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91

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

Misc. Appeal No. 803 of 2005

1. Smt. Sukuri Devi W/o late Ramjag, aged 66 years.
2. Ram Raj S/o late Shri Ramjag, aged 45 years
3. Rajaram S/o late Ramjag, aged 51 years

   All R/o Khursipar, Zone-2, street No.4, Block 3, Bhilai Nagar, District Durg (CG)

---- Appellants

Versus

1. Jasvindar Singh S/o Sajen Singh Sikh, aged 37 years. Driver Truck No. M.T.B. 7910, R/o No. 29524, Bombey Agaripara, Akash Building, Chautha Mahal, P.S. Agri, Bombey (M.S.)
2. Jasbir Singh S/o Gurudayal Singh, truck owner (No. M.T.B. 7910) R/o Agaripara, Akash Building, Chautha Mahal, P.S. Agri, Bombey-2 (M.S.)
3. National Insurance Company Limited, through Divisional No.6, Maker Bhavan Marin Line, Mumbai – 20, Policy No. 140053

---- Respondents

For Appellants	:	Shri Amiyakant Tiwari, Advocate
For Respondent No.3	:	Shri Anand Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

04/09/2017

Challenge in the present appeal is to the order dated 07.08.1999 passed by the 1st Additional Motor Accident Claim Tribunal, Durg in Claim Case No.33 of 1992 whereby the Tribunal in a claim case under section 166 of the MV Act has granted compensation of Rs.1,15,600/- to the claimants. While passing the impugned award, the Tribunal has exonerated the

Insurance Company and fastened the liability of payment of compensation upon the owner and the driver of the offending vehicle.

2. The ground of challenge by the appellants is to the extent that firstly the Tribunal has wrongly exonerated the Insurance Company of its liability and secondly the amount of compensation awarded by the Tribunal is on the lower side and the same deserves enhancement.

3. So far as the exoneration of the liability of payment of compensation of the Insurance Company is concerned, counsel for the appellants challenging the said finding submits that the Tribunal has committed an error of law in not appreciating the records properly in as much as there was this seizure memo which was prepared by the Police Station Chhawani, District Durg in a criminal case registered as Crime No. 446 of 1990 which was initiated against the driver of the offending vehicle pursuant to the accident where he was charged for the offence punishable under Sections 379 and 304A of IPC. In the seizure memo, the Police Authorities, apart from seizing the other relevant documents, had also seized the copy of the insurance policy pertaining to the offending vehicle. The seizure memo reflects the policy number to be 140053 and the said policy was effective for the period up till 11.09.1990. The accident in the instant case was of 26.04.1990. Thus, presumably the vehicle involved in the accident was duly insured at the relevant point of time. According to the counsel for the appellants, this aspect was not properly looked into by the Tribunal. He submits that the Insurance Company was served with the notice of the Tribunal somewhere in the year 1996 and the Insurance Company was granted sufficient opportunities to submit their reply and also to provide necessary documentary proof if any. The Insurance Company in spite of sufficient opportunities being granted did not verify the details of the policy reflected in the seizure memo. On the contrary, the Insurance Company prayed for deletion of its name from the

93

array of the respondents in the light of a policy which was effective from 12.09.1990 to 11.09.1991 i.e. a policy for the period subsequent to the date of accident. Considering the said application, the Tribunal deleted the name of respondent no.3 i.e. the Insurance Company and proceeded to pass an award in favour of the claimants against the driver and the owner exonerating the Insurance Company. According to the counsel for the appellants, the Insurance Company has not acted in a bonafide manner and has made misrepresentation before the Tribunal in respect of there being no valid policy. The insurance company has not led any evidence to show that the details provided in the seizure memo was incorrect, false or fabricated. In the absence of which, the presumption has to be drawn against the Insurance Company. Thus, counsel for the appellants prayed for the liability being fastened upon the Insurance Company.

