NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No. 780 of 2004

1. Smt. Anju Kurre W/o Lt. Laxmi Kurre, aged about 20 years, caste Satnami
2. Ansul Kurre S/o late Laxmi Kurre, aged about one and half years
3. Kamesh Kurre S/o late Laxmin Kurre, aged about six months
4. Kaikai Devi W/o late Ransai Kurre aged about 40 years

   All are resident of Q. No. B/32 Balgi Colony P.O. Balgi, Tahsil Katghora P.S. Banki Mongara, District Korba (CG)

---- Appellants

Versus

1. Ramkumar Verma S/o Ramprasad, aged about 26 years, R/o Qr. No. B/54 Balgi Colony, PO Balgi, P.S. Banki Mongara, Tahsil Katghora, District Korba (CG) Non-applicant No.1.
2. Anandram Ram S/o Sri Motiram Sahu, R/o Qr. No. B/262, SECL, Gevra Project, Korba, Urja Nagar Korba, district Korba (CG) Non-applicant no.2. (owner)
3. The new India Insurance Company Ltd. through Branch Manager, the New India Insurance Company Ltd. T. P. Nagar Korba, District Korba (CG) Non-applicant no.3.

---- Respondents

For Appellants	:	None
For Respondent no.1	:	Shri Badal Bhardwaj, Advocate
For Respondent no.2	:	Shri Rajesh Jain, Advocate
For Respondent no.3	:	Shri Sudhir Agrawal, Advocate

Misc. Appeal No. 910 of 2004

Anandram S/o Sri Motiram Sahu, R/o Qr. No. B/262, SECL, Gevra Project, Korba, Urja Nagar Korba, district Korba (CG) Non-applicant no.2. (owner)

---- Appellant

Versus

1. Ramkumar Verma S/o Ramprasad, aged about 26 years, R/o Qr. No. B/34 Balgi Colony, PO Balgi, P.S. Bankimongara, Tahsil Katghora, District Korba (CG) Driver of the vehicle

2. The new India Insurance Company Ltd. through the Branch Manager, the New India Insurance Company Ltd. T. P. Nagar Korba, District Korba (CG) Non-applicant no.3.
3. Smt. Anju Kurre, aged about 20 years, W/o late Laxmi Kurre
4. Ansul Kurre S/o late Laxmi Kurre, aged about 1 ½ years through his mother Smt. Anju Kuree W/o late Laxmi Kurre
5. Kamesh Kurre S/o late Laxmi Kurre, aged about six months through his mother Smt. Anju Kurre W/o late Laxmi Kurre
6. Kaikei Davi W/o late Ransai Kurre aged about 40 years

Respondents 3 to 6 are resident of Qr. No. B/32 Balgi Colony P.O. Balgi, P.S. Bankimongara, Tahsil Katghora, District Korba (CG)

---- Respondents

For Appellant	:	Shri Rajesh Jain, Advocate
For Respondent no.1	:	Shri Badal Bhardwaj, Advocate
For Respondent no.2	:	Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Judgement On Board

18/09/2017

These are two appeals assailing the award dated 26.04.2004 passed by the Additional Motor Accident Claims Tribunal, Korba in Claim Case No.60/2003 whereby the Tribunal has in a proceedings under Section 166 of the Motor Vehicles Act awarded a compensation of Rs.7,20,000/- with interest @ 9% per annum from the date of application. While passing the impugned award the Tribunal has exonerated the Insurance Company of its liability and fastened the liability of payment of 1/3rd of the compensation awarded upon the appellant Anandram in MA No. 910/04 and the balance amount of 2/3rd upon the subsequent purchaser of the vehicle Ramprasad Verma who has not preferred any appeal.

2. MA No. 780/04 is an appeal by the claimants assailing the impugned award seeking for enhancement. MA No. 910/04 is an appeal by the registered owner Anandram assailing the liability which has been fastened upon him in spite of the vehicle having already sold to respondent Ramprasad Verma.

