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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1388 OF 2016

Shriman Divisional Manager, The Oriental Insurance Co. Ltd., Divisional Office No.1, Madina Manzil, Jail Road, Raipur (C.G.)

… Appellant

Versus

1. Divyaranjn Bagh, age 13 years, S/o Late Tikelal Bagh, through natural guardian mother Smt. Baasmati Bagh, R/o Village Kamlamal, Post- Jaibahal, P.S. & Tahsil Borhen, District Nuaaparha (Orissa)
2. Chintamani Bagh, age 15 years, S/o Late Tikelal Bagh, through natural guardian mother Smt. Baasmati Bagh, R/o Village Kamlamal, Post- Jaibahal, P.S. & Tahsil Borhen, District Nuaaparha (Orissa)
3. Ku. Mitanjali Bagh, age 17 years, D/o Late Tikelal Bagh, through natural guardian mother Smt. Baasmati Bagh, R/o Village Kamlamal, Post- Jaibahal, P.S. & Tahsil Borhen, District Nuaaparha (Orissa)
4. Smt. Baasmati Bagh, age 35 years, W/o Late Tikelal Bagh, R/o Village Kamlamal, Post- Jaibahal, P.S. & Tahsil Borhen, District Nuaaparha (Orissa)
5. Heeralal Patel, age 38 years, S/o Shri Kshtrar Singh Patel, R/o Village Tanwant, Nuaaparha, P.S., Tahsil & District- Nuaaparha (Orissa)
6. Babulal Sainik, age 43 years, S/o Shri Sukhamlal Sainik, R/o Ward No.34, near Sulab, Shivpara, District Durg (C.G.)

… Respondents

MISC. APPEAL (C) NO. 1755 OF 2016

1. Divya Ranjan Baug, age 13 years, S/o Late Tikelal Baug, minor hence impleaded through his natural guardian mother i.e. appellant No.4 Smt. Basmati Baug, Wd/o Late Tikelal Baug, aged about 35 years, R/o Village Kamalmal, Post- Jaybahal, P.S. & Tahsil Boden, District Nuapada (Odisha)
2. Chintamani Baug, age 15 years, S/o Late Tikelal Baug, minor hence impleaded through his natural guardian mother i.e. appellant No.4 Smt. Basmati Baug, Wd/o Late Tikelal Baug, aged about 35 years, R/o Village Kamalmal, Post- Jaybahal, P.S. & Tahsil Boden, District Nuapada (Odisha)
3. Ku. Mitanjali Baug, age 17 years, D/o Late Tikelal Baug, minor hence impleaded through his natural guardian mother i.e. appellant No.4 Smt. Basmati Baug, Wd/o Late Tikelal Baug, aged about 35 years, R/o Village Kamalmal, Post- Jaybahal, P.S. & Tahsil Boden, District Nuapada (Odisha)
4. Smt. Basmati Baug, age 35 years, Wd/o Late Tikelal Baug, R/o Village Kamalmal, Post- Jaybahal, P.S. & Tahsil Boden, District Nuapada (Odisha)

… Appellants

Versus

1. Hiralal Patel, S/o Shri Kshatar Singh Patel, R/o Village Tanvant, Nuapada, P.S./Tah./Distt. Nuapada (Odisha)
2. Babulal Sainik, S/o Sukham Lal Sainik, aged about 43 years, R/o Ward No.34, near Sulabh, Shivpara, Durg, District Durg (C.G.)
3. The Oriental Insurance Co. Ltd., through Divisional Manager, Divisional Office No.1, Madina Manzil, Jail Road, Raipur, District Raipur (C.G.)

… Respondents

Mr. Raj Awasthi, Advocate, for the Appellant in M.A.(C) No. 1388 of 2016 and for Respondent No.3 in M.A.(C) No. 1755 of 2016.
Mr. Amiyakant Tiwari, Advocate, for the Appellants in M.A.(C) No. 1755 of 2016 and for Respondents No. 1 to 4 in M.A.(C) No. 1388 of 2016.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

31/07/2017

1. These are the two appeals, i.e., M.A.(C) No. 1388 of 2016 being of the Insurance Company and M.A.(C) No. 1755 of 2016 being of the Claimants, against the award dated 8.8.2016 passed by the Additional Motor Accident Claims Tribunal, Raipur, in Motor Accident Claim Case No. 434 of 2014.

2. So far as the facts of the case are concerned, there does not appear to be any dispute as regards the accident, the resultant death of Tikelal Bagh (the deceased), the age of the deceased being 35 years at the time of accident, the deceased met with an accident with the offending vehicle i.e. the motorcycle bearing registration no. CG07-LN/8520 owned by Respondent- Babulal Sainik and driven by Respondent- Heeralal Patel and insured with the Oriental Insurance Co. Ltd. at the time of accident. It is also not in dispute that the Claimants before the Tribunal were the widow and minor children of the deceased.

3. In view of the aforesaid admitted factual position, this Court refrains itself from narrating the entire facts of the case.

4. The Tribunal, on an appeal filed by the Claimants under Section 166 read with Section 140 of the Motor Vehicles Act, 1988, vide impugned award allowed the same and ordered for payment of compensation of Rs. 5,47,000/- with interest thereon at the rate of 7.5% per annum from the date of filing of the claim application, fastening the liability upon the owner, driver and insurer of the offending motorcycle to pay the same to the

Claimants. It is this award which has been assailed by the Insurance Company as well as by the Claimants in the present two appeals.