4. Further contention of the counsel for the appellants is that the deceased in the instant case was working as a loco pilot at Bhilai Steel Plant and his monthly salary was Rs.3272 per month which is proved from Ex. P-22, the salary slip produced before the Tribunal. He submits that the Tribunal ought to have taken Rs.3272 as the monthly income of the deceased for all practical purposes calculating the compensation. But the Tribunal has accepted Rs.2815/- as the monthly income of the deceased. It is also the contention of the counsel for the appellants that the multiplier applied by the Tribunal was on the lower side. He submits that the multiplier as per the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** should have been 9 but in the instant case the Tribunal has applied the multiplier of 4. Thus, prayed for suitable enhancement of the compensation.

5. Shri Anand Gupta counsel appearing for the insurance Company opposing the appeal submits that it is a case where rightly or wrongly the

94

Insurance Company has been exonerated of its liability and that the name of the Insurance Company in fact was deleted from the array of the respondents. He further submits that since the Court below had permitted for deletion of the Insurance Company from the array of the respondents before the Tribunal, the Insurance Company has not been able to produce sufficient evidence to rebut the contentions of the claimants. Therefore, if at all if this Court finds the deletion was wrongly made, the matter may be remitted back to the Tribunal for adjudication upon the issue on merits where the Insurance Company would also get an opportunity to lead evidence. Thus, counsel for the Insurance Company prayed for suitable direction.

6. Having heard the contentions put forth on either side and on perusal of the record, this Court is of the opinion that the application filed by the Insurance Company before the Tribunal seeking for deletion was totally misconceived and mala fide and the same was not after due verification of the facts. The seizure memo along with the criminal case which was produced before the Tribunal shows the details of the policy including the policy number and the period of its effectiveness. In all fairness, the Insurance Company ought to have, at the first instance, got those details examined particularly when the seizure memo reflected the office from where the insurance policy was issued.

7. Considering the facts and circumstances of the case particularly the seizure memo showing the details of the insurance policy, the validity of the insurance policy and the office from where the insurance policy was issued coupled with the fact that the subsequent insurance policy which was a renewal policy was also issued by the same Branch of the Insurance Company from where the earlier policy was issued, this Court is of the opinion that the Insurance Company in the instant case has not acted

95

bonafidely nor rendered proper assistance to the Court for proper adjudication of the case.

8. For the aforesaid reasons, this Court is of the opinion that the Insurance Company has been wrongly permitted to be deleted from the array of respondents by the Tribunal and the Insurance Company has also been erroneously exonerated from its liability.

9. Thus, it is held that the vehicle being duly insured at the relevant point of time as there is no other evidence for a different view to be taken, this Court holds that the Insurance Company is liable to indemnify the owner of the offending vehicle.

10. So far as the quantum of compensation is concerned, taking into consideration Ex. P-25 which is a salary slip of the deceased produced before the Tribunal clearly reflecting the salary of the deceased and the deductions shown in the said salary slip are all towards contributory provident fund and the other statutory deductions which otherwise also would fall within the purview of income, this court is of the opinion that the Tribunal ought to have taken the income of the deceased i.e. Rs.3272/- for the purpose of calculating compensation. This Court therefore holds that for the purpose of calculation of the compensation the amount of income of the deceased should be taken at Rs.3270/- in round figure. If Rs.3270/- is accepted as the monthly income, the yearly income would be Rs.39,240/- and after deduction of 1/3 of the said amount towards personal expenses, the yearly income would come to Rs.26,160/-. If the same is thereafter multiplied by applying the multiplier of 9, the amount would be Rs.2,35,440/-. Thus, the claimants shall be entitled for a compensation of Rs. 2,35,440/- under the head of loss of income and dependency in stead of Rs.1,05,600/- as awarded by the Tribunal. Rest of the award passed by the Tribunal shall remain intact. The enhanced amount shall also carry interest at the same rate as has been awarded by the

Tribunal. The liability of payment of compensation, if the owner and the driver till date have not paid, shall be upon the Insurance Company i.e. respondent no.3 in the present case and if it has been paid, they shall be entitled for refund of the same from the Insurance Company.

11. The appeal thus stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE

Bhola