NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.545 of 2013

Branch Manager, Bajaj Allianz General Insurance Company Limited, Through Branch Manager, Bajaj Allianz General Insurance Company Limited, Shiv Mohan Bhawan, Vidhansabha Road, Pandri, District Raipur (C.G.).

---Appellant

Versus

1. Ms.Dhanai Bai Dhimar W/o Late Budhram Dhimar, age 45 years.
2. Roop Kumar Dhimar S/o Late Budhram Dhimar, age 25 years.
3. Rupendra Dhimar S/o Late Budhram Dhimar, age 23 years.
4. Ku.Laxmin Dhimar D/o Late Budhram Dhimar, age 19 years.
5. Ku.Rupeshwari Dhimar D/o Late Budhram Dhimar, age 14 years, Minor represented through her legal guardian Mother Ms.Dhanai Bai Dhimar.

   All are R/o Village Mahmand, P.S.Torwa, Tehsil and District Korba (C.G.).
6. Goutam Prasad Noniya S/o Banthu Ram Noniya, aged 36 years, R/o Village Loharshi "Kha", Tehsil Pamgarh, District Janjgir Champa (C.G.)

---Respondents

MAC No.888 of 2014

1. Ms.Dhanai Bai Dhimar W/o Late Budhram Dhimar, age 45 years.
2. Roop Kumar Dhimar S/o Late Budhram Dhimar, age 25 years.
3. Rupendra Dhimar S/o Late Budhram Dhimar, age 23 years.
4. Ku.Laxmin Dhimar D/o Late Budhram Dhimar, age 19 years.
5. Ku.Rupeshwari Dhimar D/o Late Budhram Dhimar, age 14 years, Minor represented through her legal guardian Mother Ms.Dhanai Bai Dhimar.

   All are R/o Village Mahmand, P.S.Torwa, Tehsil and District Korba (C.G.).

---Appellants

Versus

1. Goutam Prasad Noniya S/o Banthu Ram Noniya, aged 36 years, R/o Village Loharshi "Kha", Tehsil Pamgarh, District Janjgir Champa (C.G.)
2. Branch Manager, Bajaj Allianz General Insurance Company Limited, Through Branch Manager, Bajaj Allianz General Insurance Company Limited, Shiv Mohan Bhawan, Vidhansabha Road, Pandri, District Raipur (C.G.).

---Respondents

Shri Utkal Pradhan, Advocate for appellants/claimants.
Shri G.R.Miri, Advocate for resp.No.6 in MAC No.545/2013 and for resp.No.1 in MAC No.888/2013.
Shri Ghanshyam Patel, Advocate for Insurance Company.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

27/11/2017

1. These are the two appeals filed under Section 173 of the Motor Vehicles Act assailing the award dated 02/03/2013 passed by the learned Third Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Motor Accident Claim Case No.196/2011.

2. MAC No.545/2013 is an appeal by the Insurance Company and MAC No.888/2014 is an appeal by the claimants seeking enhancement.

3. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.3,22,000/- with interest @ 6% per annum from the date of application.

4. While passing the impugned award, the Tribunal has applied the principles of pay and recovery directed the Insurance Company to deposit the amount and recover the same from the owner.

5. The owner in the instant case has not filed any appeal. This order of pay and recovery has attained finality so far as the owner is concerned.

6. The Insurance Company has challenged the appeal on the ground that, the principles of pay and recovery has been wrongly applied in as much as the license in the name of the owner was a fake license and has been

fraudulently presented before the Tribunal so as to get indemnified by the Insurance Company and therefore the Insurance Company under the said facts and circumstances of the case should not have been held liable for depositing the compensation even though the principles of pay and recovery has been applied.

7. The counsel for the owner in the instant case submits that, it appears that due to some clerical error, the name of the owner of the vehicle i.e. respondent No.6 in the license has been wrongly got typed as Gupta Prasad Loniya in place of Goutam Prasad Noniya. He further submits that, it is only a clerical error and therefore, the Insurance Company cannot be absolved of their liability and prayed for rejection of the appeal.

8. The counsel for the claimants on the contrary submits that, the claimants have also filed an appeal seeking enhancement, as compensation awarded by the Tribunal is on the lower side and that the income assessed is unreasonably low and likewise the compensation under the future heads also had not been properly awarded so also the compensation under the conventional head also deserves suitable modification.

9. Having heard the rival contentions put forth on either side and on perusal of record what reflects is that, undisputedly, the Insurance Company has insured the vehicle involved in the accident. The owner of the vehicle also is the respondent No.6 which is not in dispute.

10. Now, as regards the license of the respondent No.6, the concerned witness from the R.T.O. was examined who has stated that, the license has

been issued in the name of Gupta Prasad Loniya S/o Bhanturam Loniya whereas the owner of the offending vehicle is Goutam Prasad Noniya S/o Bhanturam Noniya. Prima-facie, it appears to be a clerical error on part of the licensing authority.

11. However, the fact that the owner though had contested in the case and was well aware of the award passed have not preferred an appeal against the said award of the Tribunal in spite of there being the order of pay and recovery.

12. Therefore, this Court does not find any strong case made out for accepting the contentions of the counsel for the owner of there being any clerical error.

13. As regards the liability of the Insurance Company is concerned, since, the vehicle was duly insured and the owner of the vehicle also is not in dispute this Court is of the opinion that, keeping in view the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Swaran Singh & Ors. [2004 {3} SCC 297]**, the finding of the Tribunal in applying the principles of pay and recovery does not warrant any interference and the appeal of the Insurance Company thus deserves to be and is accordingly rejected.

14. So far as the appeal of the claimants is concerned, the date of accident in the instant case is 12/09/2010. In the year 2010, undisputedly, the minimum income of even an unskilled labour would had been between Rs.150-200/- per day i.e. Rs.4,500 – 6,000/- per month.

15. If the deceased in the instant case is said to have been a carpenter though there is no evidence in this regard, undisputedly, even then he would had been earning minimum Rs.150/- per day i.e. Rs.4,500/- per month.

16. Therefore, this Court assesses the monthly income of the deceased at Rs.4,500/- and proceeds to decide the compensation accordingly.

17. Applying the principles of law laid down by the 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 recent larger bench decision of the Supreme court, the claimant would also be entitled for 25% of his monthly income towards future prospects which in the instant case would be Rs.1,125/- which would make the monthly income at Rs.5,625/- and yearly income at Rs.67,500/- of which if 1/4th is deducted towards personal expenses considering the total number of claimants to be 5, the amount would come to Rs.50,625/- which if multiplied by applying multiplier of 13, the amount would come to Rs.6,58,125/-. It is ordered accordingly that the claimants shall be entitled for the compensation of Rs.6,58,125/- towards loss of dependency.

18. So far as the compensation under the conventional head is concerned, taking into consideration the entire facts and circumstances of the case, this Court awards a lump sum compensation of Rs.41,875/- under the conventional head to make the total compensation payable to the claimants at Rs.7,00,000/-. Thus the claimants shall be entitled for total compensation of Rs.7,00,000/- instead of Rs.3,22,000/- as awarded by the Tribunal. The

said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

19. As a consequence, the appeal of the Insurance Company stands rejected and the appeal of the claimants stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit