NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 679 of 2012

Bajaj Allianz General Insurance Company Limited, Through: Branch Manager, Shivmohan Bhawan, Vidhan Sabha Road, Pandri, Tahsil and District Raipur Chhattisgarh

---- Appellant

Versus

1. Mrs. Kantadevi Kashyap, W/o. Narmada Prasad, Aged about 47 years,
2. Karuna Kashyap, W/o. Krishna Kumar Kashyap, Aged about 23 years,
3. Virendra Kashyap, S/o. Narmada Kashyap, Aged about 29 years,
4. Naresh Kashyap, S/o. Narmada Kashyap, Aged about 23 years,
5. Mrs. Pinki Kashyap, D/o. Narmada Kashyap, Aged about 20 years,
6. Fulbai, W/o. Late Durga Prasad Kashyap, Aged about 75 years,

   All are R/o. Village Mahli, Police Station Kunda, Tahsil Pandariya, District Kabeerdham, Chhattisgarh (Claimants)
7. Dipak Lachchhawani, S/o. Manohar Lal Lachchhawani, Aged about 33 years, R/o. Steel City, New Gayatri Nagar, Awanti Vihar, Police Station Telibandha, Raipur, District Raipur Chhattisgarh (Driver)
8. Manohar Lal Lachchhawani, S/o. Pahlajrai Lachchhawani, Aged about 66 years, R/o. Steel City, New Gayatri Nagar, Awanti Vihar, Police Station Telibandha, Raipur, District Raipur Chhattisgarh (Owner)

---- Respondents

For Appellant	:	Mr. Bhaskar Payashi, Advocate
For Claimants	:	Mr. Keshav Dewangan, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/02/2018

1. Present is an appeal by the Insurance Company. The challenge is to the award dated 29.03.2012, passed by the Motor Accident Claims Tribunal, Kabeerdham (Kawardha), Chhattisgarh, in Claim Case No. 30/2010.

2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.11,21,800/- with interest @ 9% per annum from the date of application.

3. A perusal of the record would show that the Claimants i.e. respondent No.1 to 6 had filed a claim application under Section 166 of the Motor Vehicles Act in respect of the death of one Krishna Kumar, aged around 26 years in a road accident on 12.03.2010. The vehicle involved in the accident was a Car bearing registration No. CG/06/3896, which had hit the deceased, who was going on a bicycle. The claim application was finally allowed vide the impugned award granting compensation of Rs.11,21,800/- with interest @ 9% per annum.

4. The main ground raised by the appellant in the present appeal is the fact that the Driver of the offending vehicle on the date of accident was not having a valid license. It was also the ground raised by the appellant that the amount of compensation awarded is on the higher side and the same requires reconsideration as the compensation awarded is exorbitantly high. Moreover, the deduction of 1/5 made by the Tribunal also is inappropriate taking into consideration the fact that most of the Claimants were not dependent upon the deceased and the impugned award deserves to be set-aside/modified on this ground also.

5. At this juncture, Mr. Keshav Dewangan, Advocate appearing for the Claimants submits that he has also preferred a cross-objection seeking for enhancement of the compensation. The only ground on which the enhancement is sought is that the Tribunal has not considered the aspect of calculating compensation taking note of the

future prospects aspect. He submits that given the facts and circumstances of the case, the Claimants would be entitled for 40% of the income towards future prospects while quantifying the compensation and the Tribunal having assessed Rs.6000/- as his monthly income, the yearly income would come to Rs.72,000/- and of the same 40% has to be added towards future prospects which is Rs.28,800/-, which if added to the yearly income, would bring the figure to Rs.1,00,800/-. He further submits that the calculation ought to have been made keeping the income of the deceased.

6. Perusal of the record would show that the Insurance Company has not led any evidence in support of its contentions before the Tribunal. There has been no witness examined, nor is there any cogent evidence brought on record on the part of the Insurance Company, nor does there seems to be any material facts brought before the Court through the cross-examination of the Claimants and their witnesses, with which the claim of the Claimants and the statements of the witnesses could be doubted at.

7. Given the said facts and circumstances of the case, moreover Exhibit NA-1(c) has been brought on record, which is a photocopy of the driving license of the Driver who was driving the vehicle at the time of accident. The said license shows that he was having a valid license to drive the Light Motor Vehicle (Non-Transport). The vehicle involved in the accident also is a Light Motor Vehicle for all practical purposes and therefore the Insurance Company cannot be absolved of their liability indemnifying the Owner.

8. Further, from the record of the criminal case which was produced before the Tribunal, it clearly reflects that during the course of

seizure of the relevant documents, the insurance policy issued in respect of the offending vehicle for the period was also recovered, which shows that there was a valid policy between 16.04.2009 to 15.04.2010.

9. In view of the aforesaid documents which have come on record, this Court does not find any strong case made out by the Insurance Company calling for an interference with the impugned award. The appeal of the Insurance Company thus deserves to be and is accordingly dismissed.

10. So far as the cross-objection of the Claimants is concerned, this Court has no hesitation in accepting the contentions of Mr. Keshav Dewangan that the Claimants would also be entitled for compensation of 40% of his income towards future prospects as well, which would bring the yearly income to Rs.1,00,800/-. Accepting the fact that there were total six Claimants, the deduction made would be 1/4th as per the judgment of the Hon'ble Supreme Court in the case of "***Sarla Verma & Ors vs Delhi Transport Corp. & Anr." (2009) 6 SCC 121)***". 1/4th of Rs.1,00,800/- is Rs.75,600/-, which if multiplied applying the multiplier of 17, which would bring the loss of dependency at Rs.12,85,200/- instead of Rs.10,36,800/-. The multiplier also had to be applied as per the parameters laid down by the Hon'ble Supreme Court in the case of "Sarla Verma" (supra), though the Tribunal had applied the multiplier of 18. In addition to the loss of dependency of Rs.12,85,200/-, the Claimants would also be entitled for a lump sum compensation of Rs.85,000/- as assessed by the Tribunal in its award to bring the total compensation at Rs.13,17,200/- instead of Rs.11,21,800/-.

11. The enhanced amount shall also carry interest at the same rate as awarded by the Tribunal.

12. Thus the appeal of the Insurance Company stands rejected and the Cross-objection of the Claimants stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Ved