NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.1001 of 2013

1. Smt.Urvashi Bai W/o Late Lokuram Sahu, aged about 50 years.
2. Lalji Sahu S/o Late Lokuram Sahu, aged about 32 years.
3. Bhagwani Shau S/o Late Lokuram Sahu, aged about 29 years.
   All are R/o Village – Chhata, Police Station-Utai, Civil & Revenue, District Durg (C.G.).

---Appellants

Versus

1. Abdul Salim S/o Late Abdul Wahid, aged about 48 years, R/o Faridnagar, Supela, Bhilai, Police Station – Bhilai, Civil & Revenue District Durg (C.G.).
2. Ifco Tokio General Insurance Company Limited, Registered and Head Office Ifco Sadan, C/1, District Centre, Saket, New Delhi, Branch Office, through the Branch Manager, Lal Ganga Shopping Mall, G.E.Road, Raipur, District Raipur (C.G.).
3. Smt.Firan Bai W/o Late Guharam Sahu, R/o Chhata, Police Station – Utai, Civil & Revenue District Durg (C.G.).

---Respondents

For appellants	:	Shri Goutam Khetrapal, Advocate.
For resp.No.2/Insurance Company	:	Shri K.Rohan under instructions of Shri Amrito Das, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/11/2017

1. Present is an appeal by the claimants under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 24/01/2012 passed by the learned 1st Additional Motor Accident Claims Tribunal, Durg (C.G.) in Motor Accident Claim Case No.55/2010.

2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded the compensation of Rs.25,82,208/- along with interest @ 6% per annum.

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

4. The appeal of the claimants is firstly assailing the exoneration given to the Insurance Company and secondly the amount of compensation awarded being on the lower side.

5. The counsel for the appellants submits, that so far as exoneration of the Insurance Company is concerned, that was only on the ground that the driver of the vehicle involved in the accident did not have a valid license on the date of accident in as much as he was driving a Mahindra Pick Up Van which was a commercial vehicle and the license which the driver had was only for a Light Motor Vehicle. According to the counsel for the appellants is an issue which now no longer requires any adjudication as it has already been settled by the Hon'ble Supreme Court in the case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited [AIR 2017 SC 3668]*** also in the subsequent decision of ***Sant Lal Vs. Rajesh & Ors. [AIR 2017 SC 4054]***.

6. Perusal of record show, that the vehicle involved in the accident is a Mahindra Pick Up DI bearing registration No.CG-07-CA-0512. Undisputedly, the said vehicle is a Light Motor Vehicle though a commercial vehicle by virtue of its weight.

7. The Supreme Court in the aforesaid two judgments have conclusively held, that merely because the endorsement is not there in the driving license of the driver so far as the permission to drive the commercial or a transport vehicle by itself would not absolved the Insurance Company of its liability.

8. In the light of the aforesaid two decisions of the Supreme Court this court is of the opinion, that the finding of the Tribunal in the instant case exonerating the Insurance Company thus is bad in law and the same is accordingly set aside and it is held that the liability of payment of compensation shall be jointly and severally upon the Insurance Company, owner and the driver.

9. So far as enhancement of compensation is concerned the counsel for the appellants submits, that the Tribunal ought to have taken into consideration the income under future prospects.

10. Taking into consideration the recent larger bench decision of the Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors. (SLP Civil No. 25590/2014, decided on 31/10/2017)*** this court is of the opinion that since, admittedly, the deceased in the instant case was a regular permanent employee of Bhilai Steel Plant, as per the guidelines laid down by the Supreme Court in the said judgment, the claimants shall be entitled for future prospects to the tune of 15%.

11. Accordingly, 15% of the monthly income of the deceased of Rs.30,400/- is Rs.4,560/- which if added with the monthly income, the figure would come to Rs.34,960/- of which if 1/3rd is deducted towards personal expenses, the amount would come to Rs.23,307/- which if multiplied by applying multiplier of 12 would bring the yearly income to Rs.2,79,684/- of which the said amount if multiplied by applying multiplier of 11, the amount would come to Rs.30,76,524/-. Considering the facts and circumstances of the case and also considering the claimants this court is of the opinion, that ends of justice would meet if the claimants are awarded a lump sum compensation of Rs.23,476/- towards conventional head making total compensation payable at Rs.31,00,000/- instead of Rs.25,82,208/-. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal. It is expected, that the Insurance Company shall deposit the entire amount at the earliest.

12. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Sumit