NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 579 of 2013

1. Smt. Kasturi Singh W/o Late Shankar Singh Aged About 49 Years R/o Mohtarai, P.S. Ratanpur, Distt. Bilaspur C.G.
2. Uttam Singh S/o Late Shankar Singh Aged About 24 Years R/o Mohtarai, P.S. Ratanpur, Distt. Bilaspur C.G.
3. Smt. Pushpa Singh W/o Rajesh Singh Aged About 24 Years R/o Mohtarai, P.S. Ratanpur, Distt. Bilaspur C.G.

---- Appellants

Versus

1. Ashok Yadav S/o Kanhaiya Lal Yadav Aged About 30 Years R/o Near Old Police Chouki, Near Adhari Kachar School, P.S. Rampur, Korba, Distt. Korba C.G.
2. Satendra Sahu S/o D.P. Sahu R/o O.D. 12, C.S.E.B. Colony, Korba, Distt. Korba C.G.
3. National Insurance Company Ltd. Through- Branch Manager, 13 Meenu Complex, Kosabadi, Korba, Distt. Korba C.G.

---- Respondents

MAC No. 673 of 2013

Satendra Sahu S/o D.P. Sahu, aged about 35 years, R/o O.D. 12, C.S.E.B. Colony, Korba, Distt. Korba C.G.

---- Appellant

Versus

1. Smt. Kasturi Singh W/o Late Shankar Singh Aged About 49 Years R/o Mohtarai, P.S. Ratanpur, Distt. Bilaspur C.G.
2. Uttam Singh S/o Late Shankar Singh Aged About 24 Years R/o Mohtarai, P.S. Ratanpur, Distt. Bilaspur C.G.
3. Smt. Pushpa Singh W/o Rajesh Singh Aged About 24 Years R/o Mohtarai, P.S. Ratanpur, Distt. Bilaspur C.G.
4. National Insurance Company Ltd. Through- Branch Manager, 13 Meenu Complex, Kosabadi, Korba, Distt. Korba C.G.
5. Ashok Yadav S/o Kanhaiya Lal Yadav Aged About 30 Years R/o Near Old Police Chouki, Near Adhari Kachar School, P.S. Rampur, Korba, Distt. Korba C.G.

---- Respondents

For Claimants	:	Shri Mukesh Sharma, Advocate.
For Owner-Driver	:	Shri Pramod Shrivastava, Advocate.
For Insurance Company	:	Shri Ratan Pusty, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

<u>03.11.2017</u>

1. By this common judgment both the appeals are being disposed of as common facts & issues are involved in these appeals which arise out of the same accident.
2. Both the appeals under Section 173 of the Motor Vehicles Act have been filed against the award dated 19.03.2013 passed by the 3rd Additional Motor Accident Claims Tribunal, Bilaspur, in Claim Case No.226/2011. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act in a death case has awarded a compensation of Rs.6,32,000/- alongwith interest @ 6 percent per annum from the date of application. While passing the award, the Tribunal has exonerated the insurance company of its liability and have fastened the liability upon the owner and driver of the offending vehicle.
3. MAC No. 579 of 2013 has been filed by the claimants seeking enhancement of compensation whereas, MAC No.673 of 2013 has been filed by the owner challenging the liability part.
4. The facts of the case is that, on 08.04.2011 Shankar Singh met with an accident when he was hit by the Tata Indigo Car bearing registration No. CG-12-T-0211 which was owned by appellant Satyendra Sahu and driven by respondent-Ashok Yadav.
5. The contention of the appellant-owner is that the the finding of the Tribunal exonerating the insurance company is bad in law. He submits that it is a case where indisputably the driver of the India Car was having a licence to drive light motor vehicle (NT) whereas, the

Tribunal has exonerated the insurance company only on the ground that since the Car was registered as a Taxi and the driver Ashok was not having licence to drive the Car with an endorsement of permission to drive transport vehicle.

6. This issue is now well settled by the larger Bench decision of Supreme Court in case of Mukund Dewangan Vs. Oriental Insurance Co. Ltd., AIR 2017 SC 3668, wherein it has been held that only on account of there being no proper endorsement on the licence of the driver, if the vehicle otherwise is of the same type, the insurance company cannot be absolved of its liability.

7. The appeal of the owner (MAC No.673 of 2013) thus deserves to be and is hereby allowed in the light of decision in case of Mukund Dewangan (Supra). The award thus stands modified to the extent that the liability of payment of compensation shall be jointly and severally upon the owner, driver and the insurance company and the responsibility of payment of compensation shall be upon the insurance company.

8. So far as appeal of the claimants (MAC No.579 of 2013) is concerned, the contention of the claimants is that, the Tribunal has not properly assessed the income of the deceased and the compensation awarded is on the lower side. So also the Tribunal has not properly assessed the future prospects and the compensation under conventional heads is also on the lower side, and therefore the award deserves to be suitably modified/enhanced.

9. According to the claimants, the income assessed by the Tribunal is

Rs.3000/-per month, when in the year, 2011 the minimum income which an unskilled labour would have been earning more than Rs.300/- per day i.e. Rs.9000/- per month. Thus, prayed for suitable enhancement of compensation. However, the insurance company opposes the appeal and submits that the awarded amount is just and proper and does not call for any interference.

10. So far as income is concerned, this court is of the opinion that considering the fact that accident is of the year, 2011 and the income assessed by the Tribunal is of Rs.3000/- yearly which definitely is low as the minimum income which the deceased could have earned in the year 2011 was at least Rs.150-200 per day which makes monthly income at Rs.4500-6000/-. Accordingly, this court assesses the monthly income of the deceased at Rs.5000/- instead of Rs.3000/- as assessed by the Tribunal.

11. Keeping in view the decision of larger Bench of Supreme Court in case of National Insurance Co. Ltd. Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014, the claimants shall be entitled for 10 percent of the income towards future prospects.

12. Accordingly, accepting the monthly income of the deceased at Rs.5000/- if 10 percent of it is added towards future prospects, the amount would reach to Rs.5500/- i.e. Rs.66,000/- yearly, of which if 1/3rd is deducted towards personal expenses, the income would come to Rs.44,000/-, which if multiplied applying the multiplier of 11, the compensation would reach to Rs.4,84,000/-. Thus, it is ordered that the claimants shall be entitled for Rs.4,84,000/- for loss of

dependency instead of Rs. 2,64,000/- as assessed by the Tribunal.

13. Further, this court is of the opinion that the claimants shall also be entitled for a lump sum compensation of Rs.70,000/- under conventional heads keeping in view the ratio laid down in Pranay Sethi (Supra). Likewise, the compensation towards medical expenses incurred as awarded by the Tribunal at Rs.3,50,000/- is ordered to remain intact. In addition, the claimants would also be entitled for a lump sum compensation of Rs. 50,000/- towards incidental expenses which they have incurred towards local transport, engagement of attendant and also for future incidental medical expenses. Thus, the total compensation payable to the claimants would become Rs. 9,54,000/. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.9,54,000/- instead of Rs.6,32,000/-.

14. The enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.

15. Accordingly, both the appeals are allowed. The liability of payment of compensation stands shifted upon the insurance company.

Sd/-
(P. Sam Koshy)
Judge

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