NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.1256 of 2015

1. Smt. Tarsila W/o Late Jerom Lakda, Aged About 40 Years.
2. Sandeep Lakda, S/o Late Jerom Lakda, Aged About 20 Years.
3. Anoop Lakda, S/o Late Jerom Lakda, Aged About 18 Years.
4. Ku. Reshma Lakda D/o Late Jerom Lakda, Aged About 15 Years.
5. Anju Lakda S/o Late Jerom Lakda, Aged About 14 Years
   Appellant Nos. 4 & 5 are Minor, Through Its Mother Smt. Tarsila.
6. Jethu Lakda S/o Boloram, Aged About 65 Years Caste.
   All are by Caste-Uraoo, R/o Nayapara Sabera, Thana Bande, Tahsil Pakhanjore, District U.B. Kanker.

---Appellants

Versus

1. Shantiranjan @ Shanti Sikdar S/o Nalini Sikdar, Aged About 57 Years R/o P. V. 8, At Present Aavaspara, Pakhanjore, District U. B. Kanker.
2. Sukdeve Kirtaniya S/o Jagdish Kirtaniya, Aged About 20 Years R/o P. V. 38, Thana And Tahsil Pakhanjore, District U. B. Kanker.
3. The Oriental Insurance Company Limited Through Branch Manager, Mandal Complex, Shop No. 11, Annapurna Para Road, District U.B. Kanker.

---Respondents

AND

MAC No.1341 of 2015

1. Shanti Ranjan @ Shanti Sikdar S/o Nalini Sikdar, Aged About 57 Years R/o P.V. 8 Present Address Awaspara Pakhanjur District North Bastar Kanker, Chhattisgarh (Owner)
2. Sukdev Kirtaniya S/o Jagdish Kirtaniya, Aged About 20 Years R/o P.V. 38 P.S. And Tahsil Pakhanjur District North Bastar Kanker, Chhattisgarh (Driver)

---Appellants

Versus

1. Smt. Tarsila W/o Late Jerom Lakda, Aged About 40 Years.
2. Sandeep Lakda, S/o Late Jerom Lakda, Aged About 20 Years.
3. Anoop Lakda, S/o Late Jerom Lakda, Aged About 18 Years.
4. Ku. Reshma Lakda D/o Late Jerom Lakda, Aged About 15 Years.
5. Anju Lakda S/o Late Jerom Lakda, Aged About 14 Years
   Appellant Nos. 4 & 5 are Minor, Through Its Mother Smt. Tarsila.
6. Jethu Lakda S/o Boloram, Aged About 65 Years Caste.
   All are by Caste-Uraoo, R/o Nayapara Sabera, Thana Bande, Tahsil Pakhanjore, District U.B. Kanker.

7. The Oriental Insurance Co. Ltd., Mandal Complex Shop No.11 Annapurna Road Kanker District North Bastar Kanker, Chhattisgarh.

---Respondents

Shri Anand Shukla and Shri P.K.Tulsyan, Advocates for respective appellants.
Shri Sudhir Agrawal, Advocate for Oriental Insurance Co.Ltd.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/11/2017

1. These are the two appeals arising out of the award dated 31/07/2015 passed by the learned Additional Motor Accident Claims Tribunal, Bhanupratappur, District U.B. Kanker in Motor Accident Claim Case No.23/2014.
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.23,73,266/- along with interest @ 6% per annum from the date of application.
3. MAC No.1256/2015 is an appeal by the claimants seeking enhancement and MAC No.1341/2015 is an appeal by the owner and the driver.
4. The Tribunal while passing the award has exonerated the Insurance Company and have fastened the liability of payment of compensation upon the owner and the driver.
5. The contention of the counsel for the appellants is that, the Insurance Company has been wrongly exonerated of its liability in as much as the vehicle was duly insured and the driver also had a proper license to drive the vehicle involved in the accident and the issue involved in the case is squarely covered by the two recent

decisions of the Hon'ble Supreme Court in the case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited [AIR 2017 SC 3668]*** as well as the subsequent decision passed in the case of ***Sant Lal Vs. Rajesh & Ors.[AIR 2017 SC 4054]***.

6. The counsel for the Insurance Company however opposes and argued the appeal and prayed for the dismissal of the appeal of the owner on the ground, that the finding of the Tribunal is proper, legal and justified as it is based upon the evidence which have come before the Tribunal.

7. Perusal of the record would show, that the vehicle involved in the accident is a Tractor attached with the Trolley bearing registration Nos.CG-19-G-1570 and CG-19-G-1622. The vehicle at the time of accident on 06/01/2014 was being driven by one Sukhdev Kirtaniya.

8. The undisputed fact which has come before the Tribunal by way of evidence is that the said Sukhdev Kirtaniya had a license to drive a Light Motor Vehicle. The finding of the Tribunal is that since, the Trolly was attached to the Tractor, the segment gets changed and it becomes the heavy goods vehicle or a transport vehicle and therefore, the driver ought to have a license to drive the heavy goods vehicle and therefore, the Insurance Company was exonerated. In the opinion of this court, this issue is no longer res-integra for the reason, that the Supreme Court in the case of Sant Lal (Supra) dealing with the identical issue involving the Tractor and Trolley, relying upon the recent larger bench decision in the case of Mukund Dewangan (Supra) has followed the same principles and have held, that no separate endorsement is required to authorize himself to drive the said vehicle if it is the same class.

9. In the light of the said two decisions, the finding of the Tribunal is not sustainable and the same deserves to be and is accordingly set aside and it is held, that the liability of payment of compensation shall be jointly and severally upon the owner, driver and the Insurance Company i.e. Oriental Insurance Company Limited.

10. So far as the appeal of the claimants for enhancement of the award is concerned, the counsel for the claimants submits, that the Tribunal in the instant case has not taken future prospects while computing the compensation. He further submits, that the compensation under the conventional head also is on the lower side and thus prayed for the compensation to be suitably modified.

11. Accepting the income of the deceased as assessed by the Tribunal to be Rs.18,696/-, if we apply the principles of law laid down by the larger bench decision of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors. (SLP Civil No. 25590/2014, decided on 31/10/2017)***, the claimants would be entitled for 30% of its income towards future prospects which would bring the amount to Rs.5,609/- which if added to his monthly income, the figure would come to Rs.24,035/- per month and Rs.2,91,660/- yearly of which if 1/4th is deducted towards personal expenses, the amount would become Rs.2,18,745/- which if multiplied by applying multiplier of 13, the amount would come to Rs.28,43,685/-. It is ordered accordingly, that the claimants shall be entitled for the compensation of Rs.28,43,685/- towards loss of dependency. In addition, considering the facts and circumstances of the case this court is of the opinion, that ends of justice would meet if the claimants are granted a lump sum compensation of Rs.56,315/- under conventional head making the total compensation

payable at Rs.29,00,000/-. Thus, the claimants shall be entitled for total compensation of Rs.29,00,000/- instead of Rs.23,73,266/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

12. Thus, the appeals filed by the claimants as well as the owner both stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Sumit