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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1069 OF 2016

Future Generali India Insurance Co. Ltd., Shop No.3, Twin Floor, Maruti Business, near Dhuppad Petrol Pump, near Rajkumar College, P.S. Saraswati Nagar, Civil & Revenue District Raipur (C.G.)

… Appellant

versus

1. Smt. Yogita Tandan, W/o Laxmikant Tandan, aged about 21 years
2. Sanchit Tandan, S/o Laxmikant Tandan, aged 01 year (minor), through Respondent No.1 mother & natural guardian Smt. Yogita Tandan, W/o Laxmikant Tandan, both R/o Majgaonpara, Police Station Mungeli, Tahsil and District Mungeli (C.G.)
3. Roshan Kumar, S/o Mukut Ram Verma, R/o Lohari, Police Station Suhela, District Balodabazar (C.G.)
4. Sairam Steels through Manager, 302 near Garba Maidan, Raipur, Police Station Raipur, District Raipur (C.G.)

… Respondents

with

MISC. APPEAL (C) NO. 647 OF 2016

1. Yogita Tandon, W/o Laxmikant Tandon, aged about 21 years
2. Sabit Tandon, S/o Laxmikant Tandon, aged 01 year, minor, through mother Smt. Yogita Tandon, W/o Laxmikant Tandan.

Both R/o Village Majgaonpara, Police Station Mungeli, District Mungeli (C.G.)

… Appellants

versus

1. Roshan Kumar, S/o Mukut Ram Verma, R/o Lohari, Police Station Suhela, District Balodabazar-Bhatapara (C.G.)
2. Sairam Steels through Manager, 302, near Garba Maidan, Raipur, District Raipur (C.G.)
3. Future General India Insurance Co. Ltd., Shop No.3, Twin Floor, Maruti Business, near Dhupat Petrol Pump, near Rajkumar College, District Raipur (C.G.)

… Respondents

- Mr. N.K. Thakur along with Mr. Shokie Yadav, Advocates, for the Appellant in MAC No. 1069/2016 and for Respondent No.3 in MAC No. 647/2016.
- Mr. A.C. Sahu, Advocate, under instructions of Mr. Goutam Khetrapal, Advocate, for the Appellants in MAC No. 647/2016 and for Respondents No. 1 & 2 in MAC No. 1069/2016.
- Mr. R.K. Pali, Advocate, for Respondent No.3 in MAC No. 1069/2016 and for Respondent No.1 in MAC No. 647/2016.
- Ms. Reena Singh, Advocate, under instructions of Ms. Sharmila Singhai, Advocate, for Respondent No.4 in MAC No. 1069/2016 and for Respondent No.2 in MAC No. 647/2016.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/08/2017

1. These are the two appeals under Section 173 of the Motor Vehicles Act, 1988.

2. Assail in both the appeals is to the award dated 11.3.2016 passed by the Additional Motor Accident Claims Tribunal, Mungeli, in Motor Accident Claim Case No. 89/2015.

3. Vide the impugned award dated 11.3.2016, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.6,88,000/- in favour of the Claimants fastening the liability to pay the same, jointly and severally, upon the driver, owner and insurer of the offending Truck, with interest at the rate of 6% per annum along with penal interest of 7.5% per annum in the event if the amount of compensation is not deposited within a period of 30 days from the date of award.

4. MAC No. 1069/2016 has been filed by the Insurance Company assailing the liability of payment of compensation fastened upon it. MAC No. 647/2016 has been preferred by the Claimants seeking for enhancement of the compensation awarded.

5. Facts of the case in brief are that, on 2.4.2012 when the deceased-Laxmikant Tandon was coming to his home on his bicycle from Village Bansakra, Tahsil Simga, he was hit by the offending Truck (Registration No. CG04-JC/0160) which was being driven rashly and negligently by Roshan Kumar, near Village Chanderi which is 7km away from Tahsil Simga. As a result of the accident, Laxmikant Tandon sustained grievous injuries and he succumbed to the injuries, giving rise to the filing of the claim application by the Claimants before the Tribunal.

