NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1162 of 2016

1. Smt. Kavita Mitra W/o Late Shri Tapas Kumar Mitra Aged About 46 Years
2. Ku. Tania Mitra, D/o Late Shri Tapas Kumar Mitra, Aged About 23 Years
3. Ku. Kamia Mitra, D/o Late Shri Tapas Kumar Mitra, Aged About 19 Years
All are R/o House No. 662, Sindhiya Nagar, Titurdih, Police Station Mohan Nagar, Durg, Chhattisgarh.

---- Appellants

Versus

1. Adhin Das S/o Shri Pyaredas Sonwani, Aged About 29 Years R/o Birgaon, Police Station Urla, Raipur, Chhattisgarh.
2. M. Sammuel S/o Late Shri Anand Rao, Aged About 45 Years R/o House No. 19-A, Street No. 24, Sector 7, Bhilai, District Durg, Chhattisgarh
3. National Insurance Company Ltd., Bhutani Complex, Ge Road, Power House, Bhilai, District Durg, Chhattisgarh.

---Respondents

MAC No.902 of 2016

National Insurance Company Limited Bhutani Complex, G. E. Road, Power House, Bhilai, District- Durg (Chhattisgarh)

---- Appellant

Versus

1. Smt. Savita Mitra Wd/o Late Tapas Kumar Mitra, Aged About 44 Years
2. Ku. Taniya Mitra, D/o Late Tapas Kumar Mitra, Aged About 21 Years
3. Ku. Kamiya Mitra, D/o Late Tapas Kumar Mitra, Aged About 17 Years Minor, Represented Through- Mother Smt. Kavita Mitra,
All are R/o House No. 662, Singhiya Nagar, Titurdih, Police Station- Mohan Nagar, Durg, District- Durg (Chhattisgarh)
4. Adhin Das, S/o Pyaredas Sonwani, Aged About 27 Years R/o Birgaon, P. S. Urla, District- Raipur (Chhattisgarh)
5. M. Samyel S/o Late Anand Rao, Aged About 43 Years R/o House No. 19-A, Road No. 24, Sector- 7, Bhilai, District- Durg (Chhattisgarh)

---Respondents

Shri K.Rohan on behalf of Shri Amrito Das, Advocate for appellants in MAC No.1162/2016 and for respondent No.1 to 3 in MAC No.902/2016.
Shri Goutam Khetrapal, Advocate for Insurance Company.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/09/2017

1. These are the two appeals arising out of the judgment dated 25/04/2016 passed by the 7th Additional Motor Accident Claims Tribunal, Durg in Claim Case No.14/2014.

2. Vide the said impugned award, the Tribunal has in a Claim Case under Section 166 of MV Act awarded compensation of Rs.11,42,400/- to the appellant. While passing the award, the Tribunal has reached to the finding that, there was an element of contributory negligence on the part of the deceased also and the percentage of negligence attributed upon the deceased was 30% and 70% of negligence attributed upon the driver of the vehicle.

3. MAC No.1162/2016 is an appeal by the claimants seeking enhancement and MAC No.902/2016 is an appeal by the Insurance Company challenging the liability. For the sake of convenience, we take the appeal of the Insurance Company first.

4. The Insurance Company has questioned the quantum of compensation awarded on the ground that, the appellant was more than 50 years of age and therefore the Tribunal ought not have taken the income from future prospects while quantifying the compensation. Likewise, the compensation under the conventional head also is on the higher side and same deserves to be reduced. In addition, the counsel for the Insurance Company also submits that there was no sufficient proof of actual income of the deceased in as much as there is discrepancy so far as authority who has issued the salary certificate, when compared to the pleadings of the claimant claiming the deceased be employee of Sahara Cement.

5. The counsel for the claimant opposing the appeal of the Insurance Company submits that, none of the grounds raised by the counsel for the Insurance Company are worth admitting the appeal in as much as there is no evidence what so ever on record to accept any of these contentions.

6. Having heard the contentions put forth on either side and on perusal of record this court finds that, the age of the deceased was assessed by the Tribunal at 49 and even if the age of the deceased as per the Insurance Company is accepted to be 50, it would not make any material difference so far as ground of the multiplier as also ground of future prospect is concerned. As even if we accepts the age to be 50, as per the decision of the Supreme Court in the case of ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [2009 {6} SCC 121]***, the future prospects which is to be taken while calculating the compensation would be 30%. It is only in a case if the age is more than 51 years, according to Sarla Verma (Supra), the claimant shall not be entitled for income under the future prospects while calculating the compensation. Thus, the said ground stands negated.

7. So far as compensation under the conventional head is concerned, if we look into the ratio of law laid down by the Hon'ble Supreme Court in the case of Rajesh Vs Rajbir, this court does not find the award of the Tribunal either exorbitant or on the higher side and the said ground also remains stands decided against the Insurance Company.

