NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 56 OF 2016

1. Mohanlal Sinha, S/o Shri Ramchand Sinha, aged about 60 years, R/o through Meha Transport, Bastar Road, Dhamtari, Tahsil & District-Dhamtari (C.G.)
2. M/s Meha Transport, through Rajendra Nanda, S/o Shri Banshilal Nanda, 57 years, R/o through Meha Transport, Bastar Road, Dhamtari, Tahsil & District Dhamtari (C.G.)

… Appellants

versus

1. Smt. Venkat Laxmi, W/o Late Raghav, aged about 25 years
2. Ku. Madhvi, D/o Late Raghav, aged about 06 years
3. Year Babu, S/o Late Raghav, aged about 04 years
4. Smt. Ramdevi Manikam, W/o Ramdeo Venkatrao, aged about 52 years
5. Ramdeo Venkatrao, S/o Ramdeo Jagganath Nayak, aged about 55 years

Respondents No. 2 & 3 being minor on behalf of through their legal guardian mother Smt. Laxmi Respondent No.1.

All R/o Village- Panampahu, Tahsil Samalkot, District East Godawari (Andhra Pradesh)

6. The Oriental Insurance Company Limited, through Branch Manager/Branch Office, near Adarsh Bal Vidya Mandir, behind Amar Talkies, Dhamtari, Tahsil & District- Dhamtari (C.G.)

… Respondents

MISC. APPEAL (C) NO. 55 OF 2016

1. Mohanlal Sinha, S/o Shri Ramchand Sinha, aged about 60 years, R/o through Meha Transport, Bastar Road, Dhamtari, Tahsil & District-Dhamtari (C.G.)
2. M/s Meha Transport, through Rajendra Nanda, S/o Shri Banshilal Nanda, 57 years, R/o through Meha Transport, Bastar Road, Dhamtari, Tahsil & District Dhamtari (C.G.)

… Appellants

versus

1. Smt. Mahalaxmi, W/o Kuripudi Badarrao, aged about 43 years
2. Kuripudi Badarrao, S/o Wada Palli, aged about 50 years

Both R/o Village- Panampahu, Tahsil- Samalkot, District- East Godawari (Andhra Pradesh)

3. The Oriental Insurance Company Limited, through Branch Manager/Branch Office, near Adarsh Bal Vidya Mandir, behind Amar Talkies, Dhamtari, Tahsil & District- Dhamtari (C.G.)

… Respondents

MISC. APPEAL (C) NO. 1614 OF 2015

1. Smt. Venkat Laxmi, Widow of Raghav, aged about 25 years
2. Ku. Madhvi, D/o Raghav, aged about 06 years
3. Iyar Babu, S/o Late Raghav, aged about 04 years
4. Smt. Ramdevi Manikam, W/o Ramdeo Venkatrao, aged about 52 yrs

Respondents No. 2 & 3 are minor, represented through legal guardian mother Venkatlaxmi, wife of Raghav. All R/o Village- Panampahu, Tahsil Samalkot, District East Godawari (Andhra Pradesh)

… Appellants

versus

1. Mohanlal Sinha, S/o Shri Ramchand Sinha, through Meha Transport, Bastar Road, Dhamtari, Tahsil & District- Dhamtari (C.G.)
2. Meha Transport, through Proprietor Rajendra Nanda, S/o Banshilal Nanda, Bastar Road, Dhamtari, Tahsil & District Dhamtari (C.G.)
3. The Oriental Insurance Company Limited, through Branch Manager, Branch Office, near Adarsh Bal Vidya Mandir, behind Amar Talkies, Dhamtari, Tahsil & District- Dhamtari (C.G.)

… Respondents

MISC. APPEAL (C) NO. 1622 OF 2015

1. Smt. Mahalaxmi, W/o Kuripudi Badarrao, aged about 43 years
2. Kuripudi Badarrao, S/o Wada Palli, aged about 50 years

Both R/o Village- Panampahu, Tahsil- Samalkot, District- East Godawari (Andhra Pradesh)

… Appellants

versus

1. Mohanlal Sinha, S/o Shri Ramchand Sinha, through Meha Transport, Bastar Road, Dhamtari, Tahsil & District- Dhamtari (C.G.)
2. Meha Transport, through Proprietor Rajendra Nanda, S/o Banshilal Nanda, Bastar Road, Dhamtari, Tahsil & District Dhamtari (C.G.)
3. The Oriental Insurance Company Limited, through Branch Manager, Branch Office, near Adarsh Bal Vidya Mandir, behind Amar Talkies, Dhamtari, Tahsil & District- Dhamtari (C.G.)

… Respondents

- Mr. Shivendu Pandya, Advocate, Owner and Driver.
- Mr. Anil Gulati, Advocate, for the Claimants.
- Mr. Neel Kanth Malviya, Advocate, for the Insurance Company.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30/11/2017

1. The present four appeals arise out of two claim cases decided by a common award.

2. Challenge is to the award dated 9.10.2015 passed by the Additional Motor Accident Claims Tribunal (F.T.C.), Dhamtari, District Dhamtari, in Claim Case No. 55/2013 and Claim Case No. 56/2013.

3. M.A.(C) No. 56/2016 and M.A.(C) No. 1614/2015 pertains to Claim Case No. 56/2013 in respect of death of deceased-Raghav. M.A.(C) No. 55/2016 and M.A.(C) No. 1622/2015 arise out of Claim Case No. 55/2013 in respect of death of deceased-Satyababu.

4. M.A.(C) No. 1614/2015 and M.A.(C) No.1622/2015 are the appeals filed by the respective claimants whereas M.A.(C) No. 56/2016 and M.A. (C) No. 55/2016 are the appeals filed by the owner and driver.

5. Vide the impugned award, the learned Tribunal, in two death cases, has awarded a compensation of Rs.3,41,000/- to the claimants in Claim Case No.55/2013 and Rs.5,21,000/- to the claimants in Claim Case No.56/2013, with interest in both the claim cases at the rate of 6% per annum from the date of respective claim application.

6. While passing the impugned award, the learned Tribunal has fastened the liability for payment of compensation upon the owner and driver of the offending vehicle i.e. a Tanker, bearing registration no. CG05-ZC-0121, exonerating the insurance company of its liability on the ground that since the driver of the offending vehicle did not have an endorsement of permission to drive a vehicle carrying goods of dangerous and hazardous nature as the said Tanker was used for transportation of petroleum products.

7. The driver in the instant case, i.e., Mohanlal Sinha, was having a valid licence with permission to drive a Light Motor Vehicle (LMV), Heavy Goods Vehicle (HGV) and Passenger Service Vehicle (PSV) and that the category of vehicle which the Tanker falls is also a 'Heavy Goods Vehicle' and except for the endorsement for permission to drive vehicle carrying goods of dangerous and hazardous nature, the driver fulfills all the other statutory requirement under the Motor Vehicles Act.

8. Learned Counsel for the owner and driver submits that the issue involved in the instant case stands squarely covered by the principles laid down by the Hon'ble Supreme Court in the case of **Mukund Dewangan** v. **Oriental Insurance Company Limited, AIR 2017 SC 3668**, that is a

Larger Bench's decision of the Hon'ble Supreme Court decided on 3.7.2017.

9. Learned counsel for the insurance company submits that it is a case where the judgment passed by the Hon'ble Supreme Court in **Mukund Dewangan** (supra) cannot be made applicable in the instant case as the said judgment of the Hon'ble Supreme Court was pertaining to the Light Motor Transport vehicle, whereas, in the instant case, it is a Heavy Goods Vehicle intended to transport dangerous and hazardous products.

10. According to the learned counsel for the insurance company, as per Section 14 of the Motor Vehicles Act, it requires an endorsement by the concerned Regional Transport Office, granting permission to drive vehicle carrying goods of dangerous and hazardous nature and therefore the said judgment cannot be made applicable in the instant case and the finding of the learned Tribunal cannot be said to be either erroneous or faulty nor does it warrant any interference and thus prayed for the rejection of the appeals.

11. Learned counsel appearing for the claimants submits that the claimants in the instant case have also filed their respective appeals seeking for enhancement of the compensation awarded, i.e. M.A.(C) No. 1614/2015 and M.A.(C) No.1622/2015, and submits that the compensation awarded in the two claims is on the lower side inasmuch as the income assessed and the future prospects have not been taken into consideration properly by the learned Tribunal while quantifying the compensation and thus prayed for a suitable enhancement of the compensation awarded.

12. Having heard the rival contentions put forth on each side and on perusal of record, some of the undisputed facts in the instant case are:

(i) the date of accident being 19.3.2008;
(ii) the offending vehicle being Tanker bearing registration no. CG05-ZC-0121;

(iii) the offending vehicle was owned and driven by appellant no.2 and appellant no.1 respectively, in M.A.(C) No.56/2016 and M.A.(C) No.55/2016; and

(iv) the offending vehicle being duly insured with the Oriental Insurance Company Limited in the instant case.

13. The driver of the offending vehicle was Mohanlal Sinha. As per the finding of the learned Tribunal itself, the said driver had a licence effective from 15.12.2006 to 14.12.2009 valid for driving a LMV, HGV and PSV. The vehicle involved in the present case is a Tanker which would also fall within the category of a Heavy Goods Vehicle. If we apply the analogy as has been laid down by the Hon'ble Supreme Court in the case of **Mukund Dewangan** (supra) it would clearly reflect that merely because there is no endorsement for permission to drive a particular class of vehicle when the substantive licence which the driver has, provides him the permission to drive a vehicle belonging to the same category, the insurance company cannot be absolved of its liability indemnifying the owner. Undisputedly, in the instant case, the Tanker falls within the category of Heavy Goods Vehicle. The driver-Mohanlal Sinha had a valid licence permitting him to drive a HGV as well as PSV. The only default seems to be that of non-availability of an endorsement permitting him to drive a vehicle with goods of dangerous and hazardous nature.

