

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1269 OF 2016

National Insurance Company Limited Through Its Authorized Authority, Divisional Manager, Divisional Office - B- 1 Taha Complex, First Floor, Ring Road, (Vyapar Vihar) Priyadarshini Nagar, Bilaspur, District- Bilaspur, (Chhattisgarh),.....(Non- Applicant No. 3).

... Appellant

versus

1. Smt. Ritu Dubey & Ors. W/o- Late Vinod Dubey, Aged About 27 Years R/o- Village- Ranigaon, Tahsil- Kota, P.S.- Ratanpur, District- Bilaspur, (Chhattisgarh),.....(Applicant No. 1).
2. Ku. Chahat Dubey, D/o Late Vinod Dubey, Aged About 5 Years Minor Through Her Guardian Mother Smt. Ritu Dubey (Res. No. 1), R/o- Village- Ranigaon, Tahsil- Kota, P.S.- Ratanpur, District- Bilaspur, (Chhattisgarh),.....(Applicant No. 2).
3. Kaushalya Bai Dubey, W/o Late Raghunath Prasad Dubey, Aged About 80 Years R/o- Village- Birkona, Post- Birkona, P.S.- Koni, Tahsil & District- Bilaspur, (Chhattisgarh),.....(Applicant No. 3).
4. Keshav Prasad Dubey, S/o Late Raghunath Prasad Dubey, Aged About 40 Years R/o- Village- Birkona, Post- Birkona, P.S.- Koni, Tahsil & District- Bilaspur, (Chhattisgarh),.....(Applicant No. 4).
5. Sukhram Singh, S/o Shumar Singh Kanwar, Aged About 24 Years R/o- Baki Mogara, Telsara, P.S.- Bakimogara, District- Korba, (Chhattisgarh), (Driver Of Scorpio No. CG-12-Y-0343),.....(Non-Applicant No. 1).
6. Chhotu Tripathi, S/o Late Narmada Prasad Tripathi, Aged About 36 Years R/o- Near Govt. College, Behind Electricity Office, LIG Colony, Katghora, P.S.- Katghora, District- Korba, (Chhattisgarh), (Owner Of Scorpio No. CG-12-Y-0343),.....(Non-Applicant No. 2).

... Respondents

MISC. APPEAL (C) NO. 1601 OF 2016

1. Smt. Ritu Dubey W/o Late Vinod Dubey Aged About 27 Years R/o Village- Ranigaon, Tahsil- Kota, P.S. Ratanpur, Distt. Bilaspur, Chhattisgarh
2. Kumari Chahat Dubey D/o Late Vinod Dubey, Aged About 5 Years Minor Through Guardian Mother Smt. Ritu Dubey (Applicant No.1) R/o Village- Ranigaon, Tahsil- Kota, P.S. Ratanpur, Distt. Bilaspur, Chhattisgarh(Claimants)

... Appellants

versus

1. Sukhram Singh S/o Shumar Singh Kanwar, Aged About 24 Years R/o Bakimangara, Telsara, P.S. Bakimongara, Distt. Korba, Chhattisgarh(Driver Of The Offending Vehicle Scorpio No. C.G.12/ Y/0343)
2. Chhotu Tripathi S/o Late Narmada Prasad Tripathi, Aged About 36 Years R/o Near Govt. Collage Behind Electricity Office, L I G Colony, Katghora, P.S. Katghora, District Korba, Chhattisgarh(Owner Of The Offending Vehicle Scorpio No. C.G.12/ Y/0343)
3. Branch Manager, National Insurance Company Ltd. Through Divisional Office, Taha Complex, Vyapar Vihar Road Bilaspur, Tahsil & District Bilaspur, Chhattisgarh(Insurer Of The Offending Vehicle Scorpio No. C.G.12/ Y/0343)

... Respondents

MISC. APPEAL (C) NO. 1318 OF 2016

National Insurance Company Limited Through Its Authorized Authority, Divisional Manager, Divisional Office - B- 1 Taha Complex, First Floor, Ring Road, (Vyapar Vihar) Priyadarshini Nagar, Bilaspur, District- Bilaspur, (Chhattisgarh),.....(Non- Applicant No. 3).

