NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 803 of 2007

1. Laxman, aged 35 years, son of late Shri Firtu Ram Kashyap
2. Ramayan, aged 42 years, son of late Shri Firtu Ram Kashyap
3. Ramji, aged 38 years, son of late Shri Firtu Ram Kashyap.
   All are R/o Village Chaurabhata, Tehsil Nawagarh, Distt. Janjgir Champa (CG).

---- Appellants

Versus

1. Chintamani Patel, aged 48 years, son of Shri Gokul Prasad, R/o Village Mudha, PS & Tehsil Saraipali, District Mahasamund (CG).
2. The Oriental Insurance Co. Ltd. Branch Raipur, Through the Divisional Manager, Kucheri Chowk, Raipur (CG).

---- Respondents

MAC No. 1192 of 2008

Chintamani Patel, aged 48 years, son of Shri Gokul Prasad, R/o Mudha, PS & Tehsil Saraipali, District Mahasamund (CG).

---- Appellant

Versus

1. The Oriental Insurance Co. Ltd. Branch Raipur, Through the Divisional Manager, Kucheri Chowk, Raipur (CG).
2. Laxman, aged 35 years, son of late Shri Phirtu Ram
3. Ramayan, aged 42 years, son of late Shri Phirtu Ram
4. Ramji, aged 38 years, son of late Shri Phirtu Ram .
   Respondents No.2 to 4 are R/o Village Chaurabhata, Tehsil Nawagarh, Distt. Janjgir Champa (CG).

---- Respondents

For Claimants	:	Shri Ritesh Verma, Advocate.
For Owner-Driver	:	Shri Vivek Tripathi, Advocate.
For Insurance Company	:	Shri Raj Awasthi, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

23.10.2017

1. By this common judgment both the appeals are being disposed of as common facts & issues are involved in these appeals which arise out of the same accident.

2. Both the appeals under Section 173 of the Motor Vehicles Act have been filed against the award dated 25.04.2007 passed by the Additional Motor Accident Claims Tribunal, Janjgir, in Claim Case No.9/2006. Vide the said impugned award, the Tribunal has awarded a compensation of Rs.79,000/- alongwith interest @ 6 percent per annum from the date of application. While passing the award, the Tribunal has exonerated the insurance company of its liability as the vehicle was being used for commercial purpose when it was insured and registered for agriculture purpose and has fastened the liability upon the owner of the Tractor.
3. MAC No. 803 of 2007 has been filed by the claimants seeking enhancement of compensation whereas, MAC No.1192 of 2008 has been filed by the owner challenging the liability part. For convenient sake, we shall take the appeal of the owner first.
4. The contention of the appellant-owner is that the vehicle was duly insured at the time of accident and that it was being used for agriculture purpose when the accident had occurred and therefore the liability should had been fastened upon the insurance company.
5. However, a perusal of the records would show that there is a categorical finding of fact by the Tribunal showing that the vehicle was being used on commercial purpose inasmuch as the owner of the tractor had given the tractor on rent @ Rs. 6/- per minute for thrashing crops of the deceased. This admitted factual matrix has not been controverted or rebutted or disproved by the appellant-owner in any manner. Thus, this court has no hesitation in

reaching to the conclusion that the Tribunal has rightly exonerated the insurance company of its liability.

6. So far as appeal of the claimants is concerned, the contention is that, the Tribunal has not properly assessed the income of the deceased and the compensation awarded is on the lower side. So also the Tribunal has not properly assessed the age of the deceased and therefore the award deserves to be suitably modified/enhanced.

7. So far as the age of the deceased is concerned, the Doctor who conducted postmortem of the deceased has given a report assessing his age at 78 years. Though the appellants claimants have submitted that at the time of accident the deceased was aged around 61 years, but there is no proof whatsoever in this regard. In the absence of any evidence as regards the age of the deceased, this court is inclined to accept the age as assessed by the doctor who conducted postmortem of the deceased and the said ground stands negated.

8. So far as income is concerned, this court is of the opinion that considering the fact that appeal is of the year, 2006 and the income assessed by the Tribunal is of Rs.15000/- yearly which definitely is unreasonably low as the minimum income which the deceased could have earned in the year 2006 was at least Rs.100/-per day which makes yearly income at Rs.36000/-. Accordingly, this court assessed the income of the deceased at Rs.36000/- instead of Rs.15000/- as assessed by the Tribunal.

9. Accordingly, accepting the annual income of the deceased at Rs.36,000/- if 1/3rd of it is deducted towards personal expenses, the

income would come to Rs.24,000/-, which if multiplied by applying the multiplier of 5 as has been applied by the Tribunal, the compensation would reach to Rs.1,20,000/-. Thus, it is ordered that the claimants shall be entitled for Rs.1,20,000/- for loss of dependency instead of Rs. 50,000/-. In addition, rest of the amount awarded by the Tribunal shall remain intact. Thus, the additional compensation payable to the claimants would become Rs.70,000/-in addition to what has already been awarded. It is ordered accordingly.

10. The said enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.

11. Accordingly, MAC No.803 of 2007 filed by the claimants is allowed and MAC No. 1192 of 2008 filed by the owner is dismissed. Further, considering the total factual matrix of the case, penal interest awarded by the Tribunal shall not become effective if the amount enhanced by this court is deposited within a period of three months from today.

Sd/-
(P. Sam Koshy)
Judge

inder