8. As regards the salary slip, this court does not find any strong case made out to disbelief the version of certain of the employer namely AW-5 Vijay Kumar Kannouj who has proved the employment as also the salary which the deceased was earning. Thus, the appeal of the Insurance Company being devoid of merit deserves to be and is accordingly dismissed.

9. Coming to the appeal preferred by the claimant seeking enhancement. The ground of challenge is that, though there was salary slip of the deceased furnished as Exhibit-A1 before the Tribunal, same has not been accepted and the Tribunal has assessed the income of the deceased at Rs.10,000/- whereas there was sufficient proof on record to show that he was earning an income of about 17,000/-. The finding given by the Tribunal in this regard therefore was bad. It was further contended that the compensation so far as loss of estate is concerned also is not been properly quantified and same deserves enhancement. In addition, the counsel for the appellant also submitted that, the finding of contributory negligence arrived at by the Tribunal also was without any basis and it would not sustainable and same required to be modified holding that there was no negligence on the part of the deceased for the occurrence of the accident.

10. As regards finding of contributory negligence is concerned, this court finds that there was a statement of one Sumit Singh, witness adduced from the claimant said as AW-2 who himself admitted the fact that, he had witnessed the accident and he was an eye-witness of the accident and according to him the accident occurred when the deceased took a U-turn and came under the rear portion of the offending Truck. The said witness himself was also on the Motorcycle when he too had taken the U-turn. There is also categorical evidence which have come before the court that all specific indication being provided of U-turn not permissible, in spite of that the claimant as well as the eye-witness took a U-turn resulting in the accident. Thus, this court does not find any illegality or perversity or finding of contributory negligence. Therefore, the said ground of the claimant thus stands rejected.

11. So far as the salary part of the deceased is concerned, this court on perusal of the record finds that there is an evidence of AW-5 Vijay Kumar Kannouj who has specifically deposed before the Tribunal at proving the employment as also proved the salary certificate of the deceased. The ground of not accepting the said salary certificate and the evidence of Vijay Kumar Kannouj-AW-5 does not seems to on any strong basis as discrepancies held by the Tribunal does not have much force for the reason that, the certificate was issued by the Sahara Cement which was manufactured by Gajanand Grinders and seal fixed on the salary certificate was also that of Gajanand Grinders. Once when it is a case that Gajanand Grinders are the manufacturers of Sahara Cement and if the salary certificate has the seal of Gajanand Grinders, it could not be said that the claimant has not been able to prove that the deceased was an quality control incharge of Sahara Cement which was manufactured by Gajanand Grinders.

12. This court does not find any good reason for disbelieving the statement of Vijay Kumar Kannouj – AW-5. Thus, for all practical reasons this court is of the opinion that, the Tribunal ought to have accepted the monthly income of the deceased to be Rs.17,000/- instead of Rs.10,000/-. It is ordered accordingly.

13. Accepting Rs.17,000/- as the monthly income and adding 30% of the same towards future prospects, the total amount would be Rs.22,100/- monthly and Rs.2,65,200/- yearly. If we deduct 1/3rd from the said amount towards personal expenses, the amount would becomes Rs.1,76,800/- which if multiplied by applying multiplier of 13 considering the age of the deceased to be 49, the total figure would be Rs.22,98,400/- of which considering the finding of 30% contributory negligence on the part of the deceased is deducted from the said amount i.e. Rs.6,89,520/- from Rs.22,98,400/-, then remaining amount shall be Rs.16,08,880/-. So far as quantum of compensation awarded under the conventional head is concerned, since the Tribunal has awarded total compensation of Rs.2,80,000/- under the conventional head, this court is of the opinion that the said amount seems to be fair and reasonable and does not warrant any enhancement. Thus, the total compensation payable to the claimant shall be Rs.18,88,880/- instead of Rs.11,42,400 as awarded by the Tribunal. The said amount shall also carry interest at the same rate as has been awarded by the Tribunal.

14. This court also finds that 30% of the contributory negligence which was to be deducted could have been only on the loss of dependency and could not have been deducted from the compensation awarded under the conventional head. In the instant case, the finding of the Tribunal shows that after quantifying the entire compensation inclusive of the award under the conventional head, the Tribunal had deducted 30% of contributory negligence. The same according to this court was uncalled for and is not in accordance with law and same deserves to be and is accordingly set-aside and it is held that the amount to be deducted towards contributory negligence would only be from the amount of compensation payable under the loss of dependency.

15. Thus, the appeal of the claimants stands allowed and the appeal of the Insurance Company stands rejected.

Sd/-
(P. Sam Koshy)
Judge

Sumit