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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.543 of 2009

Smt.Parvati Bai W/o Dindayal Sahu, aged about 40 years, R/o village Birbira, Police Station Tumgaon, Tahsil Mahasamund, District Mahasamund (C.G.).

---Appellant

Versus

1. Dilip Kumar Sahu S/o Shri Santosh Sahu, aged about 27 years, R/o village Kaundkera, P.S.Tehsil & District Mahasamund (C.G.) (Driver).
2. Dindayal Sahu S/o Samaru Ram Sahu, aged about 44 years, R/o Village Birbira, Police Station Tumgaon, Tahsil Mahasamund, District Mahasamund (C.G.) (Owner).
3. IFCO Tocyo General Insurance Company Ltd. Raipur, District Raipur (C.G.).

---Respondents

For appellant/claimant	:	Shri Ajay Chandra, Advocate.
For resp.No.3/Insurance Company	:	Shri P.R.Patanker, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/12/2017

1. Present is an appeal by the claimant under Section 173 of the Motor Vehicle Act, 1988 assailing the award dated 03/10/2008 passed by the learned Motor Accident Claims Tribunal, Mahasamund, District Mahasamund (C.G.) in Motor Accident Claim Case No.61/2008.

2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicle Act has awarded a compensation of Rs.1,02,000/- with interest @ 6% per annum from the date of application.

3. While passing the impugned award, the Tribunal has exonerated the Insurance Company of its liability and have fastened the liability of payment

of compensation upon the owner and driver i.e. respondents No. 2 and 3 in the present appeal.

4. The counsel for the appellant/claimant submits that, the income assessed by the Tribunal is on the lower side so also the income under future prospects has not been granted. The compensation under the conventional head is also on the lower side. It was further contended by the counsel for the claimant that, the exoneration of the Insurance Company also is bad in law. The finding of the Tribunal of the Tractor involved in the accident not being used for an agricultural purpose is erroneous as there is no material or basis for the Tribunal to reach to such a conclusion. He thus prayed for the award to be suitably modified and the compensation may be enhanced and the liability be shifted upon the Insurance Company.

5. The counsel for the Insurance Company however opposing the appeal submits that, it is a case where the finding of the Tribunal both on the liability aspect as well as on the quantum seems to be just and reasonable in as much as the Tractor at the time of accident was loaded with "Ballast" (Gitti) and thus prayed for rejection of the appeal.

6. It is relevant at this juncture to refer to the deposition of Seth Ram Patel – AW/2 who happens to be one of the person who was traveling on the Tractor when the accident occurred. He has categorically deposed that, the appellant were being taking the "Ballast" to the borewell which was being dug in the field of the owner. This statement of Seth Ram Patel – AW/2 has not been controverted by any of the respondents to establish that, the Ballast

were being used for the commercial purpose and not for the agricultural purpose.

7. Moreover, the Insurance Company also has led an evidence of its administrative officer who has not been able to establish that, the vehicle was being used for commercial and non-agricultural purpose.

8. In the absence of any strong evidence in rebuttal, the evidence of Seth Ram Patel – AW/2 has to be accepted and it is to be presumed that the Tractor was being used for an agricultural purpose.

9. The finding of the Tribunal in exonerating the Insurance Company therefore does not seem to be proper and it is accordingly set aside. It is held that, the liability of payment of compensation shall be jointly and severally be upon the owner, driver and the Insurance Company and the compensation part shall be paid by the Insurance Company indemnifying the owner.

10. So far as the claim for enhancement of the quantum awarded is concerned, again the income which has been assessed by the Tribunal at Rs.15,000/- yearly is unreasonably low as the date of accident was February-2008 where even an unskilled labour would have been earning more than Rs.100/- per day i.e. Rs.3,000/- per month.

11. This Court has no hesitation in assessing the monthly income of the deceased at Rs.3,000/- i.e. Rs.36,000/- yearly. The claimant would also be entitled for 40% of the income towards future prospects. 40% of Rs.36,000/- is Rs.14,400/- which would make the yearly income at Rs.50,400/- of which if

50% is deducted towards personal expenses since, the deceased was a bachelor, the amount would come to Rs.25,200/- which if multiplied by applying multiplier of 18 considering the age of the deceased, the amount would become 4,53,600/-. To this, the claimant shall also be entitled for an additional amount of Rs.40,000/- under the conventional head which would make the total compensation payable to the claimant at Rs.4,93,600/-. It is ordered accordingly that the claimant shall be entitled for total compensation of Rs.4,93,600/- instead of Rs.1,02,000/- as assessed by the Tribunal and the compensation shall be paid by the respondent No.3/Insurance Company. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

12. The appeal of the claimant thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

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