

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 885 OF 2014

1. Smt. Triveni Bai Kunjam, W/o Late Sujeet Kumar Kunjam, aged about 38 years
2. Kumari Shashibala Kunjam, D/o Late Sujeet Kumar Kunjam, aged about 19 years
3. Digvijay Kunjam, S/o Late Sujeet Kumar Kunjam, aged about 16 years
4. Kumari Poonam Kunjam, D/o Late Sujeet Kumar Kunjam, aged about 14 years
5. Smt. Ratani Bai Kunjam, W/o Late Hariram Kunjam, aged about 75 years

Appellant No.3 and 4 are minor through their natural guardian mother Smt. Triveni Bai Kunjam, W/o Late Sujeet Kumar Kunjam.

All are R/o Village: Madavapathara, Police Station Rudri, Tahsil and District Dhamtari (C.G.)

... Appellants

versus

1. Rajkumar Sahu, S/o Late Perdeshi Ram Sahu, aged about 50 years, R/o Kunderpara, Balod, Police Station and Tahsil and District Balod (C.G.)
2. Anand Roadways, through Director, Anand Roadways, Ganj Chowk, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.)
3. National Insurance Company Limited, through Branch Manager, Branch Office, Rajnandgaon (C.G.) and National Insurance Company Limited through Regional Manager, Akashganga Parisar, Supela, Bhilai, Tahsil and District Durg (C.G.)

... Respondents

MISC. APPEAL (C) NO. 488 OF 2013

Anand Roadways, through Director, Hanif Solanki, S/o Late Najruddin Solanki, aged about 56 years, R/o Anand Roadways, Ganj Chowk, Rajnandgaon, Police Station Lalbagh, Tahsil, Revenue and Civil District Rajnandgaon (C.G.)

... Appellant

versus

1. Smt. Triveni Bai Kunjam, Wd/o Late Sujeet Kunjam, aged about 38 years
2. Ku. Shashibala Kunjam, D/o Late Sujeet Kumar Kunjam, aged about 19 years
3. Digvijay Kunjam, S/o Late Sujeet Kumar Kunjam, aged about 16 years
4. Ku. Poonam Priya Kunjam, D/o Late Sujeet Kumar Kunjam, aged about 14 years
5. Smt. Ratni Bai Bai Kunjam, Wd/o Late Hariram Kunjam, aged about 75 years

No. 3 and 4 are minor, through their natural guardian mother Smt. Triveni Bai Kunjam, Wd/o Late Sujeet Kumar Kunjam.

All are R/o Village: Madawa Pathra, Police Station Rudri, Tahsil, Civil and Revenue District Dhamtari (C.G.)

6. Rajkumar Sahu, S/o Late Perdeshi Ram Sahu, aged about 50 years, R/o Kundrapara, Balod, Police Station, Tahsil, Civil and Revenue District Balod (C.G.)

7. National Insurance Company Limited, through Branch Manager, Branch Office, Rajnandgaon (C.G.), through Divisional Manager, National Insurance Company Limited, Akash Ganga Parisar, Supela, Bhilai, P.S. Supela, Tahsil, Civil and Revenue District Durg (C.G.)

... Respondents

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- Mr. Praveen K. Dhurandhar, Advocate, for the Appellants in M.A.(C) No. 885/2014 and for Respondents No. 1 to 5 in M.A.(C) No. 488/2013.
 - Mr. Shikhar Bakhtiyar, Advocate, under instructions of Mr. B.P. Singh, Advocate, for the Appellant in M.A.(C) No. 488/2013 and for Respondents No. 1 & 2 in M.A.(C) No. 885/2014.
 - Mr. Qamrul Aziz, Advocate, for Respondent No.3 in M.A.(C) No. 885/2014 and for Respondent No.7 in M.A.(C) No. 488/2013.
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/11/2017

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of the award dated 31.1.2013 passed by the Additional Motor Accident Claims Tribunal, Dhamtari, District Dhamtari, in Claim Case No. 07/2012.

