NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1182 of 2011

1. Smt. Shaista Niyaji W/o Sayeed Ahmad Khan Niyaji, aged about 32 years.
2. Ku. Sayma Niyaji D/o late Sayeed Ahmad khan Niyaji, aged about 14 years
3. Asim Ahmad Niyaji, aged about 10 years, S/o late Sayeed Ahmad Khan Niyaji

   Appellants 2 & 3 are represented here by legal guardian mother Shaista Niyaji. All are R/o Tatyapara Ward House No. 30/680, P.S Azad Chowk, Raipur, Tahsil & District Raipur (CG)

---- Appellant

Versus

1. Nasimuddin S/o Sayeed Mohmad, aged about 22 years, jeep driver, R/o Bhilai, Khursipar, Thana Chhovni, Bhilai, Tahsil & District Durg, Chhattisgarh.
2. Abdul Sattar S/o Jabbar Ali, aged about 40 years, Jeep owner, R/o near Street no.9, Sector-II, Qt. No. 3/A, Jone No.3 Khursipar, Bhilai, Tahsil and District Durg, Chhattisgarh.
3. The National Insurance Company Limited, through Divisional Manager, Divisional Office Mobin Mahal, G.E. Road, Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Shri A. L. Singroul, Advocate
For Respondent no.3	:	Shri B. N. Nande, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

29/01/2018

Present is an appeal by the claimants under Section 173 of the Motor Vehicles Act seeking for enhancement of compensation awarded by the Tribunal. The challenge is to the award dated 19.09.2011 passed by the 3rd

Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No. 159 of 2011. Vide the impugned award, the Tribunal, in a death case, has awarded a compensation of Rs.4,73,660/- with interest @ 6% per annum from the date of application.

2. Counsel for the appellants submits that it is a case where the Insurance Company has been exonerated of its liability and the responsibility of payment of compensation has been fastened upon owner & driver of the Jeep involved in the accident i.e. respondents 1 & 2 respectively. He submits that the said exoneration of Insurance Company is bad in law as it is in contravention to the evidence which has come on record. He further submits that the amount of compensation awarded is also on the lower side as the claimants are entitled for compensation under the future prospects so also the compensation awarded under conventional head is unreasonably low and the same deserves suitable enhancement.

3. Per contra, counsel for the Insurance Company opposing the appeal submits that it is a case where there was fundamental breach of policy condition in as much as the Jeep involved in the accident was a private car and the policy issued was that of a private car but the said vehicle was being used for commercial purpose as is evident from the statement of AW-2 Lal Bahadur Parihar, therefore, the insurance Company has rightly been exonerated from its liability. He submits that the contention of the Insurance Company further stands established from the criminal case which was registered against the owner of the vehicle in which apart from Section 304 A of IPC and the owner was also charged for the offence under Section 66 read with Section 192 of MV Act. Thus, prayed for rejection of the appeal.

4. From the aforesaid factual matrix of the case, the admitted position as it stands is that the date of accident being 08.03.2002, the resultant death of

Sayeed Ahmad Khan Niyaji aged around 40 years, the vehicle involved in the accident being Jeep bearing registration No. MP 23G 1771, driven by respondent no.1, owned by respondent no.2 and insured with respondent no.3. The vehicle was registered as a private vehicle and the policy issued was a private car package policy.

5. The solitary ground on which the insurance Company has been exonerated is that at the time of accident, AW-2 Lal Bahadur Parihar was travelling in the said Jeep on payment of fare of Rs.15/- to the owner as has been deposed by AW-2 himself before the Tribunal. However, what cannot be brushed aside is the fact that the deceased in the instant case was not travelling in the said jeep and he was travelling in a motorcycle bearing registration No. MP 23MA 2938 when he was hit by the Jeep belonging to respondents 1 & 2.

6. From the aforesaid facts it clearly reflects that the use of the vehicle in commercial purpose has got nothing to do with the accident as the misuse of permit or registration was not the cause of accident rather it is an accident caused to a third party from the use of the Jeep duly insured by respondent no.3. True it is that at the relevant point of time, the vehicle was registered as a private car and the policy issued was a package policy for a private car. Therefore, there apparently appears to be a fundamental breach of policy condition in as much as if the statement of AW-2 Lal Bahadur is to be relied, he had paid fare for travelling in the said vehicle on the date of accident. Thus, the vehicle though was registered as a private vehicle, was being used for commercial purpose. However, since the deceased was a third party and the policy issued was a package policy, the Insurance Company cannot be totally absolved of its liability in indemnifying the owner. In the opinion of this Court, it is a fit case where the doctrine of “pay and recovery” can be applied and the Insurance Company should be ordered to pay the entire compensation awarded with liberty to recover the same from respondents 1 & 2 i.e. owner and driver of the offending vehicle. It is ordered accordingly.

7. So far as the enhancement of compensation is concerned, the salary slip produced before the Tribunal is marked as Ex. P-7 where the income of the deceased reflects as Rs.13,922/- a month. Though there is a deduction of about Rs.5,000/- shown from the said income, the same was towards payment of loan which again is a part of income as the recovery would have stopped immediately after the entire payment of loan is made good off. Thus, this Court assesses the income of the deceased at Rs.13,922/- and for convenience sake, it is rounded up at Rs.13,900/- a month. Keeping in view the fact that the deceased was working as a cashier in State Bank of India who undisputedly was a permanent employee, the claimants would be entitled for 50% of the income towards future prospects which brings the monthly income at Rs.20,850/- and the yearly income at Rs.2,50,200/-. Considering the total number of claimants, the deductions towards personal expenses would be 1/3 which would bring the amount to Rs.1,66,800/-. If the said amount is multiplied applying the multiplier of 15, the amount would be Rs.25,02,000/-. In addition, the claimants would also be entitled for a lump sum compensation of Rs.70,000/- under conventional heads to make the total compensation payable at Rs.25,72,000/-. It is ordered that the claimants shall be entitled for a total compensation of Rs.25,72,000/- in stead of Rs.4,73,660/-. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

8. At this juncture, counsel for the Insurance Company submits that the Tribunal on an earlier occasion, vide its order dated 30.06.2003 had awarded compensation of Rs.10,25,265/- to the claimants against which, the Insurance Company had also deposited Rs.10,55,765/- inclusive of interest before the Tribunal. He submits that there was no order of refund of the said amount made when the appeals preferred by the Insurance Company so also that of claimants were decided by this Court on 27.10.2010. Counsel for the Insurance Company prays that the said amount still lies with the claimants and the same may kindly be ordered to be adjusted from the total amount awarded by this Court.

9. This aspect has not been disputed by the counsel for the appellants.

10. If that be so, whatever amount has been deposited by the Insurance Company during the earlier round of litigation, subject to the verification of the same by the Tribunal, it shall be adjusted with the final compensation awarded by this court in the present order.

11. It is made clear that after adjusting the amount already deposited by the Insurance Company from the total amount of compensation of Rs.25,72,000/-, the balance of amount shall be deposited by the Insurance Company before the Tribunal at the earliest with liberty to recover the same from the owner and the driver by initiating appropriate recovery proceeding.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola