NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 436 of 2008

The Oriental Insurance Company Limited, Address Divisional Office No.2, 20 Sneh Nagar, Main Road, Indore, M.P.

---- Appellant

Versus

1. Khomanlal Sahu, Age 46 years, S/o. Late Mehattar Sahu,
2. Smt. Gangotri Sahu, Aged 40 years, W/o. Khomanlal Sahu,

   Both R/o. Village Nevari, P.S. Suhela, District Raipur, Chhattisgarh
3. Ram Suresh Singh, Aged about 35 years, S/o. Shri Agnu Singh, Address Pipliya Rao, Bhanwar, Kunwa, P.S. Bhanwar Kunwa, Indore, M.P.

   Second Address Pipliya Rao Bazar, Indore, M.P.
4. Parminder Singh Bhatia, S/o. Shri Darshan Bhatia, R/o. 6/4, Sneh Nagar, Indore, M.P.

----Respondents

MAC No. 1018 of 2008

1. Khomanlal Sahu, Age 46 years, S/o. Late Mehattar Sahu,
2. Smt. Gangotri Sahu, Aged 40 years, W/o. Khomanlal Sahu,

   Both R/o. Village Newari, P.S. Suhela, District Raipur, Chhattisgarh

---- Appellants

Versus

1. Suresh Singh, Aged about 35 years, S/o. Adhunu Singh, R/o. Pipliya Rao Bhanwar, Kunwa, P.S. Bhanwar Kunwa, Indore, M.P.
2. Parminder Singh Bhatiya, S/o. Shri Darshan Bhatiya, R/o. 6/4, Sneh Nagar, Indore, M.P.
3. The Oriental Insurance Company Limited, Address Divisional Office No.2, 20 Sneh Nagar, Main Road, Indore, M.P.

----Respondents

For Insurance Company	:	Mr. Sudhir Agrawal, Advocate
For Claimants	:	Mr. A.L. Singroul, Advocate along with Mr. Ajay Kumar Chandra, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/10/2017

1. These are two appeals preferred against a common order dated 27.11.2007, passed in Claim Case No. 53/2006, decided by the 2nd

Additional Motor Accident Claims Tribunal, Baloda-Bazar, Chhattisgarh.

2. Vide the said impugned award, the Tribunal, in a death case under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.2,70,000/- with interest @ 6% per annum from the date of application.

3. MAC No. 436/2008 is an appeal by the Insurance Company assailing the liability which has been fastened upon it. MAC No. 1018/2008 is an appeal by the Claimants seeking for enhancement of the compensation awarded.

4. None-appears for the Claimants in spite of service and being represented through a Lawyer. Considering the fact that the appeal is 10 years old, this Court thought it proper for taking the assistance of Mr. A.L. Singroul, Advocate for assisting the Court and to represent the Claimants who are respondents in the appeal by the Insurance Company as also the appellants in the appeal preferred by the Claimants seeking enhancement.

5. The brief facts of the case is that the deceased Ku. Tikeshwari, who was travelling in a Moped Luna on 17.11.2005 was hit by a Truck coming from behind bearing registration No. MP 09 KC 6451, which was owned by the respondent No.4 and insured by the present appellant. As a result of the said accident, the deceased succumbed to the injuries sustained. The parents of the deceased filed a claim case under Section 166 of the Motor Vehicles Act claiming for compensation against the offending vehicle and the Tribunal vide the

impugned award has ordered for payment of Rs.2,70,000/- as compensation with interest @6% per annum.

6. The Tribunal while passing the said award has also fastened the liability of payment of compensation jointly and severally upon the Driver, Owner and Insurance Company. It is this award, which is under challenged by the Insurance Company vide MAC No. 436/2008. The solitary contentions of the counsel for the Insurance Company assailing the award is the fact that they are not liable to indemnify the insured for the reason that the cheque which was issued for the purpose of issuance of the policy had got dishonoured and an intimation in this regard was duly served upon the Owner much in advance and much before the date of accident and since the Owner did not take steps for paying the premium amount, the policy got automatically cancelled.

7. According to the counsel for the appellant Mr. Sudhir Agrawal, Advocate the respondent No.4-the Owner of the vehicle had issued a cheque on 12.07.2005 and the cheque leaf issued by the son of the respondent No.4 namely Harpreet Singh and the said cheque when was presented by the Insurance Company got dishonoured for insufficient fund on 14.07.2005. An intimation from the Bank in this regard was received by the Insurance Company on the same date i.e. on 14.07.2005, to which the Insurance Company issued a notice to the respondent No.4 vide Exhibit D/3, which is dated 18.07.2005, but was issued on 22.07.2005 and the receipt of the same is Exhibit D/4. He further submits that even otherwise the lapse of 30 days from the date of registered letter being sent it has to be presumed as deemed service unless otherwise proved.

8. Counsel for the appellant submits that the contents of the reply filed by the Owner before the Tribunal establishes the fact that the intimation of cancellation of the policy was received by him. According to the counsel for the appellant since the cheque has got dishonoured the condition to the policy automatically stood cancelled as per the conditions attached to the policy. He further submits that the issue involved in the case stands squarely covered by the decision of this Court in the case of "***Oriental Insurance Co. Ltd. v. Nadiram and others", 2014 ACJ 2110***

9. Mr. A.L. Singroul, Advocate appearing on behalf of the Claimants submits that it is a case where the Claimants themselves have challenged the award alleging that quantum of compensation awarded is on the lower side and the same deserves suitable enhancement. He further submits that so far as the Claimants are concerned since the vehicle was dully insured and the policy was valid from 13.07.2005 to 12.07.2006, the liability fastened upon the Insurance Company does not warrant any interference and thus prayed for rejection of the appeal by the Insurance Company and for allowing the appeal preferred by the Claimants by appropriate enhancement of the compensation.

10. In the instant case in spite of paper publication being made at the address where the owner and driver reside, there is no representation made on their behalf and hence this Court proceed to decide the case in absence of respondents No. 3 & 4.

11. The Insurance Company had led the evidence before the Tribunal by adducing evidence of Mr. Sudhir Kopulwar, an employee of the

Insurance Company who has deposed that the condition to the insurance policy provide of an automatic cancellation ***ab initio*** in the event if the dishonour of the cheque issued towards payment of premium. There is no evidence to rebut the evidence which has been adduced by the Insurance Company.

12. If the factual matrix of the case is taken into consideration, the cheque which was issued by the owner was of 12.07.2005 and the same got dishonoured on 14.07.2005 and the intimation by the Insurance Company to the insured sent by the registered post on 22.07.2005 and the same was also got served upon the owner stands proved and established from the reply of the owner which was filed before the Tribunal.

13. Now, the intimation of the dishonouring of the cheque having being made upon the owner much before the date of accident, which is 17.11.2005 and the owner not making any effort for the payment of premium in the light of the cheque getting dishonoured, the condition to the policy of an automatic cancellation of the policy would come into play and the policy for all practical purposes would stand canceled.

14. At this juncture, it would be relevant to take note of the decision of the Hon'ble Supreme Court in the case of "***Deddappa and others v. Branch Manager, National Insurance Co. Ltd." 2008 (2) Supreme Court Cases 595***, wherein the Hon'ble Supreme Court in paragraph No.26 has held as under:

> ***"26. However, as the appellant hails from the lowest strata of society, we are of the opinion that in a case of this nature, we should, in exercise of our extraordinary jurisdiction under Article 142 of the***

> ***Constitution of India, direct Respondent No.1 to pay the amount of claim to the appellants herein and recover the same from the owner of the vehicle viz. Respondent No.2, particularly in view of the fact that no appeal was preferred by him. We direct accordingly."***

15. The said view of the Hon'ble Supreme Court has further reiterated again in the case of "***United India Insurance Co. Ltd. v. Laxmamma", 2012 ACJ 1307***, wherein it has been categorically held that in the event of the policy of the insurance getting cancelled and the authorized insurer have been dully intimated in this regard, the Insurance Company shall not be liable to indemnify the insured persons.

16. A similar view has been taken by the Coordinate Bench of this Court in the case of "***Oriental Insurance Co. Ltd. v. Nadiram and others"*** (supra). Considering the authoritative decision in this regard by the Hon'ble Supreme Court as also by this Court, this Court is of the opinion that the impugned award so far as the liability being fastened upon the appellant-Insurance Company is bad in law and the same deserves to be and is accordingly set-aside and the entire liability of payment is ordered to be shifted upon the respondents No.3 & 4 i.e. the Owner and Driver of the offending Truck bearing registration No. MP-9-KC-6451.

17. As regards the appeal by the Claimants seeking enhancement, the contention of Mr. Singroul, Advocate is that the income assessed by the Tribunal is on the lower side and the same deserves to be suitably modified. Likewise, the Tribunal also according to the Claimants has not applied the proper multiplier and the future prospect also has not been taken into account for quantifying the

compensation. The compensation under the conventional head also is unreasonably low and the same deserves suitable enhancement.

18. In the light of the facts and circumstances of the case and there is no representation on behalf of the Owner and Driver to oppose the appeal for enhancement we proceed to consider whether the amount of compensation awarded is just and reasonable or not?

19. The date of accident in the instant case is November, 2005. The deceased in the instant case was aged around 19 years. At the relevant point of time i.e. in November, 2005 the minimum income of an unskilled labour also would had been more than Rs. 100/- a day, which would had made it Rs.3,000/- a month. The Tribunal having taken Rs.15,000/- as the income of the deceased is definitely unreasonably low. The deceased at the time of accident was pursuing her Physiotherapy course and was a student of Raipur Medical College. Under no circumstances, the income of the deceased could have been assessed less than Rs.3,000/- a month for the purpose of quantification under such circumstances. It is ordered accordingly.

20. Likewise, the multiplier applied also would be that of 18 as per the decision of the Hon'ble Supreme Court in the case of ***"Sarla Verma & Ors vs Delhi Transport Corp. & Anr." (2009) 6 SCC 121)*** instead of 16 as assessed by the Tribunal. So far as the future prospects are concerned, this also by now has become an established position of law that any compensation would also include income from future prospects. The compensation under the

conventional head also is on the lower side and the same also deserves suitable enhancement.

21. Accepting Rs.3,000/- as monthly income of the deceased, the yearly income would be Rs.36,000/- and if 50% is added towards future prospects, the amount would be Rs.54.000/-. If 1/3 of the same is deducted, the amount which would come to would be Rs.36,000/-, which multiplied by applying the multiplier of 18, the amount would be Rs.6,48,000/-. It is ordered accordingly that the Claimants shall be entitled for compensation of Rs.6,48,000/- towards loss of dependency.

22. So far as the compensation under the conventional head is concerned, taking into consideration the decision of the Hon'ble Supreme Court in the case of ***"Rajesh and others vs. Rajbir Singh and others" (2013(9) SCC 54)***, this Court is of the opinion that ends of justice would meet if the lump sum compensation of Rs.1,00,000/- is awarded to the Claimants under the conventional head instead of Rs.30,000/- as awarded by the Tribunal. Thus, the total amount of compensation payable to the Claimants would be Rs.7,48,000/- instead of Rs.2,70,000/-. The amount shall carry interest at the same rate as awarded by the Tribunal and the liability of payment of compensation shall be on the owner and driver. The amount already, if any, deposited by the Insurance Company shall be released to the Claimants with liberty to the Insurance Company to recover the same from the owner and for the rest, the owner shall deposit before the Tribunal.

23. Both the appeals preferred by the appellant-Insurance Company as well as the Claimants stands allowed and disposed of.

24. The Additional Registrar (Judicial) is directed to send a copy of the order to the Secretary, District Legal Services Authority, Raipur, Chhattisgarh with a direction to ensure serving the copy of this judgment to the Claimants.

Sd/-
(P. Sam Koshy)
Judge

Ved