6. So far as the appeal of Insurance Company is concerned, learned Counsel for the Insurance Company vehemently argues that there was a clear breach of policy conditions at the time of accident inasmuch as the driver of the offending Truck, i.e., Roshan Kumar (Respondent No.3 in the appeal of the Insurance Company and Respondent No.1 in the appeal preferred by the Claimants) was not having a proper valid licence to drive the vehicle. According to learned Counsel, the licence which is said to have been seized by the police authorities which was found along with the record of the criminal case, which was of the driver-Roshan Kumar, was in fact a fake licence as was also proved by the Insurance Company by leading evidence of RTO, Raipur. He further submits that once when it has been proved that the licence which was in possession of the driver-Roshan Kumar was a fake licence it clearly establishes the breach of policy conditions. Therefore the Insurance Company would not indemnify the owner in the event of breach of policy conditions. The Insurance Company therefore should have been exonerated from its liability.

7. However, perusal of the record would show that the driver of the offending Truck had entered appearance before the Tribunal and led his evidence. During the course of his evidence, he had produced a driving licence which appears to have been duly issued from the RTO, Jagdalpur and which was valid at the time of accident. The contention of the Insurance Company in this regard is that the driving licence so produced by the driver-Roshan Kumar was an improvement that he has made subsequent to the Insurance Company taking a stand that the licence which was in his possession at the time of accident was a fake licence and therefore the same cannot be accepted. What is relevant from the record is that from the cross-examination of driver-Roshan Kumar, he does not appear to have been countered with the fake driving licence aspect and neither was he cornered or cross-examined in a manner so as to draw an inference of the driving licence which was produced by him was either fake or was a licence which was prepared or obtained subsequent to the accident that took place on 2.4.2012. On the contrary, the particulars on the driving licence which was produced by the driver-Roshan Kumar before the Tribunal show that it was issued originally much before the date of accident and that the endorsement of permitting him to drive a transport vehicle was issued on 27.7.2010. This forces this Court to presume that on the date of accident i.e. on 2.4.2012, he had a valid driving licence to drive the vehicle. Further, strengthening the case of the driver-Roshan Kumar of having valid licence is the fact that he has stated before the Tribunal of having lost his original licence initially and that was the reason for him to obtain a duplicate licence. What is also going against the Insurance Company is the fact that the driver-Roshan Kumar was examined before the Insurance Company and he has led his evidence and in the course of his evidence he has produced the licence issued from the RTO, Jagdalpur. The Insurance Company could have appointed its investigating officer to verify from the office of the RTO, Jagdalpur, the veracity of the same, which the Insurance Company does not appear to have undertaken. Further, what also reflects is that the alleged driving licence which is said to have a fake licence issued and which has been taken as the basis for seeking exoneration of the Insurance Company was a licence which was issued from the RTO, Raipur. The said licence in fact was not seized from the physical possession of the driver-Roshan Kumar or at least does not reflect from the seizure memo which is part of the criminal case record. The seizure memo reflects that this licence was recovered from the possession of one Sanjay Kumar Bajaj and that too after 15 days from the date of accident. The said Sanjay Kumar Bajaj has not been examined before the Tribunal to show that it was a licence which was in fact recovered from the possession of the driver-Roshan Kumar of the offending Truck.

8. All these facts put together and taken into consideration would force this Court to reach to a conclusion that the Insurance Company has not been able to fully establish by leading cogent evidence nor any sufficient material was brought before the Tribunal to hold that the driver-Roshan Kumar was not having a valid driving licence.

9. In addition, the Insurance Company has also not been to show before the Tribunal or before this Court as to the lapse or failure on the part of the owner of the offending Truck of not having taken due care while engaging the driver-Roshan Kumar as his driver with which the Insurance Company could be exonerated of its liability. As long as there is no such evidence, the Insurance Company is duty bound to indemnifying the owner under the contract which has been executed between them. The appeal of the Insurance Company thus being devoid of merits fails and is accordingly dismissed.

10. So far as the appeal of the Claimants for enhancement of compensation awarded is concerned, the contention of the learned Counsel is that the deceased-Laxmikant Tandon was an income tax payee and his income tax returns of the previous years show his income to be more than Rs. 1.5. Lakh annually. Therefore, the compensation ought to had been suitably awarded by the Tribunal.

11. But, on a query being put to the learned Counsel for the Claimants, he was not able to satisfy by showing any cogent and substantive document to establish the nature of employment of the deceased-Laxmikant Tandon or his source of income with which his earning capacity has been reflected at more than Rs. 1.5 Lakh. However, if we take into consideration the period of accident, which, in the instant case, is April, 2012, it is anybody's guess that at the relevant point of time even an unskilled labourer in this part of the country was earning more than Rs.200/- a day which makes the annual income of an unskilled labourer to be more than Rs.6000/- a month. As per the Claimants, the deceased-Laxmikant Tandon was earning around Rs.4000/- a month which perhaps would be the amount which the deceased would had been giving to the Claimants at the beginning of the month. For all practicable purposes, this Court is of the opinion that at the relevant point of time, the minimum income of the deceased-Laxmikant Tandon even if he would have gone for manual physical labour he would have earned more than Rs.6000/- a month.

12. Therefore, this Court has no hesitation in holding that the monthly income of the deceased-Laxmikant Tandon for the purpose of quantifying of compensation should be Rs.6000/- and it is ordered accordingly.

13. At this juncture, learned Counsel for the Insurance Company referring to the two judgments of the Hon'ble Supreme Court, first in the case of *Shashikala and others* Vs. *Gangalakshmamma and another*[1] and the another in *Chikkamma and another* Vs. *Parvathamma and another*[2], submits that the Claimants in view of the aforesaid judgments should not be granted compensation taking future prospects as a component.

14. However, considering the total facts and circumstances of the present case and also the fact that as long as the issue is pending before the Larger Bench of the Hon'ble Supreme Court, this Court is of the opinion that, till the Larger Bench of the Hon'ble Supreme Court takes a different opinion, considering the Motor Vehicles Act itself being a beneficial legislation so far as grant of compensation and also considering

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1 2015 (2) G.L.H. 62 : ACC 2015 (2) 76
2 AIR 2017 SC 1732 : LAWS (SC) 2017-2 (124)

the age of both the Claimants, this Court would be inclined to apply the judgments which have been passed by the Hon'ble Supreme Court in the case of **Sarla Verma (Smt.) and others** v. **Delhi Transport Corporation and Another**[3] and **Rajesh and Others** v. **Rajbir Singh and Others**[4] for the purpose of taking future prospects as a component for quantifying the compensation.

15. Accordingly, so far as the quantum of compensation is concerned, if 50% of Rs.6000/- (which has been assesed by this Court as the monthly income of the deceased-Laxmikant Tandon) is added towards the future prospects in view of *Sarla Verma* (supra) and Rajesh (supra), the monthly income would come to Rs.9000/- which would make the annual income to be Rs. 1,08,000/-. If 1/3rd of Rs. 1,08,000/-, that comes to Rs.36,000/-, is deducted towards the personal expenses, the annual income of the deceased would become Rs.72,000/- which if multiplied by applying the multiplier of 18 the same would become Rs. 12,96,000/-. It is thus held that the Claimants shall be entitled for a compensation of Rs. 12,96,000/- under the loss of dependency, instead of Rs. 6,48,000/- as has been assessed by the Tribunal.

16. So far as the compensation awarded by the Tribunal under the other heads are concerned, that is, Rs.10,000/- for funeral expenses, Rs.10,000/- towards physical and mental agony, Rs.15,000/- for loss of consortium and Rs.5000/- for loss of love and affection of minor child, i.e., total Rs.40,000/-, considering the date of accident, number of dependants and the fact that the deceased-Laxmikant Tandon at the relevant point of time was 25 years and the Claimants are his young widow aged around 21 years and one minor child aged around 1 year, this Court is of the opinion that the compensation awarded by the Triubnal under the said heads also

3 2009 (6) SCC 121
4 2013 (9) SCC 54

deserves enhancement and the ends of justice would meet if the same is fixed at a lump sum compensation of Rs.1,00,000/- instead of Rs.40,000/- as has been awarded by the Tribunal. Thus, the Claimants in all shall be entitled for a compensation of Rs. 13,96,000/- instead of Rs. 6,88,000/- as awarded by the Tribunal.

17. Accordingly, it is ordered that the Claimants shall be entitled to get a compensation of Rs.7,08,000/- in addition to what has already been awarded by the Tribunal. The enhanced amount of compensation shall carry the interest at the same rate as has been awarded by the Tribunal. The penal interest awarded by the Tribunal, since there was an appeal preferred by the Insurance Company the same has become inconsequential and is accordingly set aside. Rest of the conditions stipulated in the award shall remain intact.

18. With the aforesaid, the appeal of the Insurance Company is dismissed and the appeal of the Claimants is allowed to the above extent.

Sd/-
(P. Sam Koshy)
Judge

/sharad/