... Appellant

versus

1. Lala Pradhan S/o Gangaram Pradhan, Aged About 34 Years R/o- Village- Ranigaon, P.S. - Ratanpur, Tahsil And District- Bilaspur (Chhattisgarh).....(Applicant)
2. Sukhram Singh, S/o Shumar Singh Kanwar, Aged About 24 Years R/o- Baki Mogara, Telsara, P.S.- Bakimogara, District- Korba (Chhattisgarh) (Driver Of Scorpio No. CG-12-Y-0343).....(Non-Applicant No. 1)
3. Chhotu Tripathi, S/o Late Narmada Prasad Tripathi, Aged About 36 Years R/o- Near Govt. College, Behind Electricity Office, LIG Colony, Katghora, P.S.- Katghora, District- Korba, (Chhattisgarh), (Owner Of Scorpio No. CG-12-Y-0343).....(Non-Applicant No. 2)

... Respondents

MISC. APPEAL (C) NO. 1317 OF 2016

National Insurance Company Limited Through Its Authorized Authority, Divisional Manager, Divisional Office - B- 1 Taha Complex, First Floor, Ring Road, (Vyapar Vihar) Priyadarshini Nagar, Bilaspur, District- Bilaspur, (Chhattisgarh),.....(Non- Applicant No. 3).

... Appellant

versus

1. Firoj Khan S/o Wahid Khan, Aged About 40 Years R/o Village- Ranigaon, Police Station- Ratanpur, Tahsil And Distt. Bilaspur Chhattisgarh (Applicant)
2. Sukhram Singh, S/o Shumar Singh Kanwar, Aged About 24 Years R/o- Baki Mogara, Telsara, P.S.- Bakimogara, District- Korba (Chhattisgarh) (Driver Of Scorpio No. CG-12-Y-0343),.....(Non-Applicant No.1)
3. Chhotu Tripathi, S/o Late Narmada Prasad Tripathi, Aged About 36 Years R/o- Near Govt. College, Behind Electricity Office, LIG Colony, Katghora, P.S.- Katghora, District- Korba, (Chhattisgarh), (Owner Of Scorpio No. CG-12-Y-0343).....(Non-Applicant No. 2)

... Respondents

- Mr. Dashrath Gupta, Advocate, for the Appellants in MAC No.1269/2016, MAC No.1318/2016 and MAC No.1317/2016 and for Respondent No.3 in MAC No. 1601/2016.
- Mr. A.L. Singroul, Advocate, for the Appellants in MAC No. 1601/2016, for Respondents No.1 and 2 in MAC No. 1269/2016 and for Respondent No.1 in MAC No.1318/2016
- Mr. Dashrath Prajapati, Advocate, under instructions of Mr. Rakesh Pandey, Advocate, for Respondent No.6 in MAC No.1269/2016 and for Respondent No.3 in MAC No.1318/2016 and in MAC No.1317/2016.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/10/2017

1. The present four appeals, filed under Section 173 of the Motor Vehicles Act, 1988, assail the award dated 7.4.2016 passed by the Motor Accident Claims Tribunal, Bilaspur, in M.A.C.T. No. 912/2014, M.A.C.T. No. 11/2015, M.A.C.T. No. 943/2014 and M.A.C.T. No. 944/2014.
2. Vide the impugned award, the learned Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.8,68,000/- to the claimants i.e. the widow and the daughter of the deceased in M.A.C.T. No. 912/2014 including the mother of the deceased in M.A.C.T. No.11/2015 and an amount of Rs.10,000/- to the injured-claimant in M.A.C.T. No.943/2014 and further an amount of Rs.60,000/- to the injured-claimant in M.A.C.T. No.944/2014, with interest thereon at the rate of 9% per annum.
3. MAC No. 1269/2016, MAC No. 1318/2016 and MAC No.1317/2016 are appeals by the insurance company challenging the liability part. MAC No. 1601/2016 is an appeal by the widow and the daughter of the deceased who were claimants in M.A.C.T. No. 912/2014, seeking for enhancement of compensation awarded.
4. For convenience sake, we are taking the appeals of the insurance company first. The ground of challenge in the appeals of the insurance company is that the driver of the offending vehicle at the relevant point of time did not have an endorsement of permitting him to drive a passenger carrying vehicle. According to the insurance company, the offending vehicle was a Scorpio Jeep which was registered as a Taxi and that the driver of the said vehicle had a licence to drive a 'Light Motor Vehicle' and that too 'non-transport' and thus there is a breach of policy condition and the liability therefore should have been shifted upon the owner of the offending vehicle. Further contention raised is that the offending vehicle

also did not have a valid permit at the relevant point of time. The third contention raised is that there is a great element of contributory negligence also involved in the instant case, as the deceased was driving the motorcycle in a drunken state and was travelling with two pillion riders i.e. the claimants in M.A.C.T. No.943/2014 and M.A.C.T. No.944/2014 and thus the quantum of compensation should have been reduced after attributing contributory negligence.