14. At this juncture, it would be relevant to take note of a subsequent decision of the Hon'ble Supreme Court in the case of **Santlal** v. **Rajesh & Others**, **AIR 2017 SC 4054**, decided on 3.7.2017, which pertains to a tractor and trolley, wherein the Hon'ble Supreme Court has applied the principles laid down in the case of **Mukund Dewangan** (supra) and held that the insurance company shall be liable to indemnify the owner even if it is a transport vehicle.

15. This Court thus has no hesitation in applying the same analogy and principles in the instant case also, as undisputedly the driver-Mohanlal Sinha had a licence to drive HGV as well as PSV at the time of accident. The only lacuna which was detected was that of non-availability of an endorsement. Since the Hon'ble Supreme Court in the aforesaid two judgments has held that merely because of non-availability of endorsement by itself would not absolve the insurance company of its liability if the vehicle belongs to the same category or class, in the instant case also applying the same analogy, the insurance company would be liable to indemnify the owner.

16. Under these circumstances, this Court is inclined to allow the appeal of the owner and driver, i.e., M.A.(C) No. 56/2016 and M.A.(C) No.55/2016, and holds that the liability of payment of compensation shall be jointly and severally upon the owner, driver as well as on the insurer of the offending vehicle and the responsibility of payment of compensation shall be shifted upon the insurance company.

17. So far as the appeals of the claimants are concerned, i.e., M.A.(C) No. 1614/2015 and M.A.(C) No. 1622/2015, the contention of the learned counsel for the claimants that the income assessed is on the lower side has definitely some force in it as the date of accident in the instant case is of March, 2008 where even an unskilled labourer was receiving between Rs.150-200/- a day which would make it Rs.4500-6000/- a month, but, the learned Tribunal has assessed the income at Rs.3000/- a month in both the claim cases. Thus, this Court assesses the monthly income at Rs.4500/- each in both the cases (instead of Rs.3000/- a month which has been assessed by the learned Tribunal) and proceeds to compute the compensation accordingly.

18. Further, in both the appeals, it would be 40% of monthly income to be taken into consideration towards future prospects. Thus, adding 40% i.e. Rs.1800/- to the monthly income, the amount would reach to Rs.6300/- a month and Rs.75,600/- yearly, in both the appeals.

19. So far as M.A.(C) No.1614/2015 arising out of Claim Case No.56/2013 in respect of deceased-Raghav is concerned, the number of claimants being 5 the deduction towards personal expenses would be 1/4th which would bring the compensation at Rs.56,700/- (Rs.75600 – Rs.18900) and which if multiplied applying the multiplier of 18, the amount of compensation towards the loss of dependency would be Rs.10,20,600/-, instead of Rs.4,86,000/- as assessed by the learned Tribunal. In addition, the claimants shall also be entitled for an amount of Rs.70,000/- under the conventional heads. Thus, making the total compensation payable to the claimants at Rs.10,90,600/-, instead of Rs.5,21,000/- which has been awarded by the learned Tribunal.

20. So far as M.A.(C) No.1622/2015 arising out of Claim Case No. 55/2013 in respect of deceased-Satyababu is concerned, since the deceased was a bachelor, 50% of his annual income would be deducted towards the personal expenses that would make the annual income at Rs.37,800/- (Rs.75600 – Rs.37800) and which if multiplied applying the multiplier of 18, the amount would be Rs.6,80,400/-. Thus, the claimants shall be entitled to get Rs.6,80,400/- towards the loss of dependency, instead of Rs.3,06,000/- as assessed by the learned Tribunal. In addition, the claimants shall also be entitled for an additional amount of Rs.40,000/- towards conventional heads. Thus, making the total compensation payable to the claimants at Rs.7,20,400/-, instead of Rs.3,41,000/- which has been awarded by the learned Tribunal.

21. It is accordingly ordered that the claimants in M.A.(C). No.1614/2015 shall be entitled to get a total compensation of **Rs.10,90,600/-** and the claimants in M.A.(C) No.1622/2015 shall be entitled to get a total compensation of **Rs.7,20,400/-**. The said enhanced amount shall also carry interest at the same rate as fixed by the learned Tribunal. The responsibility of payment of compensation shall be upon the insurance company. Any amount which has been deposited by the owner, the same shall be refunded by the insurance company and the balance amount shall be deposited by the insurance company.

22. As a consequence, the appeal filed by the owner and driver i.e. M.A.(C) No. 56/2016 and M.A.(C) No. 55/2016 as well as the appeal filed by the respective claimants i.e. M.A.(C) No. 1614/2015 and M.A.(C) No.1622/2015, stand allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/