3. For the sake of convenience, we take the appeal of the registered owner Anandram first for deciding the issue raised therein and thereafter the appeal of the claimants if required has to be decided.

4. Counsel appearing for respondent no.1 Ram Kumar Verma, the driver of the offending vehicle who also happens to be the son of the subsequent purchaser of the vehicle submits that his father Ramprasad Verma had expired on 22 of June, 2004 i.e. immediately after the award was passed and within the period of limitation for filing an appeal. As such no appeal could have been filed by the actual owner deceased Ramprasad Verma.

5. Shri Rajesh Jain, counsel appearing for the appellant Anandram who is the registered owner of the offending vehicle submits that the Tribunal has wrongly fastened the liability of 1/3 share of the compensation upon the registered owner in spite of a specific pleading and evidence brought on record in respect of the vehicle involved in the accident i.e. a Tata Sumo bearing registration No. CG-12/7696 which he had owned at one point of time and which subsequently was sold to Ramprasad Verma on 30.01.2003 for which a sale deed was also executed on 03.02.2003 and the accident took place on very next date i.e. 04.02.2003. According to Shri Jain, undisputedly the registered owner was the appellant Anandram and it is also not in dispute that the vehicle had been sold and the possession was handed over to Ramprasad Verma and the accident occurred while the vehicle was in possession of Ramprasad Verma. Therefore, the Tribunal could not have fastened any liability upon Anandram since he was not directly or indirectly connected with the accident nor was he having any sort of control over the vehicle involved in the accident which at one point of time he owned. It was also contended by Shri Jain that the exoneration of the Insurance Company of its liability of payment of compensation also is erroneous for the reason that it is a case where the accident occurred on the very next date of the sale deed having been executed. That under Section 157 of the MV Act, the requirement of law was that an intimation about sale should be given to the Insurance Company within 14 days but before such an intimation could have been given the accident occurred. Therefore applying the deeming provision under Section 157 of the MV Act, the actual owner has to be presumed to be Ramprasad Verma and not the present appellant Anandram. Shri Jain referred to paragraph-15 of the impugned award where the Insurance Company has been exonerated only on the ground of the Insurance Company having not been intimated about the sale of the vehicle by Anandram to Ramprasad.

6. It was further contended by Shri Jain that even otherwise on merits, the finding of the Tribunal to the extent that the accident occurred when the deceased himself was driving the vehicle is erroneous for the reason that the site map which has been produced before the Court below and which was part of the criminal case registered against the actual driver i.e. respondent no.1 Ram Kumar shows that the body of the deceased was found at the rear seat of the vehicle and not at the driver seat. This document has also been exhibited before the Tribunal as Ex.P-9 by PW-1. In spite of this, the Tribunal on presumption of the deceased driving the vehicle at the time of accident has proceeded to decide the case against the two owners which according to Shri Jain is a perverse finding and deserves to be set aside.

7. Shri Jain further referring to the record submitted that it is a case where except for the claimants, there has been no evidence or witness examined by any of the respondents before the Tribunal to establish their respective contentions which they have raised in their written statement. In the absence of any corroborative evidence to support the contentions by any of the respondents, the finding of the Tribunal is per se bad in law and deserves to be set aside. It was further submitted that the contents of the FIR was not duly proved before the Tribunal which should have been properly appreciated by the Tribunal while deciding the claim case. He referred to the judgments of the Supreme Court in the case of Managing Director, Karnataka State Road Transport Corporation Vs. New India Assurance Company Limited and another reported in (2016) 1 SCC (Cri) 493 in support of his contention.

8. For all the aforesaid reasons, counsel for the appellant Anandram, the registered owner of the vehicle submits that the impugned award deserves to be set aside and it should be held that the exoneration of the Insurance Company was bad in law, the fastening of the liability upon the appellant Anandram is bad in law and the liability be accordingly shifted upon the Insurance Company.

9. Per contra Shri Sudhir Agrawal, counsel appearing for the Insurance Company opposing the appeal submits that the finding of the Tribunal is based upon the evidences which have come on record and also the evidences of the claimants wherein the contents of the FIR reflect that it was the deceased who was driving the vehicle at the time of accident. Shri Agrawal referred to the finding arrived at by the Tribunal so far as issue Nos. 1 & 1A is concerned and submitted that in the light of the finding so arrived at by the Tribunal the impugned award does not warrant any interference. He further referred to the written statement filed by the driver Ram Kumar wherein he has specifically pleaded that he has been falsely implicated in the case. Shri Agrawal further contended that even otherwise since the deceased was also travelling in the vehicle, he cannot be presumed to be a third party by which the liability could be fastened upon the Insurance Company. He relied upon the decision of the Supreme Court in the case of Surender Kumar Arora &

another Vs. Manoj Bisla (Dr.) and others reported in 2012 (3) T.A.C. 353 (SC) wherein the finding of the Supreme Court is that in the event of the accident occurs at the hands of the deceased himself who was driving the vehicle, the Insurance company cannot be fastened with the liability and that the claimants under such circumstance would not be entitled for any compensation.

10. Having considered the rival contentions put forth on either side and on perusal of the record what clearly culls out is the following admitted position:

i) The accident to have occurred on 04.02.2003,

ii) The vehicle involved in the accident being a Tata Sumo bearing registration No.CG-12/7696,

iii) The registered owner of the said vehicle was appellant Anandram in MA No. 910/04,

iv) The vehicle was duly insured with the New India Assurance Company Limited and the policy was a “package policy” or a comprehensive policy.

v) the accident occurred during the validity of the policy.

11. What has also come on record and which has not been disputed is the fact that though the registered owner was Anandram, the vehicle was subsequently sold to Ramprasad Verma on 30.01.2003, a sale deed of which was executed on 03.02.2003 and the accident occurred on the very next day i.e. 04.02.2003 that means the accident occurred within 4 days from the date the vehicle was transferred by the registered owner to the subsequent purchaser Ramprasad. A criminal case has been registered against respondent No.1 Ram Kumar who has been held to be the driver of the vehicle at the relevant point of time vide Crime No. 40/2003 at Police Station Darri, District Korba for the offence under Sections 279 and 337 of IPC. The charge sheet which has subsequently been filed, the offence under Section 304A of IPC has also been added. What is also not in dispute is that from the accident that occurred on 04.02.2003 the deceased Laxmin Kurre died who was travelling in the said Tata Sumo. It is also an admitted factual aspect that except the claimants, none of the respondents have led any evidence before the Tribunal.

12. In addition to the aforesaid admitted factual aspect when we look into the record, what has also reflected is that the Police Authorities during the course of investigation had prepared a site map which shows the position of the dead body in the vehicle. The dead body was found on the rear portion of the Tata Sumo and not on the driver seat or in the front portion of the vehicle. This prima facie makes the Court to believe that it was not the deceased who was driving the vehicle at the time of accident but it was somebody else and in addition, the criminal case has been registered against respondent no.1 Ram Kumar which is pending consideration before the concerned Court. Though there is an allegation that the deceased along with Ram Kumar i.e. the son of the subsequent purchaser were under the influence of alcohol but there is no evidence come on record or adduced by any of the parties before the Tribunal to establish this aspect.

13. Another aspect which cannot be brushed aside is the fact that since it was a comprehensive package policy, the deceased who was travelling in the vehicle would also be covered under the risk of the said package policy as he would be considered as an occupant in the vehicle involved in the accident.

14. Now if we refer to Section 157 of the MV Act, the requirement of law is that in the event of sale of any vehicle and transfer of possession of the said vehicle, intimation of which has to be given to the Insurance Company for appropriate modification in the policy within 14 days. In the instant case, undisputedly the accident occurred on 4th day of the sale and transfer of the vehicle. Thus, there was still sufficient time left for the registered owner as well as the subsequent purchaser to intimate the insurance company in respect of the sale. Therefore, for all practical reasons, the sale has to be presumed to be a complete sale and it has to be deemed that the vehicle was duly sold by Anandram to Ramprasad Verma. Only because intimation in this regard was not sent within 4 days by the seller and the purchaser to the Insurance Company by itself cannot be presumed to be violation of the Section 157 of the MV Act. Therefore, the finding in this regard is hard to sustain and the same deserves to be and is accordingly set aside for the reason that there was still sufficient time left for the parties to intimate the Insurance Company about the transactions of sale that had taken place between them.

15. In view of the aforesaid facts and circumstances of the case, this Court is of the opinion that the finding of the Tribunal in exonerating the Insurance Company was not justified and the apportionment of the liability of 1/3rd and 2/3rd between the registered owner and the subsequent purchaser also is not sustainable and the impugned award accordingly stands modified to the extent that the Insurance Company, on account of the fact that the vehicle was duly insured by a “package policy” for the relevant period, shall indemnify the owner for the compensation that has been awarded by the Tribunal.

16. So far as the appeal of the claimants seeking enhancement is concerned, the ground for challenge is that the Tribunal has not properly taken into account the salary of the deceased at the time of accident while quantifying the compensation. Further, the Tribunal should have considered the income under the future prospects while granting compensation and the Tribunal has erred in as much as not granting any compensation under the conventional head which the claimants are otherwise entitled for.

17. If we look into the record, the pay slip which has been brought on record shows that the gross income of the deceased was Rs.6,874/- and the Tribunal has taken income of the deceased at Rs.6,000/- for quantification of the compensation. The deduction of Rs.874/- on perusal of the pay slip shows that it was towards provident fund and LIC premium which was otherwise part of the income of the deceased and which he would have got back at the time of superannuation. Therefore, there was no reason for deducting the same. Thus, this Court holds Rs.6874/- as the monthly income of the deceased for the purpose of quantification of compensation in stead of Rs.6,000/-.

18. Considering the decisions of the Supreme Court right from the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** and all subsequent decisions, the claimants in the instant case would also be entitled for 50% of the income towards future prospects while quantifying the compensation which in the instant case comes to Rs.3,437/-. If the said amount is added, the monthly income would become Rs.10,311/- of which if 1/3 is deducted towards personal expenses, the amount comes to Rs.6874/- a month and the yearly income would be Rs.82,488/-. What is also reflected is the fact that the Tribunal has wrongly applied the multiplier of 15 while quantifying the compensation whereas as per the decision of the Supreme Court in the case of Sarla Verma (supra) the multiplier ought to have been 17 and it is ordered accordingly. If Rs.82,488 is multiplied by applying the multiplier of 17, the amount reaches to Rs. 14,02,296/-. Further it appears that the Tribunal has not granted any compensation towards conventional head like loss of consortium, funeral expenses, loss of estate and love and affection particularly when the claimants are the widow and the minor children of the deceased. Applying the principle of the Supreme Court in the case of **Rajesh and Others vs. Rajbir Singh and others** reported in **(2013) 9 SCC 54,** this Court feels it fit that a lump sum compensation of Rs.1,00,000/- under conventional head shall meet the ends of justice and it is ordered accordingly. Thus, the claimants shall be entitled for a total compensation of Rs.15,02,296/- in stead of 7,20,000/- as awarded by the tribunal and this Court rounds up the compensation amount to Rs.15,02,300/-. Considering the entire factual matrix of the case, this Court is of the opinion that ends of justice would meet if the claimants are ordered to be entitled for the interest on the said amount @ 6% per annum from the date of application in stead of 9% as has been awarded by the Tribunal. It is ordered accordingly.

19. Both the appeal preferred by the claimants as well as by the registered owner stand allowed.

20. The Registry is directed to send a copy of the judgment of this case to the Secretary, District Legal Services Authority, Korba, who in turn should make all endeavours to deliver the judgment to the claimants.

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

Bhola