NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1486 OF 2008

Smt. Sumitra Bai, W/o Khoobram Pande, aged about 33 years, R/o Village Khemda, Post- Dewari, P.S. Bagbahra, Tahsil & District- Mahasamund (C.G.)

… Appellant

versus

1. Smt. Bhagwati Bariha, W/o Late Shri Narayan Singh Bariha, aged about 25 years
2. Bramhadev (minor), S/o Late Narayan Singh Bariha, aged about 2 years, through mother Smt. Bhagwati Bariha
3. Smt. Ratni Bai, W/o Late Hirau Ram Bariha, aged about 50 years

Respondent No. 1 to 3 are R/o Village- Mungaser, P.O. Mangaser, P.S. Bagbahra, Tahsil & District- Mahasamund (C.G.)

4. Chain Singh Dadsena, S/o Peelalal Dadsena, aged about 30 years, R/o Village- Simgaon, P.S. Bagbahra, Tahsil & District Mahasamund (C.G.)
5. Bajaj Alliance General Insurance Company Limited, Office- Mohan Bhawan, Vidhansabha Road, Pandari, Raipur, District Raipur (C.G.)

… Respondents

For Appellant	:	Mrs. Renu Kochar, Advocate.
For Respondents 1 to 3	:	Mr. G.V. Krishna Rao, Advocate.
For Respondent No.5	:	Mr. G.S Patel, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/11/2017

1. The present is an owner's appeal under Section 173 of the Motor Vehicles Act, 1988, assailing the award dated 23.7.2008 passed by the First Additional Motor Accident Claims Tribunal, Mahasamund, in Claim Case No. 14/2008.

2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166/140 of the Motor Vehicles Act, has awarded a compensation of Rs.1,92,000/- to respondents no. 1 to 3-claimants with interest thereon at the rate of 6% per annum from the date of claim application. While passing the award, the learned Tribunal has exonerated the respondent no.5-insurance company from its liability and ordered for payment of compensation by the appellant-owner of the offending vehicle.

3. Smt. Renu Kochar, learned counsel for the appellant-owner, assailing the liability which has been fastened upon them, submits that it is a case where the tractor and trolley was duly insured and the policy issued was a comprehensive policy and therefore the liability if any should had been fastened upon the respondent no.5-insurance company. She further submits that it is a case where the deceased-Narayan Singh Bariha had gone to the field of the appellant-owner for some construction work in the agriculture field of the appellant-owner and therefore it is proved that the accident occurred when the offending vehicle was being used for agriculture purpose and on this ground also it was prayed for the shifting of the liability from the appellant-owner to the respondent no.5-insurance company.

4. Shri Ghan Shyam Patel, learned counsel for respondent no.5-insurance company, however, opposing the appeal submits that it is a case where though it was a comprehensive policy issued, but the policy issued was for the tractor and trolley, bearing registration no. CG06-C-8867 and CG06-A-9140. He further submits that in the instant case at the time of accident it was not the trolley which was attached to the tractor but was a tanker which was attached to the tractor and the tanker was not insured by the insurer and therefore since the deceased was sitting on the tanker, the insurance company cannot indemnify the owner for the said act.

5. Shri G.V. Krishna Roa, learned counsel appearing for respondents no. 1 to 3-claimants, submits that the claimants in the instant case have also filed a cross-objection and have sought for enhancement of the compensation awarded. He further submits that the income of the deceased has been assessed unreasonably low and that the income under the future prospects also ought to have been taken into consideration for quantifying the compensation and thus prayed for the amount of compensation to be suitably enhanced.

6. Heard the submissions put forth on the respective side and perused the record of the case.

7. So far as the appeal of the appellant-owner is concerned, if we look at the evidence which have come on record it would clearly reflect that Chain Singh, who was the driver of the tractor at the time of accident, has been examined as NAW-1 and he has very specifically stated in his evidence that he has been instructed by the appellant-owner to go and bring a tanker and he had accordingly gone to the place and brought the tanker attached to the tractor when the accident occurred. The said aspect further stands reiterated from the FIR which has been lodged in respect of the accident, i.e., Exhibit P-2, which was proved at the instance of the claimants. This being a strong piece of evidence that the accident occurred when the tractor was drawing with a tanker and that the insurance company has not insured the tanker but had only insured the tractor and the trolley, the question of indemnifying the owner for use of the tanker does not arise. Likewise, it is also the case where the deceased in the instant case was also sitting on the tanker, as is evident from the FIR also also from the evidence of NAW-1 Chain Singh and also the statement of the claimants. No person is permitted to sit on the tanker for travelling purpose and if the owner and driver had permitted the person to travel sitting on the tanker it is at their own risk, for which again the insurance company cannot be asked to indemnify the owner. In the given facts and circumstances of the case, this Court does not find any strong material or facts brought before this Court, calling for an interference so far as the liability of payment of compensation which has been saddled upon the appellant-owner is concerned.

8. As regards the cross-objection of respondents no. 1 to 3-claimants, if we look into the notional income which has been assessed by the learned Tribunal, it clearly shows that the income assessed at Rs.15,000/- annually was unreasonably low. The accident in the instant case is of the year 2008 where admittedly the minimum income even of an unskilled labourer would had been around Rs.36,000/- an year at the rate of Rs.3000/- a month. This Court thus quantifies the annual income of the deceased at Rs.36,000/- and proceeds to compute the compensation accordingly.

9. The claimants in the instant case in the light of a recent Larger Bench's decision of the Hon'ble Supreme Court in **National Insurance Company Limited** v. **Pranay Sethi & Others**[1] are also entitled for a compensation towards the future prospects.

10. Accordingly, accepting the annual income of the deceased at Rs.36,000/- and adding 40% towards future prospects, i.e. Rs.14,400, the amount would come to Rs.50,400/- of which if 1/3rd, i.e. Rs.16,800, is deducted, the amount left would be Rs.33,600/- which if multiplied applying the multiplier of 17, the amount shall be Rs. 5,71,200/-. It is thus ordered that the claimants shall be entitled for Rs.5,71,200/- for the loss of dependency. In addition, so far as the compensation under conventional heads are concernerd, this Court again applying the principles laid down by the Hon'ble Supreme Court in **Pranay Sethi** (supra), quantifies a lump sum compensation of Rs.28,800/- under the conventional heads. Thus, making the total compensation payable to the claimants at Rs.6,00,000/-. It is accordingly ordered that the respondents no. 1 to 3-claimants shall be entitled for a total compensation of **Rs.6,00,000/-** instead of Rs.1,92,000/- which has been awarded by the learned Tribunal. The said enhanced

---

1 SLP (Civil) No. 25590 of 2014, decided on 31.10.2017

amount shall also carry interest at the same rate as has been fixed by the Tribunal.

11. As a consequence, the appeal of the appellant-owner is dismissed and the cross-objection of the respondents no. 1 to 3-claimants is allowed. The impugned award stands modified accordingly. The responsibilty of payment of compensation shall remain upon the appellant-owner.

Sd/-
(P. Sam Koshy)
Judge

/sharad/