

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 608 of 2007

1. Smt. Taravati Nishad, Wd/o. Late Heeralal Nishad, aged about 28 years,
2. Teekam Nishad, S/o. Late Heera Lal Nishad, aged about 6 years,
3. Manish Nishad, S/o. Late Heeralal Nishad, aged about 3 years,
Appellants No.2 & 3 Minors through natural guardian mother Smt. Taravati
appellant No.1.
All residents of village Amarkot, P.S. Saraipali, District Mahasamund (CG)

---- Appellants

Versus

1. Premnath Suryavanshi, S/o. Alekh Singh Suryavanshi, aged about 42
years, R/o. Behind Electricity Office, Basna, Tahsil Basna, District
Mahasamund (CG)
2. Ganpati Nayak, S/o. Kulhal Nayak, aged about 35 years, R/o. Village and
Post Pirda, P.S. Basna, District Mahasamund (CG)
3. I.C.I.C.I. Lombard General Insurance Company Limited, Raipur, Through:
Divisional Manager, I.C.I.C.I. Lombard General Insurance Plaza Complex,
Raipur (CG)

---Respondents

MAC No. 1373 of 2007

Gajpati Nayak, S/o. Kulhal Nayak, aged about 35 years, R/o. Village and
Post Pirda, P.S. Basna, District Mahasamund (CG)

---- Appellants

Versus

1. Smt. Taravati Nishad, Wd/o. Late Heeralal Nishad, aged about 28 years,
2. Teekam Nishad, S/o. Late Heera Lal Nishad, aged about 6 years,
3. Manish Nishad, S/o. Late Heeralal Nishad, aged about 3 years,
Respondents No.2 & 3 being Minors on behalf of through their legal
guardian mother the appellant No.1 Smt. Taravati Nishad
All residents of village Amarkot, P.S. Saraipali, District Mahasamund (CG)
4. Premnath Suryavanshi, S/o. Alekh Singh Suryavanshi, aged about 42
years, R/o. Behind Electricity Office, Basna, Tahsil Basna, District
Mahasamund (CG)
5. I.C.I.C.I. Lombard General Insurance Company Limited, Raipur, Through:
Divisional Manager, I.C.I.C.I. Lombard General Insurance Company
Limited, Plaza Complex, Raipur (CG)

---Respondents

For Appellants	:	Mr. Shivendu Pandya, Advocate Ms. Premlata Khalkho, Advocate on behalf of Mr. Raghvendra Pradhan, Advocate for respective appellants.
For Respondents	:	Mr. P. Acharya and Mr. K. Rohan, Advocates on behalf of Mr. Amrito Das, Advocate

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

07/09/2017

1. These are two appeals filed assailing the award dated 14.03.2007, passed by the Chief Motor Accident Claims Tribunal, Mahasamund, in Claim Case No. 39/2006. Vide the impugned award, the Tribunal in a proceeding under Section 166 has allowed the application and ordered for payment of Rs.2,92,000/- along with interest @ 6% per annum from the date of application.
2. While passing the said impugned award, the Tribunal had exonerated the Insurance Company and have fastened the liability upon the owner of the Truck involved in the accident. The MAC No. 608/2007 is an appeal preferred by the claimants seeking for enhancement and MAC No. 1373/2007 is an appeal preferred by the owner assailing the liability which has been casted upon the owner exonerating the Insurance Company.
3. The brief facts of the case is that, on 23.06.2006, while the deceased Heera Lal Nishad was traveling in the Truck belonging to the owner Gajpati Nayak-the appellant in MAC No. 1373/2007 bearing registration No. CG-06-B-9260 met with an accidental death. The said Tractor was insured with the Respondent No.3-Insurance Company and the policy which was taken by the owner was Miscellaneous D Policy covering the risk of the owner and the driver. In addition, there was a legal liability of covering the risk of driver, conductor and cleaner under IMD 28 for which an extra premium of Rs.25/- was paid by the owner to the Insurance Company.
4. The Tribunal considering the evidence which have come on record allowing the application granted a compensation of Rs.2,92,000/- to the claimants of which Rs.2,88,000/- was towards loss of dependency and Rs.2,000/- was paid for the funeral expenses and another Rs.2,000/- was paid as loss of consortium to the widow. The age of the deceased at the relevant point of time was 34 years. While passing the impugned award, the Tribunal reached to the conclusion that since the trolley attached to the Tractor was not insured and the fact that neither the owner had paid any extra

premium towards covering of risk of any passenger to be taken in the Tractor Trolley or the Tractor, the Insurance Company would not be liable to pay compensation and the liability were shifted upon the owner of the said Tractor.

5. The counsel for the claimants submits that, the amount of compensation awarded is on the lower side in as much as the evidence which have come on record is that, the deceased at the relevant point of time was working as a Meson and that he was earning around Rs.200/- a day. There is no evidence on the contrary to disprove this contention even if we except the fact that, the deceased at the point of accident may not earn Rs.200/- a day.
6. Since the claimants themselves have not been able to show any supportive evidence to show that he was earning Rs.6,000/- per month, this Court does not find any fault on the part of the Tribunal in taking the notional income of the deceased to be Rs.3,000/-. However this Court finds that, the Tribunal for the purpose of quantification of the compensation has not taken into account the income under future prospective. Considering the age of the deceased, the future prospects which would be added to the income would be 50% of his monthly income that would be Rs.1500/- which would make the monthly income of the deceased at Rs.4,500/- and Rs.54,000/- yearly and if 1/3rd of the same is deducted towards personal expenses, the amount would come to Rs.36,000/- which if multiplied by applying multiplier of 16 as per the decision of the Hon'ble Supreme Court in the case of ***"Sarla Verma & Others vs. Delhi Transport Corporation and Another"* [2009 (6) SCC 121]** the amount would come to Rs.5,76,000/-. It is ordered accordingly that the claimants shall be entitled for compensation of Rs.5,76,000/- towards loss of dependency instead of Rs.2,88,000/- as assessed by the Tribunal.
7. So far as the compensation towards the other heads are concerned, this Court has no hesitation in reaching to the conclusion that, the amount of Rs.2,000/- towards funeral expenses and Rs.2,000/- towards loss of consortium is definitely on an extremely lower side

and same deserves enhancement and keeping in view the decision of the Hon'ble Supreme Court in the case of "**Rajesh and others v. Rajbir Singh and others**" [2013 (9) SCC 54], this Court thinks it fit that the ends of justice would meet if a lump sum compensation of Rs.1,00,000/- is granted under the other heads, which would make total compensation payable to the appellants /claimants of Rs.6,76,000/- instead of Rs.2,92,000/-. Thus, the appellants in MAC No. 608/2007 shall be entitled for an additional compensation of Rs.3,84,000/-. The said enhanced amount shall also carry interest at the same rate as has been assessed by the Tribunal.

8. So far as the appeal of the owner i.e. MAC No. 1373/2007 is concerned, the facts which are undisputed from the pleadings which have come on record as also from the evidence is that, it was only the Tractor which was insured by the owner and that there was no insurance taken by the owner towards the trolley attached to the Tractor neither was any extra premium paid for covering the risk of any extra person apart from owner and driver and the limited liability towards the driver, cleaner and conductor.
9. In view of the aforesaid factual aspects, this Court is of the opinion that there is no illegality or an error committed by the Tribunal while exonerating the Insurance Company and fastening the liability upon the owner and for the said reasons, the appeal of the owner fails and is accordingly dismissed.
10. In view of the same, the appeal of the claimants stands allowed and the appeal of the owner stands rejected.

Sd/-
(P. Sam Koshy)
Judge