5. So far as the first ground of the driver of the offending vehicle not having proper endorsement is concerned, this issue is squarely covered from a recent decision of the Hon'ble Supreme Court in the case of **Mukund Dewangan v. Oriental Insurance Company Limited, AIR 2017 SC 3668**, which clearly envisages the fact that merely because there is no proper endorsement, the insurance company would not be absolved of its liability for payment of compensation. This ground thus stands negated.

6. So far as the offending vehicle not having proper permit is concerned, no evidence has been led by the insurance company to show that the vehicle was not having any valid permit at the time of accident. This ground also is not tenable.

7. As regards the third aspect that the deceased at the time of accident was driving with two pillion riders and they were in a drunken condition also, this Court does not find any strong evidence brought by the insurance company to prove that they were in a drunken condition and further there is also no evidence to show that there was any sort of negligence on the part of the deceased for the accident which arose. Moreover, merely because the deceased was travelling in a motorcycle with two pillion riders by itself would not amount to a breach of policy condition in any manner absolving the insurance company of its liability. Thus this ground raised by the insurance company is also not sustainable.

8. In view of above, this Court is of the opinion that the appeals of the insurance company do not have much force or substance calling for interference with the impugned award. The appeals of the insurance company thus deserve to be and are accordingly dismissed.

9. So far as appeal of the claimants is concerned, learned counsel for the claimants submits that the claimants have lead evidence of one Swati Mishra to prove that the deceased at the time of accident was drawing an income of Rs.10,000/- per month, but the learned Tribunal has not accepted the same and has assessed the income at Rs.5000/-. Further contention raised is that this assessment of income by the learned Tribunal is on the lower side, as the date of accident is of October, 2014 when even an unskilled labourer was receiving more than Rs.6000/- a month at the rate of Rs.200/- a day. Therefore, since the deceased was working as a computer salesman he was drawing much more salary than what has been assessed by the learned Tribunal. It was further contended that the deceased at the time of accident was aged around 33 years and therefore the claimants shall also be entitled for income under the future prospects while quantifying the compensation. Thus, prayed for the amount of compensation awarded to be suitably enhanced.

10. Learned counsel for the insurance company however opposes the appeal of the claimants on the ground that the award passed by the learned Tribunal is based on the evidence which have come on record so far as the income part is concerned. There is no scope of interference with the impugned award, for the reason that the claimants have not been able to justify or substantiate the actual income of the deceased. Thus prayed for the rejection of the appeal of the claimants.

11. Having considered the rival contentions put forth on either side and on perusal of the records, what is undisputed is the fact that the deceased was working as a computer salesman. Even if Rs.10,000/- as claimed by the claimants is not accepted, but it is anybody's guess that a person working in the marketing field in the year 2014 would have been earning nothing less than Rs.250/- a day i.e. Rs. 7500/- a month. The income for the said period could not have been less than that in the instant case, as during the relevant point of time even a daily wage unskilled labourer was earning more than Rs.6000/- a month at the rate of Rs.200/- a day. Thus, this Court assesses the income of the deceased for the purpose of quantifying the compensation at Rs.7500/- a month i.e. Rs.90,000/- an year, instead of Rs.5000/- a month which has been assessed by the learned Tribunal.

12. If 50% i.e. 45,000/- is added to the yearly income of Rs.90,000/- towards the future prospects, the amount would come to Rs.1,35,000/- of which if 1/3rd i.e. Rs.45,000/- is deducted towards the personal expenses, the balance would come to Rs.90,000/- which if multiplied applying the multiplier of 16, the amount would come to Rs.14,40,000/-. It is thus ordered that the claimants shall be entitled for an amount of Rs.14,40,000/- for the loss of dependency. Further, the claimants shall also be entitled for a compensation of Rs.1,00,000/- as has been quantified by the learned Tribunal under the conventional head which accordingly stands maintained. Thus, the claimants shall be entitled for receiving a total compensation of Rs.15,40,000/-, instead of Rs.8,68,000/- which has been awarded by the learned Tribunal.

13. As a result, the appeals of the insurance company i.e. MAC No. 1269/2016, MAC No.1318/2016 and MAC No.1317/2016 stand dismissed being devoid of merits. The appeal of the claimants i.e. MAC No.

1601/2016 is allowed and the impugned award stands modified to the extent that the claimants shall be entitled for a total compensation of Rs.15,40,000/- with interest thereon at the same rate as has been quantified by the learned Tribunal.

/sharad/

Sd/-
(P. Sam Koshy)
Judge