NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1338 of 2014

Sundarlal Nishad S/o Birijlal Nishad, aged about 28 years, R/o Balodabazar Road, Kharora, Post Office and P.S. Kharora, Distt. Raipur C.G.

---- Appellant

Versus

1. Smt. Rameshwari Verma W/o late Gambhir Verma, aged about 50 years, R/o Sundarnagar, Raipur, P.O. Raipur, Police Station D.D. Nagar, Raipur, Distt. Raipur, C.G.
2. The Reliance General Insurance Company Limited through Branch Manager, Branch Office, 4th Floor, Ravi Bhawan, Jai Stambh Chowk, P.O. Raipur, P.S. Gol Bazar, Raipur, Tah. and Distt. Raipur C.G.

---- Respondents

For Appellant	:	Shri Shivendu Pandya, Advocate
For Respondent no. 1	:	Shri A. L. Singroul, Advocate
For Respondent no. 2	:	Shri Sourabh Sharma along with Ms. Smita Jha, Advocates

and

Misc. Appeal (C) No. 1050 of 2014

Smt. Rameshwari Verma W/o Late Gambhir Verma, aged about 50 years, R/o Sundarnagar, Raipur, Thana D.D. Nagar, Raipur, Distt. Raipur, C.G.

---- Appellant

Vs

1. Sunder Lal Nishad S/o Brijlal Nishad, aged about 28 years, R/o Baloda Bazar Road, Kharora, P.S. Kharora, Distt. Raipur C.G. (Owner cum driver of vehicle No. CG 04 JC/4886)
2. Reliance General Insurance Company Limited through Branch Manager, Branch Office, 4th Floor, Ravi Bhawan, Jai Stambh Chowk, P.O. Raipur,

P.S. Gol Bazar, Raipur, Tah. and Distt. Raipur C.G. (Insurer of vehicle No. CG 04 JC/4886)

---- Respondents

For Appellant	:	Shri A. L. Singroul, Advocate
For Respondent no. 1	:	Shri Shivendu Pandya, Advocate
For Respondent no. 2	:	Shri Sourabh Sharma along with Ms. Smita Jha, Advocates

Hon'ble Shri Justice P. Sam Koshy

Order On Board

10/11/2017

These are two appeals arising out of the award dated 30.08.2014 passed by the 2nd Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No. 30 of 2013. Vide the impugned award, the Tribunal, in a death case under Section 166 of MV Act, has awarded a compensation of Rs.3,84,045/- with interest @ 7% per annum from the date of application.

2. MAC No.1338/14 is an appeal by the owner challenging the liability which has been fastened upon him exonerating the Insurance Company. MAC No.1050/14 is an appeal by the claimant seeking for enhancement of the compensation awarded.

3. So far as the appeal of the owner is concerned, it is contended by the counsel for the owner that the issue involved in the appeal is no longer res integra as the matter stands squarely covered by the two decisions of the Supreme Court in the cases of **Mukund Dewangan Vs. Oriental Insurance Company Limited** [1] and **Sant Lal Vs. Rajesh and Ors. etc**.[2]

4. According to the counsel for the owner, the vehicle involved in the accident is a Tata Ace (Chhota Hathi) bearing registration No. CG04 JC 4886

[1] AIR 2017 SC 3668
[2] AIR 2017 SC 4054

which is undisputedly a light motor vehicle though was being used for commercial purpose. The vehicle was being driven by the owner himself who had a valid licence to drive a light motor vehicle which is not disputed by any of the parties and the licence has been marked as Exhibit D-1. This factual aspect is not disputed by any of the counsel appearing for the respondents.

5. In the light of the aforesaid factual matrix of the case and also taking note of the two decisions of the Supreme Court referred to above, this Court has no hesitation in allowing the appeal of the owner holding that the liability of payment of compensation shall be jointly and severally upon the Insurance Company and the owner and the responsibility of payment of compensation shall be upon the Insurance Company.

6. So far as the appeal of the claimant for enhancement is concerned, contention of the counsel for the claimant is that the income assessed is on the lower side so also the claimant would be entitled under the future prospects. He submits that the compensation under conventional head is also deserves to be enhanced and the deduction made was also erroneous as it should have been 1/3 whereas ½ has been assessed by the Tribunal.

7. Undisputedly the date of accident in the instant case is 21.10.2012. In the year 2012 even an unskilled labour would have been earning Rs.150 -200 a day which would amount to Rs.4,500 - 6,000 a month. Even if we accept Rs.150/- as the minimum income of the claimant, the monthly income would be Rs.4,500/-. Thus, this Court assesses Rs.4,500/- to be the monthly income of the deceased for the purpose of calculating compensation. If 10% of the said amount is added towards future prospects, the amount would be Rs.4,950/- a month and Rs.59,400 yearly. If 1/3 of the said amount is deducted towards personal expenses, it would come to Rs.39,600/- which if multiplied applying the multiplier of 11, the amount comes to Rs.4,35,600/-. In addition, the claimant would also be entitled for the compensation as awarded by the Tribunal towards expenditure for medical treatment of Rs.1,26,345/-. Further, considering the entire facts and circumstance of the case, ends of justice would meet if the claimant is awarded a lump sum compensation of Rs.38,055/- under the conventional head making the total compensation payable to the claimant at Rs.6,00,000/- in stead of Rs. 3,84,045/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

8. Since the order of exoneration of the Insurance Company has been set aside by this Court, the responsibility of payment of compensation shall now fall upon the Insurance Company. Any interim order passed by this Court stands merged with the final order. Whatever amount that has been deposited by the owner, if not disbursed, the same shall be refunded back to the owner and the entire amount of compensation shall be deposited by the Insurance Company before the Tribunal at the earliest.

9. Both the appeals preferred by the owner as well as by the claimant stand allowed.

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

Bhola