

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 1229 of 2014

Rajman Jain, S/o. Late Ganguram Jain, aged about 40 years, R/o. Village – Amabeda, P.S. - Amabeda, District – North Bastar – Kanker (C.G.).

---- Appellant

Versus

1. Maniram Padda, S/o. Prabhulal Padda, aged about 26 years, R/o. Bagdongari, Post Kortara, Tahsil – Charama, District – North Bastar Kanker (C.G) (Driver). Presently resided at Koudopara Chhote Tewada.
2. Shyamuram, S/o. Mehattar, aged about 28 years, R/o. Village Sothe, P.S. Amabeda, District – North Bastar Kanker (C.G.) (Owner).
3. The Shri Ram Insurance Co. Ltd. E-8, EPIP RIICO Seetapur, Jaipur (Rajasthan), 302011. (Insurance).

---- Respondents

For Appellant	: Mr. P.K. Tulsyan, Advocate
For Respondent No.3.	: Mr. S.S. Rajput, Advocate
For Respondent No.1 & 2	: None present though served.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

12/09/2017

1. This appeal has been brought challenging the award dated 30.07.2014, passed by the learned Additional Motor Accident Claims Tribunal, Bhanupratappur, District North Bastar Kanker in Claim Case No.70/2012 for enhancement of compensation award.

2. Mother of appellant namely Ghasnin Bai died as a result of accident, which occurred due to rash and negligent driving of tractor bearing No. C.G.-04-DB-0283 and trolley No. C.G.05A-2429 by respondent No.1. The respondent No.2 is the registered owner and the respondent No.3 is the insurer of the vehicle. On preferring claim, the learned tribunal below after conducting enquiry has passed the impugned award and an amount of Rs.1,72,000/- has been awarded as compensation to the appellant.
3. The grounds in appeal are these that trial Court has erred in holding that respondent No.3 the insurance company is not liable for compensation in this case and further the learned tribunal below has also erred in making assessment of the monthly income of the deceased limited to Rs.3000/- per month, whereas the deceased was earning Rs.4,000/- per month. Hence on this count, it is prayed that compensation awarded by the learned tribunal below be enhanced suitably.
4. Counsel for the respondent No.3 has submitted that the finding of learned tribunal below exonerating the respondent No.3 from the liability is a correct finding, which can not be interfered with as it has not been proved by the appellant in the case that vehicle involved in the accident was insured with respondent No.3. Respondent No.3 has by pleading and adducing evidence, categorically denied the existence of insurance policy of concerned vehicle involved in the accident, hence respondent No.3 can not be held liable to make good the payment of compensation and prayed that the appeal be dismissed against him.

5. The question for determination in this appeal is that whether the respondent No.3 can be held liable for payment of compensation to the appellant and secondly whether the compensation awarded by the learned tribunal below is required to be enhanced.
6. I have heard the learned counsel for the parties and perused the documents placed on record.
7. Respondent No.1 and 2 remained absent and proceeding was taken ex parte against them. Respondent No.3 has denied in pleading that the offending vehicle was insured by the respondent No.3. The witnesses by the appellant has not made any statement about the insurance of the vehicle involved in the accident and has admitted in cross-examination that he has no knowledge about the insurance of the vehicle concerned. In evidence of respondent No.3, Chandrashekhar (N.A.W.-1) has stated that tractor bearing No. C.G.-04-DB-0283 and trolley No. C.G.05A-2429 were not insured by the respondent No.3, Shriram General Insurance Company Limited, of which he was an employee. This statement has not been rebutted in the cross-examination. No document is on record to show that vehicle concerned were insured by the respondent No.3, hence there is no proof of insurance of the vehicle with the respondent No.3 and the finding recorded by the learned tribunal below can not be stated to be erroneous.
8. The second question is based on quantum of the compensation awarded. The income of the deceased was assessed as Rs.3,000/- per month by the learned tribunal below. Rajman (A.W-1) has stated that his mother was earning Rs.4,000/- per month by doing labour

work. No question was put to him in cross-examination to rebut this statement made by him and neither any other witnesses has been examined or has stated anything against the statement made by the appellant. Hence, there was no reason for the trial Court to disbelieve the statement made by the appellant, before the learned tribunal below. The monthly earning of deceased should have been assessed as Rs.4,000/- per month, which is assessed accordingly in this appeal and on the basis of which the yearly earning of deceased is calculated at Rs.48,000/- per year.

9. The learned claims tribunal has selected the multiplier of 9 and there is no dispute on the multiplier selected by the trial Court, the same multiplier of 9 is made use of and multiplying the yearly income of the deceased a total loss of income comes out to Rs.4,32,000/-. As the claimant is son of the deceased in this case, the deduction of 50% shall be applicable here. Hence after making the deduction accordingly, the amount of Rs.2,16,000/- is the just and appropriate compensation under the head of loss of income.
10. The compensation in the head of funeral expenses and loss of love and affection is also too much on the lower side as awarded by the learned tribunal below, which needs enhancement, therefore, the amount awarded towards funeral expenses is enhanced to Rs.25,000/-. Similarly for loss of love and affection, the compensation of Rs.15,000/- appears to be just and adequate. Hence the total compensation comes to Rs.2,56,000/-, which the appellant is entitled to receive as just and proper compensation.

11. Thus the appeal is allowed. Appellant/claimant shall be paid a total compensation of Rs.2,56,000/- by the respondent No.1 and 2 within a period of 60 days from the date of this judgment. On failure of respondents in payment of compensation awarded, interest @ 9% shall be chargeable from the date of this judgment till its realization. Compensation awarded by the tribunal below if paid, shall be adjustable in payment of compensation awarded by this Court.
12. No order as to costs.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram