NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.73 of 2013

1. Smt. Kunti Bai W/o Late Rajkumar Aged About 40 Years
2. Ku. Laxmi D/o Late Rajkumar Aged About 14 Years
3. Sanjay Kumar S/o Late Rajkumar Aged About 12 Years
4. Ku. Heena D/o Late Rajkumar, Aged about 01 Month.
5. Smt. Suthra Devi W/o Ram Singh Aged About 65 Years

Appellants No. 2 to 4 are Minor, through: legal guardian mother Smt. Kunti Bai.

All are R/o. Village Milpara, Utai, P.S. Utai, Distt. Durg (C.G.)

---- Appellants

Versus

1. Dinesh Kumar S/o Manaklal Baksare R/o. Krishna Chowk, P.S. Nevai, Distt. Durg, C.G.
2. Khomlal S/o Milapram Aged About 30 Years R/o Bajrangpara House No. 29, Ward No. 62, Station Maroda, P.S. Nevai, Distt. Durg C.G.
3. United India Insurance Company Limited, Through The Divisional Manager, Divisional Office- Tara Complex, G.E. Road, Power House Bhilai, Distt. Durg C.G.

----Respondents

For Appellants	:	Mr. A.C. Sahu, Advocate
For Insurance Company	:	Ms. Chitra Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/10/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act filed by the Claimants assailing the award dated 09.02.2012, passed by the 1st Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh, in Motor Accident Claim Case No. 23/2011.

2. The fact of the case is that the deceased Rajkumar Dhimar was hit by a Mahindra Champion Transport Vehicle bearing registration No. CG-07-T-0523 on 15.10.2010. The said vehicle belonged to the respondent No.2 and was driven the respondent No.1 and the

vehicle was dully insured with the respondent No.3- Insurance Company.

3. Vide the impugned award the Tribunal fixed the compensation at Rs.3,98,000/- with interest @ 6% per annum from the date of application. While passing the award, the Tribunal has exonerated the Insurance Company of its liability and has fastened the liability of payment of compensation upon the respondents No. 1 & 2.

4. The present appeal has been preferred by the Claimants challenging the liability which has been fastened upon the owner and driver and also have sought for the enhancement of the compensation. The counsel for the appellant submits that it is a case where the only ground for exonerating the Insurance Company was that the driver of the Mahindra Champion Transport Vehicle was not having proper endorsement to drive the transport vehicle, though he had the license to drive the Light Motor Vehicle.

5. According to the counsel for the appellant, the issue is no longer ***res integra*** as it has now been decided by the larger Bench of the Hon'ble Supreme Court in the case of "***"Mukund Dewangan vs. Oriental Insurance Company Limited" AIR 2017 S.C. 3668*** and therefore the impugned award deserves to be modified to the extent of the liability being shifted from the owner and driver to the Insurance Company. It was also contended by the counsel for the appellant that the compensation awarded by the Tribunal is also on the lower side in as much as the income of the deceased who was engaged in the business of selling of fish was earning much more

than that has been assessed by the Tribunal. According to the counsel for the appellant it was an accident of year 2010. The deceased was earning around Rs.9,000/- a month at the rate of Rs.300/- a day and thus prayed for suitable enhancement of the compensation also.

6. The counsel for the Insurance Company opposing the appeal submits that the present impugned award is dated 09.02.2012, when the judgment of Mukund Dewangan (supra) had not been passed by the Hon'ble Supreme Court and that the finding of the Tribunal was justified on the basis of the legal position as is stood then. She further submits that so far as the compensation part is concerned again since there is no proof led by the Claimants, so far as the income of the deceased is concerned, the notional income of Rs.3,000/- a month assessed by the Tribunal cannot be faulted with and thus prayed for the rejection of the appeal.

7. Having heard the contentions on either side and on perusal of the record, this Court is of the opinion that in the light of the larger Bench decision of the Hon'ble Supreme Court in the case of Mukund Dewangan (supra), the issue so far as exoneration of the Insurance Company is concerned stands settled. In the light of the judgment of the Hon'ble Supreme Court the finding of the Tribunal is not sustainable and the same deserves to be and is accordingly set-aside. It is held that the liability of payment of compensation shall be jointly and severally upon the Insurance Company, the owner and the Driver. As regards the enhancement part is concerned, since the

date of accident is December, 2010 undisputedly even the minimum income of a daily wage worker would had been more than Rs.150/- a day which would be Rs.4,500/- a month. Though the claimants had claimed for an income of Rs.9,000/-, but since there is no sufficient evidence on record for all practical purposes, this Court is inclined to assess the income of the deceased at Rs.4,500/- a month instead of Rs.3,000/- as assessed by the Tribunal.

8. Further the claimants would also be entitled for compensation under the future prospects and considering the age of the deceased, the income under future prospects to be added to his income would be 30% of Rs.4,500/-, which makes the monthly income of the deceased at Rs.5,850/-, which would make it Rs.70200/- an year. Taking into the account the total number of claimants, the deduction towards personal expenses to be made would be ¼ and after deduction of ¼ from Rs.70,200/- it would be Rs.52,650/-, which when multiplied by applying multiplier of 14, the amount would be come to Rs.7,37,100/-. It is ordered that the Claimants shall be entitled for payment of compensation of Rs.7,37,100/- towards of loss of dependency instead of Rs.3,78,000/- as assessed by the Tribunal.

9. So far as the conventional head is concerned, considering the entirety of the facts and circumstances of the case and also considering the total number of claimants, this Court is of the opinion that a lump sum compensation of Rs.1,13,000/- under the conventional head would meet the ends of justice. Thus, the total

amount of compensation payable would become Rs.8,50,100/- which is rounded of at Rs.8,50,000/- instead of Rs.3,98,000/- as assessed by the Tribunal. The said enhanced amount shall also carry interest at the same rate as awarded by the Tribunal. The liability of payment shall be upon the Insurance Company.

10. The appeal stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved