NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 480 of 2012

Shri Ram General Insurance Co. Ltd., Through: Divisional Manager, Shri Ram General Insurance Company Limited, Office at M.P. Nagar, Bhopal (M.P.)

---- Appellant

Versus

1. Smt. Geeta Bai Wd/o Late Tularam Barre, Aged about 40 years
2. Nitish Kumar Barre, S/o. Tularam Barre, Aged about 7 years,
3. Dipesh Kumar Barre, S/o. Tularam Barre, Aged about 6 years,
4. Punauram Barre, S/o. Guharam Barre, Aged about 60 years,

   Respondent No.2 & 3 are Minors represented through their natural guardian mother respondent No.1 Smt. Geeta Bai.

   All R/o. Gogaon, Post Sarora, Thana Khamtarai, District Raipur Chhattisgarh

   Another Address: Village Lahanga, Thana Ahirwara, Nandani Mines, District Durg Chhattisgarh
5. Toran Nishad, Aged about 35 years, S/o. Raviram, R/o. Kumhari, Thana Urla, Raipur, Chhattisgarh
6. Bharat Lal Jangde, Aged about 40 years, S/o. Ramkishun Jangde, R/o. Kanhera, Thana Urla, District Raipur Chhattisgarh

---- Respondents

For Appellant	:	Mr. S.S. Rajput, Advocate
For Respondents No. 1 to 4	:	Ms. Aprajita Gayakwad, Advocate on behalf of Mr. Amiyakant Tiwari, Advocate
For Respondents No. 6	:	Mr. Shivendu Pandya, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/02/2018

1. Present is an appeal by the Insurance Company challenging the award dated 16.12.2011, passed by the 1st Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 44/2010.

2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.10,33,500/- with interest @ 6% per annum from the date of application.

3. The challenge by the Insurance Company is on the ground that the vehicle involved in the accident owned by the respondent No.6 and driven by the respondent No.5 did not have a valid permit on the date of accident. The contention of Mr. Rajput, Advocate is that the Insurance Company has led the evidence of its witness, whereby he has specifically stated that inspite of a request being made by moving an appropriate application before the Tribunal for production of the permit, the Owner has not cooperated and has not produced the same, hence has to draw an inference against the Owner and the liability of payment of compensation accordingly should be shifted upon the Owner and the Insurance Company should be exonerated of its liability.

4. Per contra, the counsel for the Owner submits that the contention of the Insurance Company is not sustainable as it was the duty and responsibility, which was casted upon the Insurance Company to have proved its case not having done so, the finding of the Tribunal cannot be found fault with.

5. The counsel appearing for the Claimants on the contrary submits that the Claimants have also filed a Cross-objection seeking for enhancement of the compensation under Order 41 Rule 22 of the Code of Civil Procedure. The counsel for the Claimants submits that the income assessed by the Tribunal is unreasonably low and contrary to the evidence, which have come on record. He submits that the last wages of the deceased Exhibit P/16 was brought on record and exhibited through AW/2 showed the monthly wages of the deceased at Rs.13,700/-, whereas the Tribunal has assessed the income at Rs.8000/- and thus prayed for the income part to be

suitably enhanced and the compensation quantified. Likewise, the counsel for the Claimants also submits that the Claimants also would had been entitled for income under the future prospects so also compensation under the conventional head also deserves suitable enhancement.

6. Considering the facts and circumstances of the case, particularly the facts as has been narrated and not disputed by the parties what clearly reflects is that the Driver and Owner initially entered appearance before the Tribunal and were also contesting the case, however on an application being moved by the Insurance Company he was asked to produce the permit, thereafter the Owner and Driver abruptly stopped appearance before the Tribunal and the Tribunal later proceeded exparte against the Owner and Driver. Likewise, what also reflects is that even though the appeal has been filed in the year 2012, the Owner, who is represented through a lawyer before this Court till date also has not been able to produce the permit, which he had at the relevant point of time.

7. In the given facts and circumstances of the case this Court has no hesitation in drawing an adverse inference against the Owner and hold that the Owner did not have a valid permit on the date of accident in respect of the vehicle which he owned and which was involved in the accident. However, considering the fact that the vehicle was duly insured and the policy was a package policy (Exhibit D/1), which has been duly exhibited before the Tribunal by the officer of the Insurance Company itself, this Court is of the opinion that in the given circumstances more particularly since the 50% of the award has already been deposited by the Insurance

Company, it is a fit case where the doctrine of 'pay and recovery' could be applied and it is thus ordered that the entire compensation shall be deposited by the Insurance Company with liberty to recover the same from the Owner i.e. the respondent No.6 by initiating appropriate recovery proceedings.

8. So far as the Cross-objection of the Claimants is concerned, true it is that Exhibit P/16 has been produced before the Tribunal and marked through AW/2 the witness of the earlier employer's office to show that the wages of the deceased was Rs.13,700/-. Even, if there was not much material to show the actual income of the deceased on the date of accident, this Court has no hesitation in reaching that under any circumstances, the deceased would had been earning roughly Rs.10,000/- a month as he was an electrician by profession and as such he was a trained skilled person and where his income would definitely had been more than Rs.300/- a day.

9. Given the circumstances, this Court assesses the income of the deceased at Rs.10,000/- a month and proceeds to calculate the compensation accordingly.

10. Assessing Rs.10,000/- as a monthly income, the yearly income would come to Rs.1,20,000/-, to which the Claimants would also be entitled for 40% towards future prospects, which comes to Rs.48,000/- which would bring the yearly income of the deceased at Rs.1,68,000/-, of which if 1/4th is deducted towards personal expenses, the amount left would be Rs.1,26,000/-, which if multiplied applying the multiplier of 16, the amount would come to Rs.20,16,000/- towards loss of dependency. In addition the Claimants shall also be entitled for an amount of Rs.70,000/- under

conventional head to make the total compensation payable at Rs.20,86,000/- instead of Rs.10,33,500/-.

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

12. It is made clear that the responsibility of payment of compensation shall be upon the appellant-Insurance Company with liberty to recover the same from the Owner i.e. respondent No.6.

13. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved