

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No.595 of 2016

Branch Manager, Chalamandalam General Insurance Company Ltd.,
1st floor near Above Selfrosidendr Center, Renault Show room, Vyapar
Vihar Road, Bilaspur (C.G.).

---Appellant

Versus

1. Sadharam Yadav S/o Shivcharan Yadav, aged about 52 years.
2. Smt.Suruj Bai W/o Sadhu Ram, aged about 48 years.
3. Mannu Ram Yadav S/o Sadharam Yadav, aged about 15 years.
4. Ku.Mana Yadav D/o Sadharam Yadav, aged about 17 years.

Respondents No. 3 & 4 are minor and represented through their father
Sadharam.

All are R/o village Kunda, Tehsil Pandariya, District Kabirdham (C.G.).

5. Vijay Shukla S/o Bihari Shukla, aged about 34 years, R/o village Makri,
P.S.Kunda, Tehsil Pandariya, District Kabirdham (C.G.).

---Respondents

MAC No.623 of 2017

1. Sadharam Yadav S/o Shivcharan Yadav, aged about 52 years.
2. Smt.Suruj Bai W/o Sadharam Yadav, aged about 48 years.
3. Mannu Ram Yadav S/o Sadharam Yadav, aged about 15 years.
4. Ku.Mana Yadav D/o Sadharam Yadav, aged about 17 years.

Respondents No. 3 & 4 are minor and represented through father and
legal guardian Sadharam Yadav.

All are R/o village – Kunda, Tahsil Pandaria, District Kabirdham (C.G.).

---Appellants

Versus

1. Vijay Shukla S/o Bihari Shukla, aged about 34 years, R/o village Makri,
P.S.Kunda, Tehsil Pandariya, District Kabirdham (C.G.).
2. Branch Manager, Chalamandalam General Insurance Company Ltd.,
1st floor near Above Selfrosidendr Center, Renault Show room, Vyapar
Vihar Road, Bilaspur (C.G.).

---Respondents

Shri C.K.Sahu, Advocate for resp.No. 1 to 4 in MAC No.595/2016 & for appellants in MAC No.623/2017.

Shri Kunal Das, Advocate for resp.No. 5 in MAC No.595/2016 & for resp.No.1 in MAC No.623/2017.

Shri Ghanshyam Patel, Advocate for Insurance Company.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/12/2017

1. These are the two appeals filed under Section 173 of the Motor Vehicle Act assailing the award dated 19/02/2016 passed by the learned Motor Accident Claims Tribunal, Kabirdham (Kawardha) (C.G.) in Motor Accident Claim Case No.26/2015.

2. Vide the said impugned award, the Tribunal in a death case under Section 163-A has awarded a compensation of Rs.3,74,000/- with interest @ 7% per annum from the date of application.

3. So far as the appeal by the Insurance Company i.e. MAC No.595/2016 is concerned it was contended by the counsel for the Insurance Company that, it is a case where there was no policy issued in favour of the respondent/owner of the offending vehicle and that the Tribunal has wrongly fastened the liability upon the Insurance Company. He further submits that it is a case where the only document which was produced before the Tribunal showing issuance of policy was a proposal form written by the owner, but the same has not been deposited with the Insurance Company nor has the Insurance Company received any premium against the said proposal form nor a policy as such was issued. Even a cover note also was not issued. He

further submits that, the finding of the Tribunal is erroneous for the reason that the Tribunal has accepted the proposal form as the cover note policy whereas it was only a proposal form and that too not in the original form which was in the possession of owner. The fact that the original form itself was in the possession of owner shows that, the same has not been deposited with the Insurance Company failing which it would not had been with the possession of the owner and thus prayed for the award to be suitably modified and the liability be shifted upon the owner.

4. The counsel for the respondent/owner however opposing the appeal submits that, the finding of the Tribunal does not seem to be erroneous in as much as it is based upon the evidence which have come on record and therefore the appeal of the Insurance Company deserves to be rejected. He further submits that, if the owner has paid the money for the issuance of policy to the agent of the Insurance Company, even then the Insurance Company would be fully liable to indemnify the owner.

5. However perusal of record show that, the owner has not been able to show as to whom the money was deposited, when was the money deposited and what was the proof of payment of money towards the issuance of policy.

6. So far as the claimants appeal are concerned, the counsel for the claimants submits that, the finding of the Tribunal in fastening the liability upon the Insurance Company seems to be proper, legal and justified. He further submits that, the compensation awarded to the claimants deserves for enhancement in as much as the Tribunal should have taken into account

the income under the future prospects while quantifying the compensation. The counsel for Insurance Company raised his objection that in the claim case under Section 163-A, the income under future prospects cannot be added or else the income of the deceased would go beyond Rs.40,000/- annually and the claim would not be maintainable.

7. As regards the objection of the counsel for the Insurance Company that the future prospects should not be added to the income of the deceased in a proceeding under Section 163-A or else the income of the deceased may rise beyond Rs.40,000/- this Court is of the opinion that, the schedule under Section 163-A only prescribes that, the annual income of the deceased should not be beyond Rs.40,000/-. It does not mean that while computing the compensation, the compensation under future prospects cannot be added. Neither it is the mandate of the Act or law that the monthly income of the deceased or the injured as the case may be, to be inclusive of the income under the future prospects. Thus the said ground of the counsel for the Insurance Company is not acceptable and the same stands negated.

8. Having heard the contentions put forth on either side and on perusal of record true it is that, the Insurance Company has led an evidence before the Tribunal to the extent of the fact that, the Insurance Company has not received any premium for insuring the vehicle involved in the accident i.e. a Tractor bearing registration No. CG-09-C-7862. It is also not in dispute that the alleged form which is been accepted by the Tribunal as a cover note is only a proposal form.

9. This Court finds sufficient force on the argument of the counsel for the Insurance Company in as much as if the proposal form in original which has been produced by the claimants would had been deposited by the Insurance Company, then it would not had been in the possession of the owner. It would had been in the possession of the Insurance Company and it would had been the carbon copy of the proposal form which would had been in the possession of the owner. Further the owner also has not been able to produce any documents or evidence or proof to show that, after the submission of the proposal form, the policy or the cover note was issued in his favour.

10. The counsel for the owner submits that the objection of the Insurance Company is not sustainable as they have not taken such plea in the WS and for the first time they have raised the issue while the evidence of the witnesses were being recorded.

11. The said ground raised by the counsel for the owner also may not have sufficient force for the reason that, since, he was the owner, it was first duty of the owner to establish that he had a valid policy and the driver had an effective license at the time of the accident with which the burden of proof could have been shifted upon the Insurance Company.

12. Therefore, this Court is of the opinion that, the finding of the Tribunal in fastening the liability upon the Insurance Company is not proper, legal and justified and the same deserves to be and is accordingly set aside and it is

held that, the entire liability of payment of compensation shall be upon the owner of the offending vehicle.

13. As regards the appeal by the claimants i.e. MAC No.623/2017 is concerned this Court is of the firm view that, the claimants shall be entitled for the income under future prospects to be added to the income of the deceased while computing the compensation. The deceased in the instant case was aged around 23-24 years and that his income assessed was Rs.3,000/- by the Tribunal i.e. Rs.36,000/- yearly. In view of the recent 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 future prospects to the extent of 40% of the income which in the instant case would come to Rs.14,400/- which if added to the yearly income would make it Rs.50,400/- of which if half is deducted towards personal expenses, the amount would come to Rs.25,200/- which if multiplied by applying multiplier of 18, the amount would come to Rs.4,53,600/-. It is ordered accordingly that the claimants shall be entitled for the compensation of Rs.4,53,600/- towards loss of dependency.

14. So far as the compensation under the conventional head is concerned, again considering the principles of law laid down by the Supreme Court in the case of Pranay Sethi (Supra), this court quantifies a lump sum compensation under the conventional head at Rs.46,400/-. Thus, making total compensation payable to the claimants at Rs.5,00,000/- instead of

Rs.3,74,000/-. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

15. Needless to mention that whatever amount the Insurance Company has already deposited with the Tribunal, the same may be permitted to be withdrawn to the claimants with liberty to the Insurance Company to recover the same from the owner initiating appropriate execution proceeding and the balance amount shall be paid by the owner to the claimants.

16. With the aforesaid view, the appeal of the Insurance Company as well as the appeal of the claimants both stands allowed and disposed off in terms as decided earlier.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE