NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 378 OF 2008

ICICI Lombard General Insurance Co. Ltd., ICICI Towers, Bandra Kurla Complex, Bandra (East) Mumbai, through its Legal Manager, Lal Ganga Shopping Complex, G.E. Road, Raipur (C.G.)

… Appellant

versus

1. Nansai Kashyap, S/o Shri Ghuraram Kashyap, aged about 66 years
2. Smt. Jago Bai, W/o Shri Nansai Kashyap, aged about 64 years
3. Vikas Kshyap, alleged adopted son of Late Shri Shriram Kashyap, aged about 9 years, through his natural guardian and next friend being his grandfather, Shri Nansai Kashyap.

All residents of Village Mangari, Junapara, Tehsil Sitapur, District Surguja (C.G.)

Claimants No. 1 and 2 presently residing at Pandit Harihar Prasad Sharma, Sahyog Vidhya Mandir, Tamnar, Tehsil Gharghora, District Raigarh

4. Chaturbhuj Agrawal, S/o Late Shri Murarilal Agrawal, aged about 51 years, resident of near Chuna Bhatta, Kotra Road, District Raigarh (C.G.)
5. Fooljan Barua, S/o Shri Venetic Barua, aged about 31 years, resident of Lanji Berna, Thana Rajgangpur, Distt. Sundergarh Orissa, presently residing at Dadri, Village Amaghat, Thana Tamnar, Tehsil Gharghora, District Raigarh (C.G.)

… Respondents

MISC. APPEAL (C) NO. 769 OF 2008

1. Nansai Kashyap, S/o Late Ghudaram Kashyap, aged about 65 years
2. Smt. Jago Bai, W/o Nansai, aged about 63 years
3. Minor Vikas Kashyap, adopted son of Shri Ram Kashyap, through natural guardian his grand father Nansai

All residents of Village- Mangari, Junapara Tahsil- Sitapur, District Surguja (C.G.), present address Pandit Harihar Prasad Sharma, Sahyog Vidya Mandir Tamnar, Tah. Gharghoda, District Raigarh (C.G.)

… Appellants

versus

1. Chaturbhuj Agrawal, S/o Late Shri Murarilal Agrawal, aged about 50 years, occupation owner of vehicle, R/o near Chuna Bhatta, Kotra Road, District Raigarh (C.G.)
2. Fooljan Barua, S/o Shri Venetic Barua, aged about 30 years, occupation- Driver, R/o Lanji Berna, P.S. Rajgangpur, Distt. Sundergarh (Orissa), present address - Dadari, Village Amaghat, P.S. Tamnar, Tehsil Gharghora, District Raigarh (C.G.)
3. ICICI Lombard General Insurance Co. Ltd., ICICI Towers, Bandra Kurla Complex, Bandra (East) Mumbai, through its Legal Manager, Lal Ganga Shopping Complex, G.E. Road, Raipur (C.G.)

… Respondents

- Mr. Amrito Das and Mr. P. Acharya, Advocates, for the Appellant in MAC No. 378/2008 and for Respondent No.3 in MAC No. 769/2008.
- Mr. M.K. Sinha, Advocate, for the Appellants in MAC |No. 769/2008 and for Respondents No. 1 to 3 in MAC No. 378/2008.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/10/2017

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of award dated 19.12.2007 passed by the Fourth Additional Motor Accident Claims Tribunal (F.T.C.), Raigarh, in Claim Case No. 59/2007.

2. Vide the impugned award dated 19.12.2007, the learned Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, in a death case, has awarded a compensation of Rs. 2,01,900/- to the claimants, with interest thereon at the rate of 7.5% per annum from the date of claim application.

3. MAC No. 378/2008 is an appeal preferred by the insurance company assailing the liability which has been fastened upon the insurance company. MAC No. 769/2008 is an appeal filed by the claimants seeking enhancement of compensation awarded.

4. So far as the appeal of the insurance company is concerned, the challenge is primarily on the ground that the insurance company has not received any premium for the policy which has been issued therefore the policy stood cancelled vide order dated 29.8.2006. According to the counsel for the insurance company, the cheque issued for issuance of policy got dishonoured for insufficient funds, the intimation of which was duly issued to the owner of the vehicle yet he has not taken steps for payment of premium and subsequently the vehicle got involved in accident at a much later date i.e. 13.3.2007. The insurance company thus should not have fastened with the liability of payment of compensation as the policy issued stood cancelled in accordance with the terms and conditions of the policy. The impugned award thus deserves to be modified to the extent of fastening the liability upon the owner and driver of the offending vehicle.

5. Contention of the insurance company is also that the learned Tribunal while quantifying the compensation has wrongly deducted 1/3rd towards personal expenses whereas it should had been half as the deceased in the instant case was a bachelor and there was no substantive evidence to show that the claimant no.3 was an adopted son of the deceased and that there was no proof or reason in this regard.

6. According to the insurance company, it is a case where the cheque which was issued in favour of the insurance company for the issuance of the policy i.e. cheque no. 857121 for an amount of Rs.21,937/- was presented for clearance on 5.8.2006 and the bank gave an intimation to the insurance company on 25.8.2006 vide Exhibit D-2 that the cheque has been not cleared on account of insufficient fund. Immediately a notice was issued to the owner of the vehicle i.e. respondent no.4, vide notice dated 29.8.2006.

7. The owner and driver of the vehicle in spite of service remained *ex parte* before the Tribunal so also before this Court. Hence, this Court is proceeding to decide the appeal in absentia of the owner and driver of the offending vehicle, i.e. Dumper No. CG13-A-7141.

8. So far as the dishonouring of the cheque is concerned, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in this regard particularly the case of **Deddappa and others** v. **Branch Manager, National Insurance Co. Ltd.**, **2008 (2) SCC 595**, wherein in paragraph 24 it has been held as under:-

> **“**We are not oblivious of the distinction between the statutory liability of the insurance company vis-a-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the

> contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.**”**

9. The said decision has been further reiterated by this Court in the case of **Oriental Insurance Co. Ltd.** v. **Nadiram and others**, **2014 ACJ 2110**.

10. This Court thus has no hesitation in reaching to the conclusion that the insurance company has not received premium for the said policy and as such as per the terms of the policy, the contract between the insurance company and the insured would automatically get terminated on an intimation being made by the insurance company to the insured so far as the cancellation of policy is concerned.

11. However, in the instant case though there is Exhibit D-1 which is an intimation of the cancellation of the policy which has been sent to the address of the insured, but there is no proof which has been adduced by the insurance company to show that the said intimation has been duly served upon the insured or not. In the given factual matrix of the case, this Court is of the opinion that it shall be the duty of the insurance company to indemnify the owner as of now by depositing the amount of compensation with a liberty of recovering the same by initiating appropriate recovery proceeding against the owner and driver on account of the policy getting cancelled for dishonouring of the cheque.

12. So far as the second contention as regards the deduction being made towards personal expenses, again this Court is of the opinion that since there is a categorical finding by the Tribunal in paragraph 15 of the award where it has been brought to the notice of the court that there is no sufficient proof of claimant no.3 to be the adopted son of the deceased and that neither was he projected as the adopted son while claimants no. 1 and 2 had moved the employer of the deceased for release of the GPF amount. Thus, it is difficult to accept him as an adopted son of the deceased for the purpose of quantifying the compensation under the Motor Vehicles Act. Thus, the deduction for all practical purposes, since the deceased was a bachelor, should be one half of the income, instead of 1/3rd as assessed by the Tribunal and it is held accordingly.

13. Now, so far as the appeal of the claimants seeking enhancement is concerned, the contention of the claimants is that the Tribunal has not taken into account the income towards future prospects, the multiplier applied is not in accordance with the judgment of the Hon'ble Supreme Court rendered in the case of **Sarla Verma (Smt.) and others** v. **Delhi Transport Corporation and Another**, **2009 (6) SCC 121**, likewise the compensation awarded under the conventional heads is also on the lower side and thus prayed for a suitable enhancement of the compensation.

14. It is further alleged by the claimants that there is no sufficient evidence for the Tribunal to have reached to the aspect of contributory negligence and the ratio of the negligence on the part of the deceased assessed as 50% is also on the higher side. According to the learned counsel for the claimants, the vehicle involved in the accident i.e. the dumper belonging to respondent-Chaturbhuj Agrawal was parked in a manner without any sufficient indication and any parking lights being on and the time of accident being at around 8:30 at night, as such it was quite dark and therefore the stationary vehicle could not be seen by the deceased which resulted in the accident.

15. Considering the fact that the deceased had dashed the stationary vehicle from behind, applying the principles laid down by the Hon'ble Supreme Court in the case of **Raj Rani and others** v. **Oriental Insurance Company Limited and others**, **2008 (13) SCC 654**, it cannot be said that there was no element of negligence on the part of the deceased for the accident to have occurred, though the percentage may not be to the extent of he being equally responsible for the accident.

16. Thus, the ratio of negligence upon the deceased and the driver of the dumper involved in the accident should be 25:75. That is to say, 25% of the negligence was upon the deceased and 75% would be upon the driver of the vehicle i.e. dumper to which the deceased had dashed. It is held accordingly.

17. So far as the enhancement of compensation is concerned, true it is that the from the land mark decision of the Hon'ble Supreme Court in **Sarla Verma** (supra) to all the subsequents decision, the income towards future prospects also is a regular component for the purpose of quantifying the compensation.

18. Likewise, it is also a settled position of law as of now for the purpose of quantifying the compensation, it is the age of the deceased which would be relevant for applying the multiplier and not the age of the parent. Accordingly, in the instant case, the multiplier to be applicable would be 15 instead of 5 as applied by the Tribunal.

19. So also the compensation under the conventional heads is concerned, this Court is of the opinion that applying the principles of law as laid down by the Hon'ble Supreme Court in the case of **Rajesh and Others** v. **Rajbir Singh and Others**, **2013 (9) SCC 54**, a lump sum compensation of Rs.1 Lakh would meet the ends of justice, instead of Rs.35,000/- as awarded by the Tribunal.

20. Thus, the compensation which would be payable to the claimants shall be Rs. 9220 x 12 = 1,10,640/- 50% of it towards future prospects would be Rs.55,320/- which would make the yearly income to be Rs.1,65,960/- of which if 50% is deducted towards personal expenses, the amount would become Rs.82,980/- which if multiplied by applying the multiplier of 15, it would be Rs. 12,44,700/-. Thus the total compensation assessed is Rs. 12,44,700/- towards loss of dependency, of which the claimants shall be entitled for a compensation of 75%, as the negligence on the part of the deceased for the accident to occur has been assessed as 25%. Thus, the claimants shall be entitled for 75% of the said amount, that comes to Rs.9,33,525/-. It is accordingly held that the claimants shall be entitled for a compensation of Rs. 9,33,525/- towards loss of dependency. In addition, the claimants shall also be entitled for a lump sum compensation of Rs. 1 Lakh under the conventional heads.

21. It is thus ordered that the claimants shall be entitled for a total compensation of Rs. 10,33,525/-, instead of Rs. 2,01,900/-. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal. The liability of payment of compensation shall be upon the insurance company with a liberty for recovering the same from the owner and driver.

22. Accordingly, the appeal of the insurance company i.e. MAC No. 378/2008 is allowed in part and the MAC No. 769/2008 filed by the claimants stands allowed and the award stands modified accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/