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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1111 of 2010

1. Smt. Aasin Bai, age 48 years, W/o late Ram Kumar Dewangan.
2. Govind Dewangan, age 25 years, S/o Shri Ram Kumar Dewangan, Both are R/o Village Teela, PS Gobra Nawapara, Tahsil Rajim & Distt. Raipur (CG).

---- Appellants

Versus

1. Santosh Kumar Sahu, Age 32 years, S/o late Shri Gayalal Sahu, R/o Ward No.5, Mahasamund, PS & Teh. Mahasamund (CG).
2. Tarkeshwar Dadsena S/o G.L. Dadsena, Age 28 years, R/o Ward No. 19, Near Water Tank, Club Para, P.S. Mahasamund, Distt.-Mahasamund (CG).
3. Bajaj Allianz General Insurance Co. Ltd., Through Divisional Office, Vidhansabha Road, Raipur, Distt.-Raipur (CG).

---- Respondents

For Appellants	:	Shri JA Lohani, Advocate.
For insurance Company	:	Shri SS Rajput, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

23.11.2017

1. The present appeal under Section 173 of the Motor Vehicles Act has been been filed by the claimants seeking enhancement of compensation against the award dated 16.08.2010 passed by the Motor Accident Claims Tribunal Mahasamund, in Claim Case No. 44/2009. Vide the said impugned award, the Tribunal in a death case of 27 years bachelor has awarded a compensation of Rs.51,000/- along with interest @ 6 percent per annum from the date of application after quantifying compensation at Rs.1,02,000/- and assessing 50 percent of contributory negligence on the part of deceased.

2. Learned counsel for the appellants submits that the compensation awarded is on lower side and the same ought to have been much more than what has been awarded. He submits that the notional income also is unreasonably low considering the fact that accident occurred in March, 2009. Further, the findings of contributory negligence is also without any substantive material placed/adduced by any of the parties before the Tribunal and the said finding is only on assumption and presumption. It was lastly contended that the Tribunal has also erred inasmuch as exonerating the insurance company of its liability. Considering the facts that the vehicle was duly insured and the exoneration was only on the ground that driver was not having valid licence at the time of accident, the insurance company by this ground alone could not have been absolved of its liability.
3. Per contra, learned counsel for the insurance company opposing the appeal submits that the finding arrived at by the Tribunal is a well reasoned and justified finding and the compensation also has been rightly assessed and there is no scope of any interference in the award and prayed for rejection of the appeal. He further submits that it is a case where the Tribunal has elaborately discussed the evidence of the witness examined on behalf of the insurance company i.e. witness from the office of RTO and have reached to the conclusion that the evidence led by the said witness to be doubtful and suspicious. Therefore, the insurance company has rightly been exonerated and the appeal deserves to be rejected.

4. So far as finding of contributory negligence is concerned, it is a case where indisputably the deceased in the instant case was travelling in the bicycle when the accident occurred. The witness has stated before the Tribunal that deceased was hit by motorcycle coming from behind. There is no evidence before the Tribunal to show that the deceased was riding bicycle in a rash and negligent manner or was in the centre of the road which had resulted in the accident. The owner and driver of the motorcycle also have not been able to adduce any material to prove the aspect of negligence on the part of the deceased.
5. In the given circumstances, the finding of contributory negligence arrived at by the Tribunal attributing 50 percent contributory negligence on the part of the deceased does not seem to be sustainable and the same deserves to be and is accordingly set aside.
6. As regards the evidence of witness from the RTO i.e. Rajesh Bhargava working as licence clerk at the office of RTO, Raipur is concerned, true it is that there are 2-3 documents produced before the Tribunal i.e. Ex. D/2,D/3 and D/4, but there are certain discrepancy and contradiction in the statement of said witness. What is also undisputed is the fact that the vehicle was duly insured with the respondent No.3-insurance company. What is also by now well settled is the fact that even if we assume that the driver of the offending vehicle at the time of accident was having licence to drive different category of vehicle, it could only be a case of applying the

principle of pay and recovery as has been laid down by the Supreme Court in case of Oriental Insurance Co. Ltd. Vs. Zaharulnisha & Ors. AIR 2008 SC 2218. In the instant case also though the witness of RTO states that the driver of the motorcycle had an endorsement of permission to drive motorcycle, but such endorsement is not reflected in the documents Ex.D/2 and D/3 which were produced before the Tribunal by the owner of the vehicle.

7. Thus, in the given facts and circumstances of the case, this court is of the opinion that ends of justice would meet if the ratio laid down in case of Zaharulnisha (Supra) is adopted and it is directed that the responsibility of payment of compensation shall be upon the insurer of the motorcycle with liberty of recovering the same from the respondents No.1&2. It is ordered accordingly.

8. So far as enchantment of compensation is concerned, considering the date of accident i.e. March, 2009 and the deceased working as a Tailor, indisputably even an unskilled labour would have been earning more than Rs.150-200/- per day which would bring monthly income at Rs.4500-6000/-. Thus, considering the period of accident this court assesses the monthly income of the deceased at Rs.4500/- accepting the minimum wages to be Rs.150/- per day.

9. Keeping in view the decision of larger Bench of Supreme Court in case of National Insurance Co. Ltd. Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014, the claimants shall be entitled for 40 percent of the income towards future prospects.

10. Accordingly, accepting the monthly income of the deceased at

Rs.4500/- if 40 percent of it is added towards future prospects, the amount would reach to Rs.6300/- i.e. Rs.75,600/- yearly, of which if 50 percent is deducted towards personal expenses considering the fact that deceased was a bachelor, the income would come to Rs.37,800/-, which if multiplied applying the multiplier of 17, the compensation would reach to Rs.6,42,600/-. Thus, it is ordered that the claimants shall be entitled for Rs.6,42,600/- for loss of dependency.

11. Further, this court is of the opinion that the claimants shall also be entitled for a lump sum compensation of Rs.57,400/- under conventional heads keeping in view the ratio laid down in Pranay Sethi's case. Thus, the total compensation payable to the claimants would become Rs. 7,00,000/-. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.7,00,000/- instead of Rs.51,000/-.

12. The enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal. It is made clear that since the findings of contributory negligence is set aside, the claimants shall be entitled for entire amount of compensation.

13. Accordingly, the appeal stands allowed. The liability of payment of compensation shall be upon the respondent No.3-insurance company with liberty of recovering the same by initiating appropriate recovery proceedings against the respondents No.1&2-driver and owner.

Sd/-
(P. Sam Koshy)
Judge

inder