5. The Insurance Company has challenged the impugned award on the ground that the Tribunal has not granted sufficient opportunity of hearing to prove its case inasmuch as there was a specific pleading by the Insurance Company that the policy which is alleged to have been produced during the course of proceeding was in fact a fake policy and it is a case where the offending motorcycle did not have any insurance at the time of accident and that the Insurance Company has not insured the offending motorcycle at the relevant point of time. The Insurance Company thus prayed for the setting aside of the impugned award and for remitting the matter back to the Tribunal with a liberty to the Insurance Company to adduce evidence to substantiate it case.

6. The Claimants however oppose the appeal of the Insurance Company on the ground that the Insurance Company had been given more than sufficient time to lead their evidence but the Insurance Company did not avail the opportunity and in the absence of any evidence, the Tribunal has rightly closed the right of the Insurance Company and proceeded further to decide the matter and therefore the appeal of the Insurance Company is liable to be rejected. At the same time, the Claimants, who have also preferred an appeal for enhancement of compensation awarded by the Tribunal, submit that the compensation awarded deserves for enhancement on the ground that the notional income taken by the Tribunal of Rs.3000/- per month is extremely on a lower side as the deceased being an agriculturist himself used to work in the field and at the relevant point of time the minimum of the income, which a labourer in the field would have got was between 150-200/- a day, which comes to around Rs.4500-6000/- a month. Even if the Tribunal would have taken the minimum, it should had been Rs.4500/- and not Rs.3000/- per month as has been assessed by the Tribunal. They further submits that the Tribunal has not taken into account the income so far as future prospects is concerned for the purpose of quantifying the compensation. The Claimants thus prayed for suitable enhancement of compensation awarded by the Tribunal.

7. On such prayer of the Claimants, the Insurance Company opposes the same and submits that since the stand of the Claimants was that the deceased was an agriculturist and that his agricultural land remains in the possession of the Claimants, the Tribunal was justified in awarding the compensation taking the notional income of the deceased as Rs.3000/- per month and quantifying the compensation at Rs. 5,47,000/-, which does not require any further enhancement and the appeal of the Claimants is liable to be rejected.

8. Having heard the rival contentions put forth on either side and on perusal of the records, when we look into the appeal of the Insurance Company wherein the contention is of denial of sufficient opportunity, the order-sheets reflect that the Tribunal for the first time on 6.5.2015 had directed the Insurance Company to lead evidence. It is also pertinent to note of the fact that on the same date itself, an application under Section 170 moved by the Insurance Company was also allowed and they were specifically instructed to keep all the witnesses present on the next date of hearing or at-least Talwana of those witnesses should be deposited. It appears that till 27.7.2016 that is for more than about 13 months, the Insurance Company could not lead any evidence whatsoever. In between, they had also moved an application for framing additional issues, which was also done, and in spite of that also the Insurance Company could not lead any evidence. Therefore, the Insurance Company cannot now cry foul of not being given sufficient opportunity. They had almost 13 months' time and numerous dates of hearing fixed for their evidence but they failed to lead any evidence. The ground of there being no proper insurance cannot also be accepted in the given facts, for the reason that it was an application 170 which was moved by the Insurance Company itself seeking permission to establish their case in addition to whatever defence raised in their written statement. This contention forces this Court to draw an inference that there was a policy duly issued by the Insurance Company. The fact that the Insurance Company had moved an application under Section 170 of the Motor Vehicles Act and which stood allowed the safest inference under such circumstances that can be drawn is of the Insurance Company having a valid policy. In view of the same, the finding of the Tribunal does not warrant interference so far as the said contention of the Insurance Company is concerned.

9. As far as the appeal preferred by the Claimants are concerned, this Court has no hesitation in accepting the fact that in the year 2014, that is the period when the accident arose, the minimum that an agricultural labourer would have earned, would had been Rs.4500-6000/- a month and that for the purpose of quantification of compensation, the minimum of the same which should had been taken by the Tribunal in stead of going for a notional income of Rs.3000/- a month. Therefore, for the purpose of quantifying the income of the deceased, it ought to had been Rs.4500/- a month, which comes to Rs.54,000/- per annum. It is ordered accordingly.

10. The Hon'ble Supreme Court in the case of **Sarla Verma (Smt.) and others** v. **Delhi Transport Corporation and Another** [2009 (6) SCC 121] and **Rajesh and Others** v. **Rajbir Singh and Others** [2013 (9) SCC 54], has categorically held that while calculation of compensation is done, the income towards the future prospects should also be borne in mind.

Accoridngly, considering the age of the deceased the income under the head of future prospects should be 50%. If 50% of Rs.54,000/- is added, i.e. Rs.27,000/-, the annual income of the deceased would be Rs.81,000/- of which if 1/3 is deducted towards the personal expenses, it would come to Rs. 54,000/- which if multiplied by the multiplier of 16, the same would be Rs. 8,64,000/-. Thus, it is held that the Claimants shall be entitled for a compensation of Rs.8,64,000/- towards loss of dependency, in stead of Rs.4,32,000/- which has been assessed by the Tribunal. It is ordered accordingly.

11. In the result :

(1) The appeal of the Insurance Company, i.e. M.A.(C) No. 1388 of 2016, is dismissed.

(2) The appeal preferred by the Claimants, i.e. M.A.(C) No. 1755 of 2016, is allowed and the impugned award is modified to the extent that the Claimants shall be entitled for an enhanced compensation of Rs. 4,32,000/- in addition to what has been awarded by the Tribunal. Rest of the amounts awarded by the Tribunal under the other heads shall remain intact. The enhanced amount of compensation shall also carry the interest at the same rate as has been awarded by the Tribunal. All the other directions and conditions, as awarded by the Claims Tribunal, shall remain intact.

Sd/-
(P. Sam Koshy)
Judge

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