NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 921 OF 2015

1. Khokhan Haldar, S/o Aditya Haldar, aged about 45 years
2. Smt. Ushrani, W/o Khokhan Haldar, aged about 31 years

Both R/o Village P.V. 55, P.S. and Tahsil Pankhjur, District North Bastar Kanker (C.G.)

… Appellants

versus

1. Sanjeet Ram, S/o Sunil Ram, aged about 25 years, R/o P.V. 46, Tahsil Pankhjur, District North Bastar Kanker (C.G.)
2. Sujeet Rai, S/o Sunil Rai, aged about 31 years, R/o P.V. 46, Tahsil Pankhjur, District North Bastar Kanker (C.G.)
3. The Oriental Insurance Co. Ltd., through Branch Manager, near Adarsh Bal Mandir, Main Road, Dhamtari, District Dhamtari (C.G.)

… Respondents

For Appellant	:	Mr. P.K. Tulsyan, Advocate.
For Respondents No. 1 and 2	:	Mr. Parag Kotecha, Advocate.
For Respondent No.3.	:	Mr. H.P. Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/11/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, preferred by the appellants-claimants, assailing the award dated 24.11.2014 passed by the Additional Motor Accident Claims Tribunal, Bhanupratappur, District North Bastar Kanker, in Claim Case No.102/2012.

2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.1,40,500/- in favour of the appellants-claimants with interest thereon at the rate of 6% per annum from the date of presentation of the claim application and has fastened the liability for payment of compensation jointly and severally upon the respondents no. 1 and 2 i.e. the driver and owner of the offending vehicle, exonerating the respondent no.3-insurance company of its liability.

3. Learned counsel for the appellants-claimants submits that it is a case where the liability has been fastened upon the owner and driver exonerating the insurance company, only on the ground that the driver of vehicle involved in the accident i.e. Commander Jeep, bearing registration no. CG19-T-0522, was not having the endorsement so far as the permission to drive a transport vehicle is concerned. He further submits that this finding of the learned Tribunal is no longer *res integra* in the light of a recent Larger Bench's decision of the Hon'ble Supreme Court in the case of **Mukund Dewangan** v. **Oriental Insurance Company Limited, AIR 2017 SC 3668**, as also the decision of the Hon'ble Supreme Court in the case of **Santlal** v. **Rajesh & Others**, **AIR 2017 SC 4054**, wherein it has been held that merely because of there being no proper endorsement in the licence of the driver when the category or class of vehicle remains the same, the insurance company cannot be absolved of its liability.

4. This ground raised by the learned counsel for the appellants-claimants does have force. This Court therefore is inclined to accept the said argument raised and to modify the award to the extent that the liability of payment of compensation shall jointly and severally be upon the owner, driver and insurer of the offending vehicle and the responsibility of payment of compensation shall now shift upon the insurance company.

5. So far as the appeal seeking for enhancement of compensation is concerned, again this Court has no hesitation in holding that the issue involved is squarely covered from the two decisions of the Hon'ble Supreme Court, firstly the case of **Lata Wadhwa and Others** v. **State of Bihar and Others**, **2001 (8) SCC 197**, which has been further reiterated and improved upon in the case of **Kishan Gopal and Another** v. **Lala and Others**, **2014 (1) SCC 244**.

6. Admittedly, in the instant case, the deceased-Harshit was a 14-15 years old school going boy, studying in Class 10th. Applying the principles laid down in the aforesaid decision of the Hon'ble Supreme Court, i.e. the case of **Kishan Gopal** (supra), this Court is inclined to apply the same analogy while computing the compensation in the instant case also quantifying the annual income of the deceased at Rs.30,000/- and applying the multiplier of 15, making the compensation towards the loss of dependency at Rs.4,50,000/- with an additional amount of Rs.50,000/- under the conventional heads, making the total compensation payable to the claimants at **Rs.5,00,000/-** instead of Rs.1,40,500/- as awarded by the learned Tribunal. The enhanced amount shall also carry interest at the same rate as has been awarded by the learned Tribunal.

7. The appeal stands allowed and disposed of with the modification in the impugned award as pointed out in the preceding paragraphs.

Sd/-
(P. Sam Koshy)
Judge

/sharad/