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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1201 of 2012

1. Devnarayan Dhuruv, aged about 50 years, S/o late Pardeshiram Dhuruv
2. Smt. Anusuiya Dhuruv, aged about 45 years, W/o Shri Devnarayan Dhuruv

   Both by caste Gond, R/o Bhanbeda, Tahsil Bhanupratappur, District Kanker (CG)

---- Appellants

Versus

1. Sunil Baghel, aged about 28 years, S/o Kamal Singh Baghel, by caste Gada, R/o Adhrinvagaon, Thana Kotwali, Dhamtari, Ward No.8, District Dhamtari
2. Kalim Khan S/o Sardar Khan, by caste Musalman, R/o Shtnabandha Dhamtari, District Dhamtari
3. The Oriental Insurance Company Ltd. Divisional Officer, Adarsh Bal Mandir, Guru Teg Bahadur Road, Dhamtari

---- Respondents

For Appellants	:	Shri Shalvik Tiwari, Advocate
For Respondent no.2	:	Shri Adil Minhaj, Advocate
For Respondent no.3	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

26/02/2018

Present is an appeal by the claimants under Section 173 of the Motor Vehicles Act. The challenge is to the award dated 29.09.2012 passed by the Additional Motor Accident Claims Tribunal, Uttar Bastar, Kanker (CG) in Claim Case No.37/2012. Vide the impugned award, in a death case under Section 166 of the MV Act, the Tribunal has awarded compensation of Rs.65,000/- with interest @ 6% per annum from the date of application.

2. While passing the impugned award, the Tribunal has exonerated the Insurance Company of its liability and shifted the liability of payment of compensation upon the owner and the driver i.e. respondents 1 & 2 herein.

3. Counsel for the appellants submits that the finding of the Tribunal exonerating the Insurance Company is bad in law in as much as the issue involved in the case now stands squarely covered by the larger Bench decision of the Supreme Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in **AIR 2017 SC 3668** which has also been followed in the case of **Sant Lal Vs. Rajesh and others** reported in **AIR 2017 SC 4054.**

4. Counsel for the appellants further assailing the quantum part submits that the compensation awarded is unreasonably low in as much as no compensation for the loss of dependency has been awarded neither is there proper compensation under the conventional head provided. He submits that the Tribunal has committed a gross error in granting a lump sum compensation of Rs.65,000/- in a death case to the claimants. Counsel for the appellants prays that the impugned award may be suitably modified and the liability part may also be shifted upon the Insurance Company.

5. Counsel appearing for respondent no.2 submits that admittedly, the offending vehicle i.e. Jeep bearing registration No. CG 05 ZD 1080 was being driven by Sunil Baghel respondent no.2 who had a valid licence to drive a light motor vehicle. He submits that on this admitted factual matrix, the issue involved in the present case stands squarely covered by the judgment of the Supreme Court in the case of Mukund Dewangan (supra). Thus, prayed for the liability to be shifted upon the Insurance Company.

6. Counsel appearing for the Insurance Company, however, opposing the appeal submits that the award under challenge was passed in the year 2012 when the award was just, proper and legal in the light of the then prevailing law and therefore the same does not warrant any interference. So far as the quantum of compensation is concerned, since there was no sufficient evidence to show the actual dependency of the claimants on the deceased, the compensation awarded seems to be justified and the appeal on this ground also does not warrant any interference and the same may be rejected.

7. Having heard the contentions put forth by the parties and on perusal of the record, what is reflected is that the date of accident and the resultant death of Madhusudan Dhruv aged around 24 years from the said accident are not in dispute. The vehicle involved in the accident bearing registration No. CG 05 ZD 1080 driven by respondent no.1 and owned by respondent no.2 is not in dispute. The vehicle was duly insured with respondent no.3 is also not in dispute. Another aspect which is an admitted fact is that respondent no.1 Sunil Baghel had a valid licence at the relevant point of time to drive a light motor vehicle.

8. From the aforesaid factual matrix of the case, this Court is of the opinion that so far as the liability part is concerned, the issue stands covered by the two judgments of the Supreme Court referred in the preceding paragraph i.e. Mukund Dewangan and Sant Lal (supra).

9. So far as the quantum of compensation is concerned, this Court has no hesitation in reaching to the conclusion that the amount of compensation awarded by the Tribunal is unreasonably low as the Tribunal ought to have quantified the compensation in view of the guidelines and parameters laid down by the Supreme Court in the case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121.** This Court does not find any good ground relied upon by the Tribunal while granting lump sum compensation of Rs.65,000/-.

10. Considering the period of accident i.e. December, 2010, the income assessed by the Tribunal seems to be unreasonable and not justified. During the said period, even an unskilled labour would have been earning more than Rs.150/- a day which makes it Rs.4,500/- a month. This Court, in the given facts and circumstances of the case, assesses the income of the deceased at Rs.4,500/- a month and proceeds to quantify the compensation accordingly.

11. Accepting Rs.4,500/- as the monthly income, yearly income would be Rs.54,000/- to which if 40% is added towards future prospects, the amount comes to Rs.75,600. Since the deceased was a bachelor, 50% of the said amount would be deducted towards personal expenses which would bring the amount to Rs.37,800/-. If the said amount is multiplied applying the multiplier of 18, the amount comes to Rs.6,80,400/- which would be the amount of compensation towards loss of dependency. In addition, the claimants would also be entitled for a lump sum compensation of Rs.40,000/- under the conventional head. Thus, the claimants shall be entitled for a total compensation of Rs.7,20,400/- in stead of Rs.65,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as fixed by the Tribunal.

12. Since this Court has already held that the liability fastened upon the owner was not justified in the light of the judgment of the Supreme Court in the case of Mukund Dewangan (supra), the liability of payment of compensation shall be jointly and severally upon the owner, driver and the Insurance Company and it shall be the responsibility of the Insurance Company to indemnify the owner and deposit the entire amount awarded by this Court.

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

Bhola