

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 46 OF 2005

1. Dashrath Sidar, S/o Late Tulsiram, aged 40 years
 2. Ku. Sonkunwar, D/o Dashrath Sidar, aged 13 years
 3. Ku. Santoshi Sidar, D/o Dashrath Sidar, aged 11 years
 4. Ku. Fagun Sidar, D/o Dashrath Sidar, aged 9 years
 5. Nohar Lal Sidar, S/o Dashrath Sidar, aged 7 years
 6. Narendra Kumar Sidar, S/o Dashrath Sidar, aged 5 years
- No. 2 to 6 are minors, through : natural guardian father Dashrath Sidar (No.1). All R/o Village Kanshipali, Post Khoksa, Tahsil- Saraipali, District Mahasamund (C.G.)

... Appellants

Versus

1. Chaman Kumar Sahu, S/o Punit Ram Sahu, aged 28 years, R/o Village Madhopali, P.S. Saraipali, District Mahasamund (C.G.)
2. Dinesh Kumar Chaurasiya, S/o Tuliprasad Chaurasiya, aged 40 years, R/o Vill. Lambar, P.S. Saraipali, District Mahasamund (C.G.)
3. The Oriental Insurance Co. Ltd., through Divisional Manager, The Oriental Insurance Co. Ltd., Kachahari Chowk, Madina Manjil, Raipur (C.G.)

... Respondents

For Appellants	:	Mr. Shikhar Sharma, Advocate, under instructions of Mr. Raghvendra Pradhan, Advocate.
For Respondents 1 & 2	:	Mr. Durgesh Goyal, Advocate, under instructions of Mr. S.C. Verma, Advocate.
For Respondent 3	:	Mr. Sudhir Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/09/2017

1. The present is a claimants' appeal under Section 173 of the Motor Vehicles Act, 1988, assailing the award dated 16.10.2004 passed by the Second Additional Motor Accident Claims Tribunal, Mahasamund, in Claim Case No. 56/2004.
2. Vide the said impugned award, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act initiated by the claimants, has awarded a compensation of Rs. 1,32,500/- with interest thereon at the rate of 8% per annum from the date of claim application. While passing the award, the Tribunal had exonerated the Insurance Company from its

liability to pay compensation, on the ground of there being a breach of policy conditions and fastened the liability to pay the compensation upon the owner and driver of the offending jeep.

3. It is a case where on 15.1.2004, the deceased Tilmoti, wife of appellant-claimant no.1 and mother of appellants-claimants no. 2 to 6, met with a vehicular accident and succumbed on the spot due to the injuries sustained. The said accident is said to have occurred when she was travelling along with appellants in the offending vehicle, i.e., Commander Jeep No. CG13/ZD-0165, driven by respondent no.1-Chaman Kumar Sahu, owned by respondent no.2-Dinesh Kumar Chourasia and insured with respondent no.3-Oriental Insurance Company at the relevant time.

4. Challenge in the present appeal is to the exoneration of respondent no.3-insurance company of its liability to pay compensation and also to the quantum of compensation awarded by the Tribunal.

5. So far as the liability part is concerned, the contention of the learned counsel for the appellants-claimants is that the insurance company has not led any evidence on their behalf to seek an exemption of its liability particularly when the vehicle involved in the accident was duly insured. According to him, once when the insurance company takes a plea of breach of policy conditions it is the responsibility of the insurance company to have proved it by leading strong and cogent evidence establishing the breach. In the instant case, no such evidence has been led by the insurance company with which they could have claimed exemption. Further contention of the learned counsel for the appellants-claimants is that the claimants themselves have in their deposition made a statement that they have not paid any fare to the owner or driver for travelling in the offending jeep with which it could be presumed or assumed of the vehicle being used for commercial purpose. According to him, even the witnesses

on behalf of the claimants have deposed of not having paid any fare for the purpose of travelling on the said jeep. The impugned award therefore deserves to be modified by fastening the liability upon the insurance company instead of the owner of the vehicle.

6. So far as the quantum part is concerned, learned counsel for the appellants-claimants submits that it is a case where the deceased-Tilmoti was aged around 37 years on the date of accident and the accident was of the year 2004 and the minimum wages even of an unskilled labour at that point of time was around Rs.100/- a day which makes the monthly income to be around Rs.3000/-. However, the Tribunal has only taken Rs.1000/- as monthly income of the deceased-Tilmoti which is beyond anybody's imagination and which is too meagre an amount with which one could sustain and therefore the same needs a suitable modification. It is further submitted by the counsel for the appellants-claimants that the Tribunal has also not taken into account the component of future prospects while calculating the compensation. Likewise, under the conventional heads also the Tribunal has awarded only Rs.4500/-, that is, Rs.2000/- towards funeral expenses and Rs.2500/- for loss of estate, which too is unreasonably low an amount in today's world, particularly when the accident is of the year 2004 and thus prayed for enhancement of compensation under the said head also.

7. Learned counsel for respondent no.3-insurance company however opposing the appeal submits that it is a case where though the insurance company may not have led any evidence but from the pleadings of the claimants and the evidence which they have led itself, it is evidently clear that the offending jeep at the relevant point of time was being used for transportation of the passengers from one place to another. He further submits that the evidence of the claimants also show that the contractor

who had engaged these workers including the deceased had hired the vehicle for taking them to the destination of work for which they were engaged and thus the Tribunal has rightly exonerated the insurance company and fastened the liability upon the driver and owner of the vehicle. He also submits that even otherwise the insurance company would not be liable to pay for the claimants on account of the fact that the policy which was taken by the owner of the offending jeep was only the Act Only policy which covers the risk of only a third party and therefore the claimants since they were travelling in the same vehicle would not fall within the definition of third party and on this ground also the insurance company cannot be fastened with the liability of payment of compensation.

8. Having heard the contentions put forth on either side and on perusal of the record, undisputedly, the deceased and the persons travelling in the offending jeep were all contractor's employees and they were being taken by the contractor to their work place. It was also the contention of the claimants that the contractor had hired the vehicle for transporting the deceased and other workers to the site of work. The reading of the statement of witnesses examined on behalf of the claimants would also reflect that it was not the contractor employees travelling in the jeep who had paid the fare but it was the contractor who had hired the vehicle. There was no effective cross-examination made by the owner of the vehicle to disprove this contention of the claimants, in the absence of which it clearly establishes the fact that the owner of the vehicle was using the jeep for commercial purposes on hire and reward. What is all the more relevant is the fact that the owner of the vehicle in spite of the award having been passed in the year 2004 itself, has not challenged the award and the awarding of compensation. Thus, the finding of the Tribunal so far as the fastening of liability is concerned does not warrant interference.

9. So far as the quantum part is concerned, admittedly the accident having occurred in the year 2004, the minimum wages of the persons would have been somewhere around Rs.100/- a day which makes it Rs.3000/- a month. The Tribunal therefore should have computed the compensation accepting the monthly wages of the deceased-Tilmoti to be Rs.3000/-. It is anybody's guess that in the year 2004, the minimum wages even of an unskilled labour would have been over Rs.100/- a day and thus the monthly income taken by the Tribunal for computing the compensation is not justified and the same deserves to be modified and it is accordingly held that the monthly income of the deceased at the time of accident is assessed at Rs.3000/- instead of Rs.1000/- as quantified by the Tribunal.

10. Further, in the light of the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and Another, 2009 (6) SCC 121**, the claimants also would be entitled for compensation under the head of future prospects which considering the age of the deceased-Tilmoti of 37 years would be 50% of his monthly income.

11. Thus, calculating the monthly income of Rs.3000/-, if 50% of it, i.e., Rs. 1500/-, is added under the head of future prospects, the monthly income would reach to Rs.4500/- and Rs.54,000/- an year. If from the said amount of Rs.54,000/-, 1/4th is deducted towards the personal expenses the amount would reach to Rs.40,500/- which if multiplied by applying the multiplier of 15, as has been held in **Sarla Verma** (supra), the amount would become Rs.6,07,500/-. It is thus ordered that the appellants-claimants shall be entitled for compensation under the head of dependency of Rs.6,07,500/- instead of Rs.1,28,000/- as was quantified by the Tribunal.

12. Further, taking into consideration the judgment of the Hon'ble Supreme Court in the case of **Rajesh and Others v. Rajbir Singh and Others, 2013 (9) SCC 54**, this Court is of the opinion that a lumpsum compensation of Rs.1,00,000/- would be justified in the factual matrix of the case so far as the compensation under the other conventional heads is concerned instead of Rs.4500/- as awarded by the Tribunal.

13. Accordingly, it is ordered that the appellants-claimants shall be entitled for a total compensation of Rs.7,07,500/- instead of Rs.1,32,500/- as was quantified by the Tribunal. Rest of the award shall remain intact.

14. Appeal thus is partly allowed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/