased in the instant case was travelling in the truck coming from the opposite direction as a passenger. Therefore, there is a clearly breach of policy condition and the Tribunal has rightly exonerated the Insurance Company of its liability.

5. The objection so raised by the Insurance Company is not acceptable for the reason that the vehicle of the present appellant i.e. the offending vehicle was duly insured and it is not the case of Insurance Company i.e. respondent no.3 that the present appellant was using his vehicle in breach of the policy condition. Thus, for all practical purposes, respondent no.3 shall indemnify the present appellant so far as the claim of a third party is concerned. Hence, the finding exonerating the insurance Company by the Tribunal is bad in law and the same deserves to be and is accordingly set aside. It is held that the liability of payment of compensation shall be jointly and severally upon the Insurance Company, the owner and the driver and it shall be the responsibility of the respondent no.3 Insurance Company to pay the amount of compensation awarded.

6. So far as the cross objection filed by the claimant is concerned, it is contended that the notional income assessed by the Tribunal is on the lower side and the same deserves enhancement. That the compensation awarded under the conventional head is also on the lower side. That the income under future prospects has also not been calculated while quantifying the compensation.

7. Consider the fact that the accident is of February, 2009 where the minimum wage of a person would have been more than Rs.100 a day, for all practical purposes, the Tribunal ought to have accepted the yearly income of the deceased to be Rs.36,000/- in stead of Rs.15,000/-. Accordingly, this Court holds the yearly income of the deceased to be Rs.36,000/- for quantifying the compensation. If 50% of the income is added towards future prospects, the amount comes to Rs.54,000/- of which if 50% is deducted towards personal expenses, the net income would be Rs.27,000/-. If the said amount is multiplied by applying the multiplier of 18, it would become Rs.4,86,000/-. Further the amount awarded under conventional head also appears to be on the lower side as the date of accident is of the year 2009. Keeping in view the decision of the Hon'ble Supreme Court in the case of **Rajesh and Others vs. Rajbir Singh and others** reported in **(2013) 9 SCC 54,** this Court is of the opinion that ends of justice would meet if a lump sum amount of Rs.1,00,000/- under the conventional head is provided to the claimant in stead of Rs.7,000/- as awarded by the Tribunal. Thus, the total compensation payable to the claimant shall be Rs. 5,86,000/- in stead of Rs.1,87,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

8. The appeal thus stands allowed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola