

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 681 OF 2012

1. Smt. Akhtari Begum, W/o Late Ikramul Haq, aged about 40 years
 2. Hamalulla, S/o Late Ikramul Haq, aged about 16 years (minor)
 3. Saddam Husain, S/o Late Ikramul Haq, aged about 14 years (minor)
 4. Jiya ul Haq, S/o Late Ikramul Haq, aged about 12 years (minor)
 5. Mohammad Kaif, S/o Late Ikramul Haq, aged about 10 years (minor)
 6. Gausiya Naz, D/o Late Ikramul Haq, aged about 5 years (minor)
- [Appellant No. 2 to 6 being minor through their legal guardian mother Smt. Akhtari Begum Appellant No.1]

All present R/o in front of Devpuri School, Mana Road, Raipur, District Raipur (C.G.)

... Appellants

versus

1. Rajesh Dhote, S/o Bharat Dhote, aged about 23 years, present R/o Punjab Roadways, Transport Nagar, Bhilai-3, District Durg (C.G.)
2. Gurudeep Singh Saini, present R/o Punjab Roadways, Transport Nagar, Bhilai-3, District Durg (C.G.)
3. The Reliance General Insurance Company Limited, through Divisional Manager, Divisional Office, Ravi Bhawan, Jaistambh Chowk, Raipur, Tahsil & District Raipur (C.G.)

... Respondents

For Appellants	:	Mr. Shivendu Pandya, Advocate.
For Respondent No.3	:	Mr. Tarkeshwar Nande, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/02/2018

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the appellant-claimants seeking enhancement of the compensation awarded.
2. Challenge in the present appeal is to the award dated 30.3.2011 passed by the Seventh Additional Motor Accident Claims Tribunal, Raipur, in Claim Case No. 34/2009.
3. Vide the impugned award, the learned Tribunal, in a death case, under Section 166/140 of the Motor Vehicles Act, has awarded a compensation of Rs.3,24,500/- in favour of the claimants with interest thereon at the rate of 6% per annum. While passing the award, the learned Tribunal has exonerated the insurance company of its liability and has

fastened the liability for payment of compensation upon the owner and the driver of the offending vehicle *i.e.* a Truck, bearing registration no CG07-C-6185.

4. Learned counsel for the appellant-claimants submits that it is a case where the vehicle involved was duly insured with the respondent no.3-insurance company. He further submits that the only ground of exonerating the insurance company of its liability is that the driver at the relevant point of time did not have a valid licence to drive the offending vehicle. He next submits that it is a case where at best the Tribunal should have ordered for pay and recovery. He also submits that the quantum of compensation needs reconsideration as the income assessed was on the lower side so also the claimants would be entitled for a compensation under the head, future prospects. He further contended that the deduction made towards personal expenses also needs modification inasmuch as the deduction would be 1/4th instead of 1/3rd taking into consideration the number of claimants.

5. Learned counsel for respondent no.3-insurance company however opposing the appeal submits that the finding of the Tribunal does not warrant interference both on the liability aspect as well as on the quantum of compensation. He further submits that since the driver did not have a licence, the liability cannot be fastened upon the insurance company as it amounts to a clear breach of policy condition. So far as quantum of compensation is concerned, he submits that the Tribunal has passed the award taking into consideration the evidence which have come on record. He thus prayed for the rejection of the appeal.

6. Having considered the contentions put forth on either side and on perusal of record, true it is that the finding of the Tribunal that the driver of the offending vehicle did not have a licence on the date of accident stood

established. Further, it is by now settled by a series of decisions of the Hon'ble Supreme Court starting from **National Insurance Co. Ltd. v. Swaran Singh & Others**¹ up till the decision of the Hon'ble Supreme Court in the case of **Manuara Khatun & Ors. v. Rajesh Kumar Singh & Others**². That, under such circumstances, the doctrine of 'pay and recovery' can be applied. What also has to be borne in mind is that the insurance company in the instant has covered the risk of the offending vehicle by issuing a package policy. Under this circumstance also, this Court is of the opinion that it is a fit case where the doctrine of 'pay and recovery' should be applied and it is accordingly ordered that the amount of compensation shall be honoured by the insurance company with a liberty to recover the same by initiating appropriate recovery proceeding against the owner and the driver of the offending vehicle.

7. So far as quantum of compensation is concerned, it is a case of the claimants that the deceased was employed as a labour in Nandan Steel at Raipur and was being paid an amount of Rs.300/- a day *i.e.* Rs.9000/- a month. The Tribunal in the instant case has assessed the income of the deceased at Rs.3000/- a month which is unreasonably low. Considering the total facts and circumstances of the case and also the fact that it is a case where the accident is of May, 2009, this Court thinks it proper to assess the monthly income of the deceased at Rs.5000/- instead of Rs.3000/-. Similarly, in the light of a recent Larger Bench's decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited v. Pranay Sethi & Others**³, the claimants would also be entitled for 25% of the monthly income towards future prospects for the purpose of quantifying the compensation.

1 2004 (3) SCC 297

2 2017 (4) SCC 796

3 SLP (Civil) No. 25590 of 2014, decided on 31.10.2017

8. Accordingly, taking Rs.5000/- as the monthly income of the deceased, the yearly income comes to Rs.60,000/- to which if 25%, i.e., Rs.15,000/-, is added towards future prospects, the amount would come to Rs.75,000/- of which if 1/4th, i.e., Rs.18,750/-, is deducted towards personal expenses, the amount left would be Rs.56,250/- which if multiplied applying the multiplier of 14, the amount towards loss of dependency would come to Rs.7,87,500/- which the claimants shall be entitled for instead of Rs.3,12,000/- which the Tribunal has assessed. The claimants in addition shall also be entitled for a lump sum compensation of Rs.70,000/- towards conventional heads instead of Rs.12,500/- which the Tribunal has awarded. Thus, making the total compensation payable to the claimants at Rs.8,57,500/- instead of Rs.3,24,500/- which the Tribunal has awarded.

9. The impugned award stands accordingly modified and enhanced from Rs.3,24,500/- to **Rs.8,57,500/-** which the appellant-claimants shall be entitled for. The enhanced amount of Rs.5,33,000/- shall also carry interest at the same rate as has been fixed by the learned Tribunal. It shall be the responsibility of the insurance company to pay the entire amount of compensation. However, the insurance company shall be at liberty to recover the same from the owner and the driver of the offending vehicle by initiating appropriate recovery proceeding.

10. The appeal thus stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge