

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1561 of 2015

Order reserved on 16-7-2018

Order passed on 24--7-2018

1. Banshilal S/o Kanakdas Dahire, Aged About 32 Years R/o Village- Sukli Govind, Chauki- Damapur, Thana- Kunda, Tahsil- Pandariya, Revenue/ Civil Distt.- Kabeerdham, Chhattisgarh, Chhattisgarh
2. Seema Bai W/o Banshilal, Aged About 30 Years R/o Village- Sukli Govind, Chauki- Damapur, Thana- Kunda, Tahsil- Pandariya, Revenue/ Civil Distt.- Kabeerdham, ChhattisgarhClaimants, District : Kawardha (Kabirdham), Chhattisgarh

---- Appellants.

Versus

1. Vishnu Prasad S/o Jhumuk Chandrakar, Aged About 32 Years R/o Village- Mahka, Thana- Kunda, Tahsil- Pandariya, Distt. Kabeerdham, ChhattisgarhOwner, Chhattisgarh
2. Branch Manager, Bharti A X A General Insurance Company Ltd., Regional Office- 1st Floor, The Ferns Icon, Survey No.28, Doddankundi, Off Outer Ring Road, Distt.- Bangalore- 560037 Address Wrongly Mentioned In Order SheetInsurance Co., Karnataka

---- Respondents

For the appellants : Mr. Samir Singh, Advocate.
For respondents : None

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Order

1. The claimants/appellants being father and mother of the deceased Pramod Kumar who died in a motor accident on 27-1-2014, have preferred this appeal against the award dated 2-11-2015 passed by the Additional Motor Accident Claims Tribunal, Kabirdham (Kawardha) (CG) in Claim Case No. 71 of 2014,

wherein the said Tribunal awarded compensation of Rs.2,00,000 as compensation for death of Pramod Kumar aged about 13 years who was son of the claimants/appellants.

2. As per case of the claimants/appellants, on 27-1-2014, when the deceased Pramod Kumar was going to his home, at that time, respondent No.1 Vishnu Prasad driving the Tractor Swaraj Mazda bearing registration No. CG 09 C 7305 rashly and negligently dashed him as a result of which he died on the spot.
3. Learned counsel for the claimants/appellants would submit that the finding of the claims tribunal is contrary to the documents and evidence available on record and the tribunal failed to consider the facts and evidence available on record in its proper perspective. He would further submit that the amount awarded by the tribunal under various permissible heads is on lower side which requires to be enhanced.
4. I have gone through the impugned award passed by the Tribunal.
5. From the oral evidence adduced before the Tribunal and the documentary evidence Ex. A/7 & A/8, it was established that Pramod Kumar died due to rash and negligent driving of respondent No.1 and the same is not challenged by him. Driver and owner led no evidence before the Tribunal and no driving licence was produced regarding the driver that he was having a

valid driving licence which was effective on the date of incident. In absence of any certificate of driving licence, it was established before the tribunal that the vehicle was driven against the terms of the insurance contract and the Tribunal exonerated the Insurance Company

6. Learned counsel for the appellants further submit that even if driving licence is not produced, liability can be fastened on the insurance company.
7. In view of this Court, it was a basic term of the insurance contract that the person driving the vehicle must have a valid and effective driving licence, when it is not proved that the driver was having a driving licence and the owner who is respondent No.1 himself was driving the vehicle at the time of incident, it is clear case of breach of insurance contract, therefore, no liability can be fastened on the insurance company when the owner himself is at fault. Therefore, the finding arrived at by the tribunal is not liable to be disturbed on this count.
8. Learned counsel for the appellants/claimants further submits that the Tribunal has not awarded the compensation on various heads. He placed reliance on the decision of Hon'ble Supreme Court in the matter of **Kishan Gopal and another vs. Lala and others, reported in (2014) 1 SCC 244** in which Rs.5,00,000/- was awarded for death of a child aged about 10 years.

9. In the present case, the Tribunal has not assessed the income of the deceased and awarded lump-sum amount. As per law laid down by Hon'ble the Supreme Court in the matter of Kishan Gopal (supra), notional income was assessed to Rs. 30,000/- per annum and multiplier of 15 was applied. Rs.50,000/- is awarded on conventional head. In all the claimants/appellants are entitled for claim of Rs.5,00,000/-.
10. Accordingly, the appeal is allowed. The award passed by the Tribunal is modified and it is directed that respondent No.1 Vishnu Prasad shall pay compensation of Rs.5,00,000/- to the appellant/claimant within 60 days from the date of passing of the order, failing which 9% interest per annum shall be charged. Both the appellants shall get equal sum Rs.1,50,000/- for each shall be deposited for five years in a nationalised bank. Rs.1,00,000/- each shall be disbursed to them through transfer of fund from the account of the Tribunal.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju