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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No. 475 of 2005

1. Ramayandas S/o Mangal das, aged about 47 years.
2. Bajrangdas S/o Ramayandas, aged about 16 years.
3. Parmeshwardas S/o Ramayandas, aged about 14 years.

Appellants 2 & 3 are minors through natural guardian father Ramayandas

All R/o Village Semertal, P. S. Koni, Tah. & District Bilaspur (C.G.).

---- Appellants

Versus

1. Rajendra Kumar Sahu S/o Tekram Sahu, aged about 29 years, R/o Village Birkona, P.S. Koni, Tah. & District Bilaspur (Chhattisgarh).
2. The Oriental Insurance Co. Ltd. Opposite High Court, Bilaspur (C.G.)
3. Foto Bai Wd/o Ramayan Das Manikpuri, aged about 45 years, R/o Village Semartal, Tah. & District Bilaspur (C.G.)

---- Respondents

For Appellants	:	Shri A. L. Singroul, Advocate
For Respondent no.1	:	Shri Indra Sen Sahu, Advocate
For Respondent no.2	:	Ms. S. Harshita on behalf of Srhi Abhishek Sinha, Advocate

Misc. Appeal No. 361 of 2005

Rajendra Kumar Sahu S/o Tekram, aged 29 years, R/o Village – Birkona, P. S. Koni, Tah. & District Bilaspur (C.G).

---- Appellant

Versus

1. Smt. Foto Bai W/o Ramayan Das Manikpuri, aged 45 years, R/o village – Semartal, Tah & District Bilaspur (C.G)
2. The Oriental Insurance Company Ltd. near High Court, Bilaspur, District Bilaspur (C.G)
3. Ramayan Das S/o Mangal Das, aged 47 years.
4. Bajrang Das S/o Ramayan Das, aged 16 years.
5. Parmeshwar Das S/o Ramayan Das, aged 14 years.

Respondents 4 & 5 are minors through natural guardian father Ramayandas

Respondents No.3 to 5 are R/o Village Semartal, P.S. Koni, Tah. & District Bilaspur (C.G).

---- Respondents

(43)

For Appellant	:	Shri Indra Sen Sahu, Advocate
For Respondent no. 2	:	Shri Sudhir Agrawal, Advocate
For Respondents 3 to 5	:	Shri A. L. Singroul, Advocate

<u>Hon'ble Shri Justice P. Sam Koshy</u>

<u>Order On Board</u>

<u>28/07/2017</u>

For convenience sake, the parties are referred to in accordance with their status as the claimants, the driver, the owner and the Insurance Company.

2. These are the two appeals under Section 173 of the Motor Vehicles Act filed, one by the claimants seeking for enhancement and the other by the owner challenging the liability fastened upon him. The appellants in both the cases have challenged the award dated 07.12.2004 passed by the 10th Additional Motor Accident Claims Tribunal, (FTC) Bilaspur in Claim Case No. 18/2004.

3. The facts of the case in brief are that deceased Ajay Prakash met with an accidental death while travelling in a Jeep bearing registration No.CG 12 ZD 0177 belonging to the owner Rajendra Ku. Sahu. The deceased at the time of accident was aged around 18 years and he was a tailor by profession. The vehicle involved in the accident was insured by respondent no.2 and that the policy which was taken was an act only policy covering only a third party. The Jeep involved in the accident as per registration as well as insurance policy was meant for the use as a private vehicle. It is said that while the said jeep was being operated between Sendri to Bilaspur, the owner Rajendra himself was driving the vehicle and enroute, the deceased fell from the Jeep resulting in grievous injuries to which he later succumbed. A criminal case was registered against the owner of the Jeep for the offence under Sections 279 and 304 of IPC. The claimants i.e. the parents and the brothers of the deceased filed a claim application under Section 166 of the Motor Vehicles Act seeking compensation for the death of Ajay Prakash.

4. The Tribunal considering the evidences which have come on record vide impugned award dated 07.12.2004 granted compensation of Rs.1,09,500/- to the

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claimants. While passing the impugned award, the Tribunal held that since the owner of the Jeep had violated the policy condition to the extent that the driver did not have a licence for driving a commercial vehicle as the Jeep involved in the accident was being used for commercial purposes when the accident arose, the Tribunal exonerated the Insurance Company of its liability and fastened the liability for payment of compensation upon the owner of the offending vehicle.

5. It is this award which is under challenge by the claimants as well as by the owner.

6. Counsel for the claimants has assailed the impugned award on the ground that the amount of compensation awarded is extremely low and the same deserves to be enhanced. According to the counsel for the claimants, the notional income of Rs. 15,000/- annually assessed by the Tribunal for the purpose of compensation is also on the lower side. Since the accident took place in July 2002 while the minimum wage of an unskilled labour was around Rs.100 a day, for all practical purposes the compensation ought to have been quantified accepting the monthly income of the deceased to be Rs.3,000/- and annual income to be Rs.36,000/-. Counsel for the claimants submits that the Tribunal has also erred in not taking into account the future prospects while quantifying the compensation. Likewise, it is also contended that the Tribunal has committed an error in not applying the proper multiplier in as much as since the age of the deceased was 18 years, the multiplier ought to have been 18 in stead of 13 as applied by the Tribunal. Thus, prayed for enhancement of the impugned award suitably.

7. There is no strong objection to the contentions put forth by the counsel for the claimants by any of the respondents.

8. Considering the fact that the deceased at the time of accident was aged about 18 years and that at that time even an unskilled labour would have got Rs.100 as a daily wage, this Court is of the opinion that the quantification of Rs.15,000/- by the Tribunal is definitely on the lower side and for the purpose of calculating compensation, the minimum wage should have been assessed by the

Tribunal as Rs.30,000/- annual and it is ordered accordingly. Likewise, taking into consideration the law laid down by the Supreme Court in the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** which has also been reiterated in the case of **Rajesh and Others vs. Rajbir Singh and others** reported in **(2013) 9 SCC 54**, 50% of the wage should have been taken by the Tribunal under the head of future prospects. Thus, accepting 50% of the wage under the head of future prospects, the annual income would be Rs.45,000/- of which if we deduced ½ towards personal expenses, it comes to Rs.22,500. So far as the multiplier is concerned, the judgment of the Supreme Court in the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** lays on broad guidelines and principles that in case of the deceased being 18 years at the time of accident, the multiplier would be 18 in stead of 13 as applied by the Tribunal. If the amount of Rs.22,500/- is multiplied by the multiplier of 18, it will amount to Rs.4,05,000/-. So far as the compensation under the other heads is concerned, considering the fact that the deceased died in the year 2002 and the Tribunal has granted an amount of Rs.12,000/- which in the opinion of this Court is also on the lower side, therefore, the same deserves to be and is accordingly enhanced to Rs.45,000/-. Thus, it is held that the claimants shall be entitled for an amount of Rs.4,50,000/- as total compensation in stead of Rs.1,09,500/- as has been awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal. Thus, the appeal preferred by the claimants in MA No.475 of 2005 stands allowed.

9. So far as the appeal on behalf of the owner of the offending vehicle in MA No. 361 of 2005 is concerned, the sole contention which the counsel for the owner has raised is the fact that the vehicle at the relevant point of time was in fact duly insured with the Oriental Insurance Company. Counsel for the owner submits that there is no evidence so far as the vehicle being used for commercial purpose. He relied upon the judgment of the Supreme Court in the case of S. Iyyapan Vs.

United India Insurance Company Limited and another reported in (2013) 7 SCC 62 and in the case of Kulwant Singh and others Vs. Oriental Insurance Co. Ltd. in 2015 (1) SCC 156. He further relied upon the decision of this Curt in 2016 (4) CGLJ 439 (National Insurance Co. Ltd. Vs. Chaman Lal Uike and Ors. and prayed that the impugned order may be modified to the extent that the liability of payment of compensation may be fastened upon the Insurance Company and not upon the owner.

10. Counsel appearing for the Insurance Company however opposes the appeal and submits that it is not a case of invalid licence or a fake licence or invalid policy. It is a case where the owner in fact had not paid any premium for the passengers that he intended to carry in the Jeep. He submits that the Jeep was used for commercial purposes on regular basis and therefore, the owner ought to have taken all necessary precautions to avoid any eventuality. It is further submitted that on account of the lapse on the part of the owner in not paying any premium, the Insurance Company cannot be saddled with the responsibility of indemnifying for some act which has been committed by the owner without paying any premium to the Insurance Company covering the risk. Thus, prayed for rejection of the appeal of the owner.

11. Having considered the contentions put forth on either side if we look into the judgments which have been cited by the counsel for the owner, it would reveal that the three judgments cited were in respect of the driver having no proper endorsement on his licence regarding the vehicle which was involved in the accident which according to the Supreme Court as also by the High Court may not be too relevant for discharging the Insurance Company from its liability of payment of compensation. However, the present is a case where there was no premium paid for the coverage of the passengers to be carried in the Jeep and if the owner has deliberately avoided the payment of premium to the Insurance Company regarding the coverage of the risk of the passengers, it is the owner himself who has to be flamed for which the Insurance Company cannot be saddled with the

(47)

responsibility of payment of compensation for an act for which they have not received any premium. Since it is a case where there was no premium paid whatsoever by the owner to the Insurance company coupled with the fact that there is a direct evidence which has come on record i.e. AW-2 Manohar who had travelled along with the deceased at the time of accident and who has stated that they were all travelling in the Jeep as passengers. This is a sufficient indication of the vehicle being used for commercial purposes. Similar statement has also been made by the mother of the deceased who has also reiterated the fact that the vehicle was being used as a commercial vehicle for carrying passengers on regular basis. Further from the statement of AW-2 it also reveals that the owner of the Jeep in spite of the accident, did not stop the vehicle and fled away from the scene. The owner stopped the vehicle only at Bilaspur where after the passengers alighted, he did not wait for the collection of the charges and fled away from that place. This fact further strengthens the argument of the Insurance Company that there was a breach of policy condition in as much as the vehicle being used for commercial purpose.

12. In the aforesaid factual matrix of the case, this Court does not find any strong case made out by the appellant owner of the offending vehicle calling for an interference with the finding arrived at by the Tribunal in discharging the Insurance Company of its liability of payment of compensation. The appeal of the owner thus, being devoid of merit stands rejected.

Sd/-

(P. Sam Koshy)
JUDGE

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