NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.742 of 2016

Branch Manager, The National Insurance Company Limited, Division Office, G.E.Road, Raipur, District Raipur (C.G.) (Insurer of offending vehicle Pickup bearing registration No.Cg-04/J.A.3995.

---Appellant

Versus

1. Bishuram Sahu S/o Gendram Sahu, aged about 45 years.
2. Smt.Sonarin Sahu W/o Bishuram Sahu, aged about 43 years.
3. Puneshwar Sahu S/o Bishuram Sahu, aged about 20 years.
4. Ku.Durpati Sahu D/o Bishuram Sahu, aged about 17 years, Minor, through natural guardian father Bishuram Sahu.

   All are R/o village Gaurbhath, Police Station Arang, District Raipur (C.G.).
5. Naresh Kumar Som S/o Anandram Som, aged about 24 years, R/o Kochway, Police Station and District Gariyaband (C.G.). (Driver).
6. Devendra Sahu S/o Chamru Ram Sahu, aged about 21 years, R/o village Kokdi, Police Station and District Gariyaband (C.G.). (Owner).

---Respondents

MAC No.973 of 2016

1. Bishuram Sahu S/o Gendram Sahu, aged about 45 years.
2. Smt.Sonarin Sahu W/o Bishuram Sahu, aged about 43 years.
3. Puneshwar Sahu S/o Bishuram Sahu, aged about 20 years.
4. Ku.Durpati Sahu D/o Bishuram Sahu, aged about 17 years, Minor, through natural guardian father Bishuram Sahu.

   All are R/o village Gaurbhath, Police Station Arang, District Raipur (C.G.).

---Appellants

Versus

1. Naresh Kumar Som S/o Anandram Som, aged about 24 years, R/o Kochway, Police Station and District Gariyaband (C.G.). (Driver).
2. Devendra Sahu S/o Chamru Ram Sahu, aged about 21 years, R/o village Kokdi, Police Station and District Gariyaband (C.G.). (Owner).
3. The National Insurance Company Limited, Division Office, G.E.Road, Raipur, District Raipur (C.G.)

---Respondents

MAC No.938 of 2016

1. Naresh Kumar Som S/o Anandram Som, aged about 24 years, R/o Kochway, Police Station and District Gariyaband (C.G.). (Driver).
2. Devendra Sahu S/o Chamru Ram Sahu, aged about 21 years, R/o village Kokdi, Police Station and District Gariyaband (C.G.). (Owner).

---Appellants

Versus

1. Bishuram Sahu S/o Gendram Sahu, aged about 45 years.
2. Smt.Sonarin Sahu W/o Bishuram Sahu, aged about 43 years.
3. Puneshwar Sahu S/o Bishuram Sahu, aged about 20 years.
4. Ku.Durpati Sahu D/o Bishuram Sahu, aged about 17 years, Minor, through natural guardian father Bishuram Sahu.

   All are R/o village Gaurbhath, Police Station Arang, District Raipur (C.G.).
5. Branch Manager, The National Insurance Company Limited, Division Office, G.E.Road, Raipur, District Raipur (C.G.).

---Respondents

Shri C.K.Sahu, Advocate for resp.No. 5 & 6 in MAC No.742/2016, for resp.No. 1 & 2 in MAC No.973/2016 and for appellants No.1 & 2 in MAC No.938/2016.
Shri Amiyakant Tiwari, Advocate for resp.No. 1 to 4 in MAC No.742 & 938 of 2016 & for appellants No. 1 to 4 in MAC No.973/2016.
Shri G.V.Kutumba Rao and Shri Qamrul Aziz, Advocates for Insurance Company.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/12/2017

1. These are the three appeals filed under Section 173 of the Motor Vehicle Act assailing the award dated 09/02/2016 passed by the learned 8th Additional Motor Accident Claims Tribunal, Raipur, District Raipur (C.G.) in Motor Accident Claim Case No.39/2012.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicle Act has awarded a compensation of Rs.9,99,000/- with interest @ 6% per annum from the date of application.

3. MAC No.742/2016 is an appeal by the Insurance Company. MAC No.973/2016 is an appeal by the claimants and MAC No.938/2016 is an appeal by the owner.

4. Vide the impugned award, the Tribunal had directed the Insurance Company to deposit the compensation with liberty to recover the same from the owner.

5. The challenge in an appeal by the Insurance Company is to the direction given by the Tribunal for payment of compensation with applying principles of pay and recovery. It was the contention of the counsel for the Insurance Company that, this direction of pay and recover in the facts of the case was erroneous as the vehicle involved in the accident was a Pickup Van which was a transport vehicle and the driver of the said vehicle only had a license to drive the Light Motor Vehicle and therefore there was a clear breach of policy condition and thus the liability should had been fastened upon the owner and driver exonerating the Insurance Company.

6. So far as the appeal of the owner is concerned, the counsel for the owner submits that, since, it is a case where the driver undisputedly had a license to drive the Light Motor Vehicle and the vehicle involved in the accident i.e. a Pickup Van bearing registration No.CG-04-JA-3995 also been a Light Motor Vehicle, it cannot be said that there was a breach of policy

condition and the order of the Tribunal directing pay and recovery is erroneous and the liability should had been exclusively fastened upon the Insurance Company since, the vehicle was duly insured and therefore prayed for suitable modification of the award.

7. So far as the appeal of the claimants i.e. MAC No.973/2016 is concerned, the counsel for the claimants submits that the income assessed by the Tribunal is erroneous for the reason that, the deceased in the instant case Tijram Sahu was a Sipoy in the Indian Army and his monthly wages was much more than what has been assessed by the Tribunal. He further submits that, by moving an application under order 41 rule 27, he has brought on record the salary slip of the deceased which show that, the deceased at the time of accident was earning an income of roughly more than Rs.33,000/- and therefore the Tribunal should have been taken this as the income of the deceased for quantifying the compensation and prayed for suitable enhancement of the award.

8. So far as the appeals of the Insurance Company and the owner are concerned, the issue raised by the counsel for the Insurance Company as well as the owner is no longer res-integra for the reason that, the Hon'ble Supreme Court in its recent larger Bench decision in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited [AIR 2017 SC 3668]** have in a very categorical terms stated that, the mere non-availability of an endorsement to drive the transport vehicle by itself would not absolve the Insurance Company of its liability indemnifying the owner.

9. Given the aforesaid authoritative decision of the Supreme Court in the case of Mukund Dewangan (Supra), the appeal of the Insurance Company i.e. MAC No.742/2016 stands rejected and the appeal of the owner i.e. MAC No.938/2016 stands allowed to the extent that, the liability of payment of compensation shall now fully fall upon the Insurance Company without the principles of pay and recovery been applied.

10. So far as the appeal of the claimants i.e. MAC No.973/2016 is concerned, the documents which has been brought on record by the claimants vide application under order 41 rule 27 which is the salary slip of the deceased – Teejram Sahu, a Sipoy in the Indian Army, it reflects his monthly net salary for the month of March-2011 and May-2011 at Rs.33,491/-.

11. This Court assesses the monthly income of the deceased at Rs.33,491/- which for convenience sake is been rounded off at Rs.33,500/- for the purpose of quantifying the compensation. In addition, in the light of 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 shall also be entitled for 50% of his monthly income towards future prospects i.e. Rs.16,750/- which if added to the monthly income i.e. Rs.33,500/-, the figure would become Rs.50,250/- per month and Rs.6,03,000/- yearly. If considering the fact that the deceased in the instant case was a bachelor, 50% of the said amount shall be deducted towards personal expenses

leaves the figure at Rs.3,01,500/- which if multiplied by applying multiplier of 18, the amount would become Rs.54,27,000/-. Thus, the claimants shall be entitled for a compensation of Rs.54,27,000/- towards loss of dependency. In addition, the claimants shall also be entitled for an amount of Rs.70,000/- towards conventional head which would make the compensation payable to the claimants at Rs.54,97,000/-. In addition, the claimants shall also be entitled for an amount of Rs.64,000/- as assessed by the Tribunal incurred by the claimants towards the medical expenses on the deceased as he had died much after the date of accident in the course of his treatment. Thus, the total compensation payable to the claimants would become Rs.55,61,000/- instead of Rs.9,99,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

12. With this, the appeal of the claimants also stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

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