NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.548 of 2013

Bajaj Allianz General Insurance Company Limited, Through its authorized officer. Bajaj Allianz General Insurance Company Limited, Shiv Mohan Bhawan Vidhansabha Road, Pandri, Raipur, District Raipur (C.G.) (Insurer of Mahindra Pickup No. UP 13 K 4475).

---Appellant

Versus

1. Smt.Sheelmani Banjare W/o Late Mohan Banjare, aged 26 years.
2. Ku.Priyanka Banjare D/o Late Mohan Banjare, aged 05 years, minor through her natural guardian mother Smt.Sheelmani Banjare.
3. Amoli Banjare S/o Bhagirathi Banjare, aged 45 years.
4. Smt.Sadhan Bai W/o Amoli Banjare, aged 42 years.

   All are R/o village Lanja, Post Kamta, P.S.Singa and Tehsil Simga, District Raipur (C.G.).
5. Dilip Kumar Sahu S/o Tirith Kumar Sahu, R/o village and Post Nardaha (Tarra) Neer D.P.S.School, P.S.Dharsiva, District Raipur (C.G.). (Driver of Mahendra Pickup No.UP 13 K 4475).
6. M/s. Goyal Poltri Form through Manager – authorized officer M/s.Goyal Poltri Form, G.T.Road Khuja, District Bulandshahar (U.P.). (Owner of Mahendra Pickup No.UP 13 K 4475).

---Respondents

For appellant/ Insurance Company	:	Shri Ghanshyam Patel, Advocate.
For resp.Nos.1-4/ Cross objector	:	Shri Amiyakant Tiwari, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/12/2017.

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 25/03/2013 passed by the learned 7th Additional Motor Accident

Claims Tribunal, Raipur (C.G.) in Motor Accident Claim Case No.75/2011.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.4,38,000/- with interest @ 6% per annum from the date of application.

3. While passing the impugned award, the Tribunal has applied the principles of pay and recovery directed the appellant/Insurance Company to deposit the compensation first and then recover the same from the owner and driver.

4. The order of pay and recovery have not been questioned by the owner.

5. The contention of the counsel for the appellant is that, the finding of pay and recovery given by the Tribunal is erroneous for the reason that, there is a categorical finding that the vehicle was a transport vehicle and the driver who was driving the vehicle at the time of the accident did not have an effective driving license in as much as the endorsement of permission to drive the transport vehicle was not available.

6. This contention of the counsel for the Insurance Company is no-longer sustainable in the light of the recent larger Bench decision of the Hon'ble Supreme Court in the case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited [AIR 2017 SC 3668]***.

7. Keeping in view the aforesaid decision of Supreme Court, this Court does not find any strong case made out by the counsel for the Insurance Company calling for an interference with the impugned award.

8. Another ground raised by the counsel for the Insurance Company is that, there is a discrepancy in the number of the vehicle when compared to the record of the Criminal Case.

9. This contention of the Insurance Company also does not seem to have much force as perusal of record would show that, the actual number which is reflected in the policy is UP-13-K-4475 and in the Criminal Case also it is the same except for the seizure memo which in the opinion of this Court would be just a typographical/clerical error. Therefore, this ground of the Insurance Company also stands negated.

10. The appeal of Insurance Company thus stands rejected.

11. The claimants/respondent Nos.1 to 4 in the instant case have also filed a cross-objection seeking for enhancement of the compensation.

12. According to the counsel for the claimants, the quantum of compensation assessed by the Tribunal is on the lower side in as much as the income assessed is extremely low considering the date of the accident which was 01/08/2010. He further submits that, the claimants are also entitled for compensation under the head of future prospects. Further the deductions made towards personal expenses also would be 1/4th instead of 1/3rd keeping in view the decision of the Supreme Court in the case of ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [{2009} 6 SCC 121]*** and prayed for suitable enhancement of the award.

13. The counsel for the Insurance Company however opposing the cross-objection submits that, the award seems to be just and reasonable and taking into consideration the evidence which have

come on record and the age of the deceased etc. and thus prayed for rejection of the cross-objection.

14. Having considered the contentions put forth on either side and on perusal of record, undisputed is the date of accident, the vehicle involved in the accident and the same being insured with the appellant/Insurance Company, the resultant death of the deceased – Mohan Banjara, aged around 30 years also is not in dispute.

15. Considering the period of accident being August-2010, even an unskilled labour during the said period would had been earning more than Rs.150-200/- per day i.e. Rs.4,500-6,000/- per month. But the Tribunal in the instant case has assessed the income of only Rs.3,000/- per month which is unreasonably low.

16. Keeping in view the date of accident, this Court assesses the income of the deceased at Rs.4,500/- instead of Rs.3,000/-. Further taking into consideration the recent larger Bench decision of 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 claimants would also be entitled for 40% of the income towards future prospects.

17. Accepting Rs.4,500/- as the monthly income of the deceased, the yearly income would be Rs.54,000/- of which if 40% is added towards future prospects, the amount would come to Rs.75,600/- of which if 1/4th is deducted towards personal expenses considering the total number of claimants to be 4 instead of 1/3rd as has been taken by the Tribunal, the amount would come to Rs.56,700/- which if multiplied by applying multiplier of 17, the

amount would come to Rs.9,63,900/-. It is ordered accordingly that the claimants shall be entitled for compensation of Rs.9,63,900/- towards loss of dependency. In addition, the claimants shall also be entitled for a lump sum compensation of Rs.70,000/- under the conventional head. Thus, making the total compensation payable to the claimants at Rs.10,33,900/- instead of Rs.4,38,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

18. As a consequence, the appeal of the Insurance Company stands rejected and the cross-objection of the claimants are allowed and the award stands modified suitably.

Sd/-
(P. Sam Koshy)
Judge

Sumit