2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166/140 of the Motor Vehicles Act, has awarded a total compensation of Rs.21,73,600/- to the 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 insurance company of its liability and has fastened the liability for payment of compensation upon the owner and driver of the offending vehicle i.e. Bus, bearing registration No. CG08-JA/2027, belonging to M/s Anand Roadways.

3. M.A.(C) No. 488/2013 is an appeal filed by the owner of the offending vehicle challenging the liability which has been fastened upon them and M.A.(C) No. 885/2014 is an appeal filed by the claimants seeking enhancement of the compensation awarded.

4. Appeal of the owner is on the ground that the insurance company has wrongly been exonerated on the ground that the driver of the offending vehicle did not have a proper licence at the time of accident.

5. However, Shri Shikhar Bakhtiyar, learned counsel for the owner, submits that in fact the driver had a proper licence at the time of accident which has not been properly appreciated by the learned Tribunal and therefore the impugned award be suitably modified and the liability for payment of compensation should be shifted upon the insurance company rather than being fastened upon the owner.

6. Shri Praveen Dhurandhar, learned counsel for the claimants, submits that it is a case where the deceased was a government employee and was working as a Constable with the police department in the State of Chhattisgarh and therefore applying the principles laid down by the Hon'ble Supreme Court in a recent Larger Bench's decision in the case of **National Insurance Company Limited v. Pranay Sethi & Others**¹, the claimants would also be entitled for an income under the future prospects while computing the compensation. He thus submits that since the age of the deceased was around 42 years at the time of accident, as per **Pranay Sethi** (supra) the claimants would be entitled for 30% of the monthly income towards future prospects and the compensation has to be accordingly computed. He thus prayed for the award to be suitably modified.

7. So far as the contention of the learned counsel for the owner is concerned, Shri Qamrul Aziz, learned counsel appearing for the insurance company, submits that he has received a report from the Licencing authority, i.e., Regional Transport Office, Jagdalpur, who has verified and

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

has submitted a report that the driver of the offending vehicle at the relevant point of time had a valid licence.

8. The report of the Licencing authority and the report of the Advocate who had conducted the investigation are filed in the present appeal by way of a submission memo dated 23.11.2017.

9. In view of the specific submission by the insurance company that the driver of the offending vehicle had a valid licence, the finding of the learned Tribunal of exonerating the insurance company becomes erroneous and warrants interference. Accordingly, the said finding of the learned Tribunal is set aside and it is held that the liability for payment of compensation shall jointly and severally be upon the insurance company and the owner and driver of the offending vehicle i.e. the bus bearing registration no. CG08-JA/2027.

10. As regards the appeal of the claimants, since admittedly the deceased was a government employee and was working as a Constable, applying the principles laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), the claimants would be entitled for 30% of the monthly income towards the future prospects while computing the compensation.

11. The monthly income assessed by the learned Tribunal as per the salary slip is Rs.17,108/- to which if 30%, i.e. Rs.5,132/-, is added towards future prospects, the monthly income of the deceased would be Rs.22,240/- and the yearly income would be Rs.2,66,880/- of which if 1/4th, i.e. Rs.66,720/-, is deducted towards the personal and living expenses, the amount would come to Rs.2,00,160/- which if multiplied applying the multiplier of 14, the amount would reach to Rs.28,02,240/- which is loss of dependency. In addition, the claimants shall be entitled for compensation under the conventional heads again as per the guidelines in

the case of **Pranay Sethi** (supra), quantifying a lump sum amount of Rs.70,000/-. The claimants thus shall be entitled for a total compensation of Rs.28,72,240/- instead of Rs.21,73,600/- as has been awarded by the learned Tribunal.

12. The impugned award thus stands modified and enhanced accordingly from Rs.21,73,600/- to **Rs.28,72,240/-** which the claimants are entitled to get from the insurance company with interest thereon at the same rate as has been fixed by the learned Tribunal.

13. As a result, the appeal of the owner as well as the appeal of the claimants, both stand allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge