NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 519 of 2017

1. Matte Singh S/o Bal Singh, Aged About 65 Years
2. Smt. Binjhwarin Bai W/o Matte Singh, Aged About 60 Years
3. Chandrabhan S/o Matte Singh, Aged About 25 Years

All are R/o Village Devarbhat, Police Station Balod, District Balod, Chhattisgarh

---- Appellants

Versus

1. Ravi Kumar S/o Dul Singh Thakur, Aged About 26 Years R/o Village Devarbhat, Police Station And Tahsil Balod, District Balod, Chhattisgarh (Driver)
2. Babu Lal Sahu S/o Late Prabhu Ram, R/o Village Devarbhat, Police Station And Tahsil Balod, District Balod, Chhattisgarh (Owner)
3. Ifco Tokiyo General Insurance Company Limited, Through Branch Office- 19/05, 5th Floor, Abhiyan Complex, Near Chouhan Hotel, Dakshin Gangotri Supela Bhilai, District Durg, Chhattisgarh (Insurer)

----Respondents

For Claimants	:	Mr. Rajkumar Pali, Advocate along with Mr. Amit Kumar Sahu, Advocate
For Insurance Company	:	Mr. P.R. Patankar, Advocate along with Mr. Utsav Mahiswar, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/01/2018

1. Present is an appeal by the Claimants under Section 173 of the Motor Vehicles Act assailing the award dated 21.02.2017, passed by the 1st Additional Motor Accident Claims Tribunal, Balod, Chhattisgarh, in Motor Accident Claim Case No. 52/2016. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.3,36,000/- with interest @ 7% per annum.

2. While passing the said award, the Tribunal has exonerated the Insurance Company and has fastened the liability of payment of compensation upon the respondent no.2-Owner of the Tractor. The

present is a Claimant's appeal challenging the quantum as well as the exoneration the Insurance Company.

3. The facts of the case is that the deceased Lokeshwar aged around 22 years, met with an accidental death when he was traveling on a Tractor owned by the respondent no.2 bearing registration No. CG/24/E/8703. The legal representatives of the deceased i.e. the parents as well as the brother of the deceased filed the claim application under Section 166 of the Motor Vehicles Act and the Tribunal vide the impugned award has disposed of the appeal in favour of the Claimants. Dissatisfied with the award, the present appeal has been filed.

4. The contention of the appellant is that the finding of the Tribunal in exonerating the Insurance Company of its liability is bad in law, in as much as the vehicle in the instant case was dully insured under the Kisan Package Policy and that the vehicle was been used for agricultural purpose, however the Tribunal has reached to a erroneous conclusion that the vehicle was being used for the commercial purpose and thus exonerated the Insurance Company.

5. It was also the contention of the counsel for the Claimants that there was no evidence before the Tribunal with which it could be said that the vehicle was used for commercial purpose, thus the finding was bad in law. It was further argued by the appellant that the income assessed by the Tribunal also is unreasonably low considering the date of accident which is 14th of February, 2016.

6. According to the appellant, in the year 2016, even an unskilled labour was getting an income of more than Rs.200/- a day and which makes it more than Rs.6,000/- a month and thus, the finding of the Tribunal assessing the income of Rs.3,000/- is bad in law.

7. It was further contended that the Claimants also were entitled for compensation under future prospects and that the compensation under the conventional head also should be on the higher side than what has been awarded.

8. The counsel appearing for the Insurance Company however opposing the appeal submits that it is a case where it has been specifically stated by the Claimants themselves that the vehicle was being used for the transportation of sand and manures and thus it clearly reflected that it was being used for the commercial purposes and therefore the finding of the Tribunal in exonerating the Insurance Company does not warrant interference. He submits that the finding arrived at by the Tribunal is based on the specific evidence which have come on record and the appeal thus being devoid of merits deserves to be rejected. He otherwise also submits that the Claimants have been rightly awarded the compensation, which is just and reasonable.

9. Having heard the contentions put forth on either side and on perusal of record, it clearly reflects that the Claimants had examined themselves and in addition have also examined an eyewitness, who was traveling in the Tractor when the accident arose namely Manohar Lal Banjare and in addition, the Sarpanch of the village was also examined namely Ghanshyam Singh Thakur. All these witnesses have specifically stated that the Tractor belonging to the appellant was being used for only agricultural purpose and that the accident occurred when the Tractor was returning after unloading the sand and manures in the field.

10. It was further perused that there is no witness examined before the Tribunal, who has stated that the sand and manures, which were

being transported in the Tractor was being used for commercial purpose or for a purpose other than agricultural work.

11. In the absence of any specific evidence in this regard, moreover the witness on behalf of the Insurance Company namely Khumeshwar Sahu has also not proved the fact that the Tractor was being used for commercial purpose. Thus, the finding of exoneration of the Insurance Company does not seem to be proper, legal and justified and the said finding thus deserves to be and is accordingly set-aside and it is held that the Insurance Company shall be jointly and severally be liable to pay compensation.

12. The counsel for the appellant referred to two of the decisions of this Court passed in MA No. 815/2004 decided on 22.07.2016 and MAC No. 1372/2007, decided on 09.07.2008, ***(2008) 5 MPHT 45*** to harp on the ground that the Insurance Company would not be liable in case if the vehicle was being used for transportation of passengers for whom the premium was not being paid.

13. This Court is of the opinion that those judgments are distinguishable of its fact itself in as much as the status of the deceased/injured in those two cases were as gratuitous passengers, whereas the deceased in the instant case was a labour working on the Tractor itself. Thus, this Court is of the opinion that ratio laid down in those two cases would not come to the aid of the Insurance Company.

14. So far as the quantum part is concerned, considering the fact that the accident is of February, 2016, undisputedly the minimum income of a daily wage worker would also at the relevant time had been more than Rs.200/- a day, this Court therefore has no hesitation in assessing the income of the deceased at Rs.6,000/- instead of Rs.3,000/- as quantified by the Tribunal. Accepting Rs.6,000/- as the

income of the deceased, the yearly income would be Rs.72,000/-, of which the Claimants shall be entitled for 40% of the income towards future prospects, which comes to Rs.28,800/-, which if added to Rs.72,000/-, the amount comes to Rs.1,08,000/-. Since the deceased was a bachelor, 50% of his income was liable to be deducted towards personal expenses, which would bring the total amount to Rs.50,400/-, which if multiplied applying the multiplier of 18, the amount comes to Rs.9,07,200/-. It is ordered accordingly that the Claimants shall be entitled for an amount of Rs.9,07,200/- towards the loss of dependency. In addition, the Claimant shall also be entitled for an additional amount of Rs.40,000/- under the conventional head to make the total compensation payable at Rs.9,47,200/-.

15. The said enhance amount shall also carry interest at the same rate as has been awarded by the Tribunal.

16. The appeal thus stands allowed.

17. It is made clear that the liability of payment of compensation shall be jointly and severally upon the Owner, Driver and the Insurance Company of the Tractor involved in the accident and the responsibility of payment of compensation shall be that on the Insurance Company.

Sd/-
(P. Sam Koshy)
Judge

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