NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1250 OF 2016

Oriental Insurance Company Limited, Branch Office, Sardar Bazar Road, Raigarh, District Raigarh (C.G.)

… Appellant

versus

1. Deepak Kumar Gupta, S/o Banshilal Gupta, aged about 49 years
2. Smt. Leelawati Gupta, W/o Deepak Kumar Gupta, aged about 45 years

Both R/o Ward No.12, Nawdha Chowk, Sakti, Police Station and Tahsil Sakti, District Janjgir-Champa (C.G.)

3. Abhishek Gabel, S/o Narendra Gabel, aged about 21 years, R/o Bandhuwa Talab, Korba Road, Ward No.4, Police Station and Tahsil Sakti, District Janjgir-Champa (C.G.)

… Respondents

MISC. APPEAL (C) NO. 1391 OF 2016

1. Deepak Kumar Gupta, S/o Banshilal Gupta, aged about 49 years
2. Smt. Leelawati Gupta, W/o Deepak Kumar Gupta, aged about 45 years

Both R/o Ward No.12, Nawdha Chowk, Sakti, Police Station and Tahsil Sakti, District Janjgir-Champa (C.G.)

… Appellants

versus

1. Abhishek Gabel, S/o Narendra Gabel, aged about 21 years, R/o Bandhuwa Talab, Korba Road, Ward No.4, Police Station and Tahsil Sakti, District Janjgir-Champa (C.G.)
2. Oriental Insurance Company Limited, through the Branch Office, Sardar Bazar Road, Raigarh, District Raigarh (C.G.)

… Respondents

- Mr. Pankaj Agrawal, Advocate, for the Insurance Company.
- Mr. P.K. Tulsyan, Advocate, under instructions of Mr. Basant Dewangan, Advocate, for the Claimants.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/12/2017

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of the same award dated 13.5.2016 passed by the First Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa, in Claim Case No. 46/2015.

2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.3,44,000/- to the claimants with interest thereon at the rate of 6% per annum from the date of presentation of claim application and has fastened the liability for payment of compensation jointly and severally upon the appellant/insurance company and respondent/owner-cum-driver of the offending vehicle i.e. a motorcycle, bearing registration No. CG11-M-6975.

3. M.A.(C) No. 1250/2016 is an appeal filed by the insurance company assailing the liability which has been fastened upon them and M.A.(C) No. 1391/2016 is an appeal filed by the claimants seeking enhancement of the compensation awarded.

4. Appeal of the insurance company is on the ground that the liability which has been fastened upon them is erroneous, inasmuch as the driver-cum-owner of the offending vehicle has not produced the driving licence before the Tribunal with which the insurance company could have ascertained or verified whether the licence was genuine, fake or a valid licence. He further submits that the insurance company in the instant case had moved an application under Order 11 Rule 12 of CPC directing the owner-cum-driver to provide details of the driving licence, but he has deliberately avoided the same and for which an adverse inference should have been drawn against the driver-cum-owner not having a valid licence at the time of accident. He next submits that it is a case where in spite of best effort made by the insurance company, the driver-cum-owner has not disclosed the details of the driving licence that he has. He thus prayed for a suitable modification of the award, exonerating the insurance company of its liability and fastening the same upon the driver-cum-owner.

5. Learned counsel for the claimants however opposing the appeal of the insurance company submits that the insurance company has not led any substantial evidence before the Tribunal with which it could be said that they had discharged their burden of proving their case before the Tribunal. He further submits that in the absence of sufficient evidence by the insurance company, the assessment made by the Tribunal cannot be said to be erroneous or bad in law. He thus prayed for the rejection of the appeal of the insurance company.

6. Learned counsel for the claimants further submits that the claimants have also filed an appeal seeking enhancement of the compensation awarded and prayed for the award to be suitably modified. He submits that the Tribunal has assessed the income of the deceased unreasonably low and that the claimants would also be entitled for compensation under the future prospects. He submits that in the instant case the Tribunal has not considered this aspect properly and thus prayed for the award to be suitably modified enhancing the compensation awarded.

7. Heard the rival contentions put forth on either side and perused the record of the case.

8. So far as the appeal of the insurance company is concerned, since from the record it is evident that the insurance company had moved an application under Order 11 Rule 12 of CPC before the Tribunal directing the driver-cum-owner to produce the details of the driving license that he has, but the driver-cum-owner has deliberately avoided his responsibility and liability, which he is otherwise also liable to provide under Section 134 of the Motor Vehicles Act.

9. In the given facts and circumstances of the case, this Court is of the opinion that it is a fit case where the principles of 'pay and recovery' can be applied. The insurance company has discharged its liability effectively, though the driver-cum-owner in spite of efforts by the insurance company did not produce any material with which it could be taken into consideration that the driver-cum-owner had a proper driving licence at the time of accident. In view of the same, the liability of payment of compensation shall be upon the insurance company. However it shall have the liberty to recover the same from the owner-cum-driver of the offending vehicle.

10. The appeal of the insurance company thus stands allowed in part.

11. So far as the appeal of the claimants seeking enhancement of compensation is concerned, the income assessed by the Tribunal in the instant case was only Rs.3000/- per month, whereas the deceased was aged around 19-22 years and was a student at the time of accident. Considering the fact that the death is of the year 2014, this Court assesses the notional income of the deceased at Rs.5000/- per month which would make it Rs.60,000/- yearly, instead of Rs.3000/- as assessed by the Tribunal. On the said annual income of Rs.60,000/-, the claimants shall be also be entitled 40% of the same towards future prospects. Thus, adding 40%, the annual income would come to Rs.84,000/- of which if 50% is deducted towards personal and living expenses, the amount would come to Rs.42,000/- which if multiplied applying the multiplier of 18, the amount towards the loss of dependency would come to Rs.7,56,000/- which the claimants shall be entitled for, instead of Rs.3,24,000/- as assessed by the Tribunal. In addition, the claimants shall also be entitled for an amount of Rs.70,000/- towards the conventional heads. Thus, making the total compensation payable to the claimants at Rs.8,26,000/-, instead of Rs.3,44,000/- as awarded by the Tribunal.

12. It is accordingly ordered that the claimants shall be entitled for a total compensation of **Rs.8,26,000/-** the responsibility of payment of which shall be upon the insurance company with a liberty to recover the same from the owner-cum-driver. The said enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

13. As a consequence, the appeal of the insurance company i.e. M.A.(C) No.1250/2016 is allowed in part and the appeal of the claimants i.e. M.A.(C) No.1391/2016 also stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/