NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 551 of 2014

1. Smt.Savitri Bai Yadav W/o Late Gopal Yadav Aged About 35 Years
2. Dinesh Kumar Yadav S/o Late Gopal Yadav Aged About 21 Years
3. Ku. Ganga Yadav D/o Late Gopal Yadav Aged About 17 Years
4. Ku. Jamuna Yadav D/o Late Gopal Yadav Aged About 17 Years
5. Domeshwar Yadav S/o Late Gopal Yadav Aged About 15 Years
   Respondents No. 3 to 5 are Minor, Through- Mother Smt. Savitri Bai Yadav, R/o Sahaspur, P.S. & Tah. Rajim, P.O. Rajim, Distt. Raipur C.G.
6. Budhuram Yadav S/o Joidha Yadav Aged About 65 Years,
7. Smt. Sukhbai Yadav W/o Budhuram Yadav Aged About 60 Years,
   All R/o Sahaspur, P.S. & Tah. Rajim, P.O. Rajim, Distt. Raipur C.G.

---- Appellants

Versus

1. Bhagwat Sahu S/o Thanuram Sahu Aged About 35 Years R/o Ward No.21, Adarsh Nagar, Mahasamund, Distt. Mahasamund C.G., Present Address- R/o Teka, Through- Koundkera, P.S. & Tah. Rajim, Post Office- Rajim, Distt. Raipur C.G.
2. Yogendra Singh S/o Gajraj Singh Aged About 45 Years R/o Teka, Through- Koundkera, P.S. & Tah. Rajim, P.O. Rajim, Distt. Raipur C.G.
3. The Oriental Insurance Co. Ltd. Thru- Branch Manager, Branch Office, Madina Building, Jail Road, Raipur, P.S. Gol Bazar, P.O. Raipur, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellants	:	Shri AL Singroul, Advocate.
For respondent No.1 & 2	:	Shri Shivendu Pandya, Advocate.
For respondent No.3	:	Shri AK Athaley and Shri NK Malviya, Advocates.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

09.11.2017.

1. The present is an appeal filed by the claimants seeking enhancement under Section 173 of the Motor Vehicles Act (for short, the MV Act) against the award dated 28.07.2012 passed by the Additional Motor Accident Claims Tribunal, Gariyaband (for short, the Tribunal) in Claim Case No.66 of 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.3,85,000/- to the claimants along with interest @ 7.5 percent per annum from the date of application. The liability of payment of compensation has been fastened upon the driver and owner exonerating the insurance company of its liability on the ground that driver of offending vehicle did not have proper endorsement on his licence to drive transport vehicle.

2. The present is an appeal by the claimants questioning exoneration of the insurance company, so also the quantum of compensation awarded alleging that the same is on the lower side as the income assessed was not commensurate to the income which the deceased was drawing at the time of accident. He further submits that the award also deserves to be modified inasmuch as compensation under the future prospects has not been taken into consideration by the Tribunal while quantifying the compensation. Likewise, it was also contended that deduction made in the instant case considering the total number of claimants is also not proper.

3. Learned counsel appearing for the insurance company opposes the cross objection on the ground that no substantial proof has been made by the claimants to establish the income and therefore the income assessed by the Tribunal cannot be said to be bad or on the lower side and the award does not warrant any interference. However, the counsel for the respondents-insurance company fairly admits that the present is a case which is squarely covered by the decision of the Supreme Court in case of Mukund Dewangan Vs. Oriental Insurance Co. Ltd, AIR 2017 SC 3668 wherein it has been held that merely

because there is no endorsement on the licence of the driver who otherwise has a licence to drive the Light Motor Vehicle by itself would not absolve the insurance company of its liability.

4. Having heard the rival contentions put forth on either side and on perusal of records, this court is of the opinion that in addition to recent larger Bench decision of Supreme Court in case of Mukund Dewangan (Supra) the Supreme Court has also in a recent decision in case of Sant Lal Vs. Rajesh & Ors., AIR 2017 SC 4054 in relation to the use of tractor and trolley has applied the judgment of Mukund Dewangan (Supra) and have ordered that the liability of payment of compensation under the said circumstances would be that on the insurance company.

5. Keeping in view the aforesaid two decisions of the Supreme Court, this court is of the opinion that the instant case is squarely covered by the aforesaid two decisions and therefore, the findings of the Tribunal exonerating the insurance company is set aside and the award is modified and ordered to the extent that the liability of payment shall be jointly and severally upon the owner, driver and the insurer of vehicle involved in the accident.

6. So far as the enhancement of compensation is concerned, taking note of the fact that it is an accident of the year, 2011 where even an unskilled labour would had been getting daily wage of Rs.150-200/- which would make the monthly income at Rs.4500-6000/-. As the claimants have not led any evidence with regard to income of the deceased, this court assesses the minimum income of the deceased

at Rs.4500/- per month i.e. Rs.54,000/- annually.

7. 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 40 percent of the income towards future prospects.

8. Accordingly, accepting the yearly income of the deceased at Rs.54,000/- if 40 percent of it is added towards future prospects, the amount would reach to Rs.75,600/-, of which if 1/5 is deducted towards personal expenses considering the total number of claimants to be that of 7, the income would come to Rs.60,480/-, which if multiplied applying the multiplier of 15, the compensation would reach to Rs.9,07,200/-. Thus, it is ordered that the claimants shall be entitled for Rs.9,07,200/- for loss of dependency.

9. 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. Thus, the total compensation payable to the claimants would become Rs. 9,77,200/-. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.9,77,200/-.

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

11. Accordingly,the appeal of the claimants stands allowed and disposed of. Since the exoneration of insurance company has already been set aside in the preceding paragraph, the liability of payment of compensation shall now be jointly and severally upon the owner, driver

and insurer of the offending vehicle and it is directed that the insurance company shall deposit the amount of compensation at the earliest.

Sd/-

(P.Sam Koshy)
Judge

inder