NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1000 OF 2010

1. Tarshiyush Tirky, S/o Late Vasil Viha Tirky, aged about 55 years
2. Ku. Lata Blesh Tirky, S/o Tarshiyush Tirky, aged about 20 years
3. Minor Jovita Lilee, S/o Tarshiyush Tirky, aged about 18 years
4. Minor Ravi Praksha Tirky, S/o Tarshiyush Tirky, aged about 15 years
5. Minor Jan Jeviyar Tirky, S/o Tarshiyush Tirky, aged about 13 years

Appellant no. 4 to 5 through their natural guardian father Tarshiyush Tirky, S/o Late Vasil Viha Tirky.

Appellant no.1 to 5 all are caste- uraon, R/o Quarter No. B.5, N.H. 3 (N.T.P.C.), Vindhyanagar Vindhyachal Super Tharmal Power Station Vindhyanagar, P.S. Vindhyanagar, Tahsil Singrolee Bedhag, District Sidhi (M.P.)

… Appellants/Claimants

Versus

1. Santosh Sarkar, S/o Bachha Ram Sarkar, aged 48 years, occupation-Driver, Village-13/a 17/a picnic garden, third lane, Kolkata, 39, P.S. Tiljala, Tahsil & District Kolkata (W.B.)
2. Raj Mohan Prasad Kushwaha, S/o Bagavat Prasad, age 49 years, Caste Kushawaha, occupation- Bus Owner, R/o- 13/a 17/a, third lane, picnic garden, Kolkata, 39, P.S. Tiljala, Tahsil & District Kolkata (W.B.)
3. Manager, Reliance General Insurance Co. Ltd., Kolkata, Tahsil & District Kolkata (W.B.), through Manager, Main Branch, Reliance General Insurance Co. Ltd., Mumbai Office, Reliance Sentar 19, Balchand, Hirachhand Marg, Balai State Mumbai 400038

… Respondents

MISC. APPEAL (C) NO. 1088 OF 2010

Reliance General Insurance Company Limited, through its Legal Manager, Reliance General Insurance Company Limited, 301-302 Corporate House, 3rd Floor, 169 RNT Marg, Opposite Jhabua Tower, Indore (M.P), Branch Office at Raipur, Ravi Bhavan, 4th Floor, Jaistambh Chowk, G.E. Road, Raipur (C.G.)

… Appellant

Versus

1. Tarsiyus Tirkey, S/o Late Wasil Viha Tirkey, aged about 55 years
2. Ku. Lata Blas Tirkey, S/o Tarsiyus Tirkey, aged about 20 years
3. Minor Jovita Tirkey, S/o Tarsiyus Tirkey, aged about 18 years
4. Minor Ravi Prakas Tirkey, S/o Tarsiyus Tirkey, aged about 15 years
5. Minor John Xavier Tirkey, S/o Tarsiyus Tirkey, aged about 13 years

   Respondents No. 4 & 5 being minor represented through father Tarsiyus Tirkey, S/o Late Wasil Viha Tirkey.

   All Respondents No.1 to 5 by caste Uraon, R/o Qr. No. B 5, N.H. 3 (N.T.P.C.), Vindhya Nagar, Vindhyachal Super Tharmal Power Station Vindhyanagar, P.S. Vindhyanagar, Tahsil Singourli, Baidhag, District Sidhi (M.P.)
6. Santosh Sarkar, S/o Bachcha Ram Sarkar, aged 48 years, occupation-Driver, Village-13/A 17/A Picnic Garden, Third Lane, Calcutta 39 P.S. Tiljala, Tahsil & District Calcutta (W.B.)

7. Raj Mohan Prasad Kushwaha, S/o Bagawat Prasad, age 49 years, Caste Kushawaha, occupation- Vehicle Owner, R/o- 13/A 17/A, Third Lane, Picnic Garden, Calcutta, P.S. Tiljala, Tahsil & District Calcutta (W.B.)

… Respondents

- Mr. Amit Sharma, Advocate, for the Claimants.
- Mr. Tarkeshwar Nande, Advocate, under instructions of Mr. Sourabh Sharma, Advocate, for Reliance General Insurance Company Limited.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/09/2017

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of the same award dated 28.6.2010 passed by the Additional Motor Accident Claims Tribunal, Jashpur, in Claim Case No. 20/2007.

2. Vide the impugned award dated 28.6.2010, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs. 15,60,580/- to the claimants along with interest thereon at the rate of 4% per annum from the date of filing of claim application, fastening the liability for payment of the same jointly and severally upon the driver, owner and insurer of the offending vehicle.

3. MAC No. 1000/2010 is an appeal preferred by the claimants seeking enhancement of the compensation awarded by the Tribunal. Whereas, MAC No. 1088/2010 is an appeal filed by the insurance company assailing the quantum part as well as liability assessed by the Tribunal.

4. It is a case where on 29.8.2007 the deceased-Lusia Tirkey sustained grievous injuries and later on succumbed to the injuries, on account of a vehicular accident by Truck No. WB23-B/3038 which was driven by Santosh Sarkar, owned by Raj Mohan Prasad Kushwaha and insured with Reliance General Insurance Company, giving rise to the filing of the claim application out of which the present appeals arise.

5. For the sake of convenience, this Court intends to decide the appeal of the insurance company first.

6. The contention of the learned counsel appearing for the insurance company is that the income of the deceased assessed by the Tribunal is on the higher side and secondly that the Tribunal has wrongly fastened the liability upon the insurance company inasmuch as the Tribunal has failed to appreciate the fact that the driver of the offending vehicle did not have a valid driving licence at the relevant point of time.

7. The perusal of the record would show that the insurance company has not led any evidence to substantiate its contentions. In the absence of any evidence on the part of the insurance company, both to show that the income assessed by the Tribunal was either erroneous or on the higher side, or the fact that the driver at the relevant point of time did not have a valid driving licence, the grounds raised by the insurance company assailing the impugned award do not have any force. Thus, the appeal of the insurance company being devoid of merits the same deserves to be and is accordingly rejected.

8. So far as the appeal of the claimants seeking enhancement of compensation is concerned, learned counsel for the claimants submits that the income assessed by the Tribunal is unreasonably low inasmuch as the Tribunal has taken the monthly income of the deceased as Rs.21,265/- whereas the pay-slip for the month of July, 2007 which was produced before the Tribunal as Exhibit P-13, reflects the gross income of the deceased to be more than Rs.32,000/-. According to the claimants, the deductions which have been accepted by the Tribunal also have to be added to the gross income and that except for the tax part which has been deducted, the rest of the amounts are all part of the income of the deceased.

9. Considering the contentions of the claimants and on perusal of the record, this Court is of the opinion that the submissions of the claimants do have force in it and this Court has no hesitation in accepting the fact that except for the deductions towards the income tax, professional tax, or, for that matter, the club allowances which have been deducted, rest of the deductions made are either statutory deductions or are in other way income of the deceased. The total amount of deductions according to this Court which have been wrongly brought under the head of deductions would be Rs.7170/- which need to be added to the income of the deceased assessed by the Tribunal, i.e., Rs.21,265/-.

10. Accordingly, if Rs.21,265/- is added with Rs.7170/-, the monthly income of the deceased would be Rs.28,435/- of which if 1/4th is deducted towards the personal expenses the amount which would come is Rs.21,326/- which if multiplied by 12, the yearly income would come to Rs.2,55,912/- which again applying the multiplier of 11 (instead of 9 that has been applied by the Tribunal) as has been laid down in **Sarla Verma (Smt.) and others** v. **Delhi Transport Corporation and Another**, **2009 (6) SCC 121**, the total compensation payable would be Rs.28,15,032/-. It is thus ordered that the claimants shall be entitled for a compensation towards loss of dependency for Rs.28,15,032/-, instead of Rs.15,31,080/- as was quantified by the Tribunal.

11. Further, so far as the compensation awarded under the conventional heads is concerned, considering the decision of the Hon'ble Supreme Court in **Rajesh and Others** v. **Rajbir Singh and Others**, **2013 (9) SCC 54**, this Court has no hesitation in reaching to the conclusin that the amount of compensation of Rs.29,500/- awarded by the Tribunal under the conventional heads is on the lower side and the same deserves to be enahnced and is accordingly enhanced to Rs.1,25,000/-.

12. Thus, the total compensation which the claimants shall be entitled for is Rs.29,40,032/- which is being rounded off at Rs.29,40,000/-, instead of Rs.15,60,580/- as has been awarded by the Tribunal. Rest of the award including the interest part remains intact. It is thus ordered accordingly.

13. In the result, the appeal of the insurance company stands dismissed being devoid of merits and the appeal of the claimants is allowed to the aforesaid extent.

Sd/-
(P. Sam Koshy)
Judge

/sharad/