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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 253 OF 2011

Bajaj Allianz General Insurance Company Limited, Registered Office GE Plaza, Airport Road, Yerwada, Pune (M.H.), through Branch Manager, Shivmohan Bhawan, Vidhansabha Marg, Pandri, Raipur (C.G.)

… Appellant

versus

1. Smt. Laxmi Singh, W/o Late Santosh Singh, aged about 29 years
2. Minor Samar Pratap, S/o Late Santosh Singh, aged about 6 years
3. Minor Atul Singh, S/o Late Santosh Singh, aged about 2 years

Respondents No. 2 and 3 are through natural guardian mother Smt. Laxmi Singh.

All Respondents are by caste Rajput, R/o Vinoba Nagar, Raigarh, Tahsil and District Raigarh (C.G.)

4. Mohd. Soheb Khan, S/o Mohd. Mustafa Khan, R/o Madhuban Para, Raigarh, occupation- Driver, Tahsil and District Raigarh (C.G.)
5. Anoop Bansal, M/s Annop Road Carriers, Jindal Transport Nagar, Patrapali, Raigarh, District Raigarh (C.G.)

… Respondents

MISC. APPEAL (C) NO. 69 OF 2011

1. Smt. Laxmi Singh, W/o Late Santosh Singh, aged about 29 years
2. Minor Samar Pratap Singh, S/o Late Santosh Singh, aged 6 years
3. Minor Atul Singh, S/o Late Santosh Singh, aged about 2 years

Appellants No. 2 and 3 are minors, through their mother namely Smt. Laxmi Singh.

All of caste- Rajput. All are R/o Vinoba Nagar, Raigarh, Tahsil and District Raigarh (C.G.)

… Appellants

versus

1. Mohd. Soheb Khan, S/o Mustafa Khan, occupation- Driver, R/o Madhuban Para, Raigarh,, Tahsil and District Raigarh (C.G.) (Driver of the offending vehicle)
2. Anup Bansal, M/s Anup Road Carriers, Jindal Transport Nagar, Patrapali, Raigarh, District Raigarh (C.G.) (Owner of the offending vehicle)
3. The Bajaj Alloyance General Insurance Company Limited, Raipur (C.G.) (Insurer of the offending vehicle)

… Respondents

- Mr. Abhishek Sinha, Advocate, for the Appellant in MAC No. 253/2011 and for Respondent No.3 in MAC No. 69/2011.
- Mr. Roop Naik, Advocate, for the Appellants in MAC No. 69/2011 and for Respondents No. 1 to 3 in MAC No. 253/2011.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

<u>09/01/2018</u>

1. These are two appeals under Section 173 of the Motor Vehicles Act, 1988, arising out of the award dated 6.10.2010 passed by the 3rd Additional Motor Accident Claims Tribunal (F.T.C.), Raigarh, in Claim Case No. 3 of 2009.

2. M.A.(C) No. 253/2011 is an appeal filed by the Bajaj Allianz General Insurance Company assailing the liability which has been fastened upon it whereas M.A.(C) No. 69/2011 is an appeal filed by the claimants seeking enhancement of the compensation awarded by the Tribunal.

3. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.6,58,000/- to the claimants with interest thereon at the rate of 6% per annum from the date of presentation of the claim application.

4. So far as the appeal of the insurance company is concerned, *i.e.*, M.A.(C) No. 253/2011, the contention of the learned counsel for the insurance company is that the involvement of the offending vehicle which was insured by the insurance company itself is doubtful and that it appears to be a false and fabricated case presented before the Tribunal only for the purpose of obtaining compensation. To substantiate his contention, learned counsel for the insurance company submits that initially on an FIR which was lodged on the very next of the accident, *i.e.*, on 1.9.2008, in respect of the accident that took place on 31.8.2008 by AW-2 Rajesh Singh, the police authorities had submitted a closure report after about 3 months of investigation. He submits that subsequently however about 7 months later, a charge-sheet was filed by the same police authorities on 7.4.2009 prosecuting the respondent-Mohd. Soheb Khan, the driver of the vehicle, for the offence under Section 304 of IPC.

5. Learned counsel for the insurance company further submits that it is a case where the claimants have not been able to prove the involvement of the offending vehicle so also the negligence on the part of the owner and driver of the vehicle. It was further contended that the claimants have not proved their case by leading evidence of any eye-witness much less even the pillion rider on the motorcycle on which the deceased was traveling, has not been examined. Thus, the entire claim case itself is without any proof and the claim application ought to have been rejected by the Tribunal in the absence of any cogent evidence.

6. It was further contended by the learned counsel for the insurance company that the only evidence which has been led by the claimants was that of the widow of the deceased and the brother-in-law of the deceased, AW-2 Rajesh Singh, who have not either witnessed the accident nor have in any manner established the involvement and negligence of the offending vehicle. Learned counsel for the insurance company submits that the application of the insurance company under Section 170 was also rejected by the Tribunal which further restricted the insurance company from substantiating their contentions by proving the negligence part. He thus prayed for the setting aside of the impugned award.

7. Learned counsel for the insurance company lastly submitted that the quantum of compensation awarded is also on the higher side inasmuch as the Tribunal for an accident that took place in the year 2008 has quantified the monthly income of the deceased at Rs.5000/- which is on the higher side and therefore the same deserves to be suitably reduced and appropriate calculation should be made. He next submitted that the Tribunal has failed to appreciate the fact that the accident had occurred in the middle of the road which by itself establishes the fact that there was some element of contributory negligence on the part of the deceased which also should had been borne in mind while computing the compensation by the Tribunal.

8. Learned counsel for the claimants however opposes the appeal of the insurance company on the ground that, the fact that there was a charge-sheet subsequently filed by the police authorities and Mohd. Soheb Khan being prosecuted for the offence under Section 304 of IPC is a sufficient proof of prima facie there being the involvement of the vehicle belonging to respondent-Anoop Bansal and driven by respondent-Mohd. Soheb Khan. He further submits that the claimants themselves have filed an appeal for enhancement of compensation as the Tribunal has not properly appreciated the income tax returns which the claimants had furnished with which the income of the deceased could be easily assessed and that the income of Rs.5000/- assessed by the Tribunal is unreasonably low and the same deserves to be suitably enhanced. He next submits that the claimants shall also be entitled for the income under the future prospects. He also submits that the compensation awarded under the conventional heads is also unreasonably low and the same also deserves to be enhanced suitably.

9. Having heard the contentions put forth on either side and on perusal of record, so far as the involvement of the vehicle is concerned, the contention of the learned counsel for the insurance company cannot be accepted for the reason that the same police authorities who had initially submitted the closure report had subsequently reopened the case and filed a charge-sheet against respondent Mohd. Soheb Khan, prima facie, establishes the accident to have occurred involving the vehicle, *i.e.*, a Truck, bearing registration no. CG13-D-1955. Further, from the proceeding it would also reflect that the subsequent filing of the charge-sheet has not been quashed or questioned by the driver stating it to be a false case lodged against him.

10. Given the facts and circumstances of the case and also the evidence that of AW-2 Rajesh Singh who is the lodger of the FIR on 1.9.2008 and the claimant herself, this Court is of the opinion that no strong case has been made out by the insurance company doubting the involvement of the vehicle involved in the accident in the instant case.

11. As regards the other grounds which have been raised by the insurance company, this Court is of the opinion that the insurance company has not been able to led sufficient evidence to counter or substantiate these grounds including that of the quantum part and therefore the appeal of the insurance company deserves to be and is accordingly dismissed.

12. So far as the appeal of the claimants, *i.e.*, M.A.(C) No. 69/2011, is concerned, the contention of the learned counsel for the claimants is that the deceased was having a loader machine and was operating it at Jindal Plant and therefore his income was much more, but what has to be taken note of is the fact that the machine is still there for the family and they can still have earned income from the said machine. That, for an accident that took place in the year 2008, the income of Rs.5000/- assessed by the Tribunal cannot be said to be on the lower side and this Court does not find any illegality on the part of the Tribunal in assessing the income at Rs.5000/- and the same is just and reasonable.

13. However, the claimants would definitely be entitled for 40% of income under the future prospects. Likewise, the claimants are also entitled for a higher amount of compensation under the conventional heads than what has been been awarded by the Tribunal.

14. Accordingly, accepting Rs.5000/- as the monthly income of the deceased, the yearly income comes to Rs.60,000/- to which if 40% is added towards future prospects, the amount would come to Rs.84,000/- of which if 1/3rd is deducted towards the personal expenses, the amount would come to Rs.56,000/- which if multiplied applying the multiplier of 15, the amount would reach to Rs.8,40,000/- which is the loss of dependency which the claimants are entitled for, instead of Rs.6,40,000/- which the Tribunal has assessed.

15. Keeping in view a recent Larger Bench's decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited** v. **Pranay Sethi & Others**[1], the claimants are also entitled for a lump sum compensation of Rs.70,000/- under the conventional heads, instead of what has been awarded by the Tribunal.

16. Thus, it is ordered that the claimants shall be entitled for a total compensation of **Rs.9,10,000/-** instead of Rs.6,58,000/- which the Tribunal has awarded, and the said enhanced amount shall also carry the interest at the same rate as has been fixed by the Tribunal.

17. As a result, the appeal of the insurance company, *i.e.*, M.A.(C) No. 253/2011, stands dismissed and the appeal of the claimants, *i.e.*, M.A.(C) No. 69/2011 stands allowed to the said extent.

Sd/-
(P. Sam Koshy)
Judge

/sharad/

1 SLP (Civil) No. 25590 of 2014, decided on 31.10.2017