

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 1199 of 2012

1. Ramprasad S/o Shobha Ram Nishad, aged about 43 years.
 2. Nemin Bai W/o Ramprasad Nishad, aged about 40 years.
 3. Pramod Nishad S/o Ramprasad Nishad, aged about 09 years, Minor, represented through his father Ramprasad.
- All are R/o village Bilha, District Bilaspur (C.G.).

---Appellants

Versus

1. Lalu Ram Kaiwart S/o Nikhad Ram Kaiwart, aged about 27 years, R/o Kapot (Chetma), P.S. Pali, Tahsil Pali, District Korba (C.G.) (Driver).
2. Sarwmangla Kanstraction, Rajkumar Agrawal S/o Shri Chhote Lal Agrawal, R/o G.I.R. Tati Bandh, Raipur (C.G.) (Owner).
3. Branch Manager, United India Insurance Company, Branch Office Rajendra Nagar Chowk, Bilaspur (C.G.) (Insurer).

---Respondents

For appellants/claimants	:	Shri A.L.Singroul, Advocate.
For respondent No. 1	:	Shri Samir Singh, Advocate.
For respondent No.3/Insurance Company.	:	Ms.Chitra Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/02/2018

1. Present is an appeal filed by the claimant under Section 173 of the Motor Vehicles Act assailing the award dated 10/07/2012 passed by the learned Sixth Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Motor Accident Claim Case No. 33/2011.
2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.2,15,000/- with interest @ 7.5% per annum from the date of application.

3. While passing the impugned award, the Tribunal has fastened the liability of payment of compensation upon the owner and driver of the offending vehicle exonerating the Insurance Company.

4. The contention of the counsel for the appellant/claimant is that, the Insurance Company has been wrongly exonerated of its liability. It was further contended that, the claimant in the instant case has brought license – Ex-D-C/5 on record to show that, the driver had infact a valid license at the time of the accident. So far as quantum is concerned the counsel for the appellant submits that, the income assessed by the Tribunal is unreasonably low considering the period of accident. He further submits that the claimant would also be entitled for compensation under the future prospects so also the multiplier to be applied also is that of 18 and thus prayed for suitable enhancement of the award.

5. So far as the liability of payment of compensation is concerned what is revealed from the proceedings is that, the Insurance Company had led an evidence of their witness Subrat Choudhary-NAW/1 who was an officer of the Insurance Company who has specifically pleaded before the Tribunal that the driver of the offending vehicle did not have a license at the time of accident. He further deposed that, the Insurance Company had got it verified from the concerned R.T.O. as to whether the license produced was a genuine license or not and it was revealed that no such license was issued from the office of R.T.O. To substantiate the contention of the said witness, the Insurance Company also had examined NAW/2 – Manish Kumar Kosley,

an employee from the office of R.T.O., Korba who has also specifically supported the evidence of NAW/1 – Subrat Choudhary and has stated that, no such license was ever issued from the R.T.O., Korba.

6. Given the facts and circumstances of the case and the evidence which have come on record, this Court has no hesitation in reaching to the conclusion that, the finding of the Tribunal in exonerating the Insurance Company is proper, legal and justified and the same does not warrant any interference.

7. So far as quantum part is concerned, considering the period of accident which is February-2011, it is anybody's guess that, at the relevant point of time, even an unskilled labour would had been earning more than Rs.150-200/- per day i.e. Rs.4,500-6,000/- per month. In the instant case, the deceased was working as a Raj Mystry (Mason) and thus he would definitely had been earning Rs.200/- per day which would bring his monthly income at Rs.6,000/-.

8. Therefore, this Court assesses the monthly income of the deceased at Rs.6,000/- instead of Rs.3,000/- as assessed by the Tribunal. The claimant would also be entitled for 40% of the income towards future prospects which come to Rs.2,400/-. If Rs.2,400/- is added to the monthly income, the figure would become Rs.8,400/- per month i.e. Rs.1,00,800/- yearly. Considering the fact that the deceased was a bachelor, the deduction towards the personal expenses would be half i.e. 50% which would bring the income of the deceased at Rs.50,400/- which if multiplied by applying multiplier of 18,

the amount would come to Rs.9,07,200/-. Thus, the claimant shall be entitled for a compensation of Rs.9,07,200/- towards loss of dependency. In addition, the claimant would also be entitled for an additional amount of Rs.40,000/- towards the conventional head which would make the total compensation payable to the claimants at Rs.9,47,200/- instead of Rs.2,15,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

9. Considering the fact that the Insurance Company has been exonerated of its liability, the claimant shall be entitled for initiating appropriate recovery proceedings if the owner does not honour the award against the respondent No.2.

10. The appeal stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit