NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1075 OF 2012

1. Smt. Pramodani Kashyap, W/o Late Dinesh Kumar Kashyap, aged about 32 years
2. Avinash Kashyap, S/o Late Dinesh Kumar Kashyap, aged about 09 years
3. Ku. Prachi Kashyap, D/o Late Dinesh Kumar Kashyap, aged about 08 years

Appellant No.2 and 3 are minors and the legal guardian is the Appellant No.1 Smt. Pramodani Kashyap, W/o Late Dinesh Kumar Kashyap.

All are R/o Village Changori, Post Bathena, P.S. and Tahsil Patan, District Durg (C.G.), at present R/o Qtr. No.6/I, Street No.46, Sector 6 Bhilai Nagar, P.S. Kotwali (Sector 6 Bhilai Nagar), District Durg (C.G.)

… Appellants

versus

1. Jagdish Nayak, S/o Chandramani Nayak, aged about 33 years, R/o Bhatapara, Borsi Road, Ruwabhata Bhilai, Post Ruwabhata, P.S. Sector 6, Kotwali, Bhilai Nagar, Tahsil and District Durg (C.G.)
2. Sonal Rungata, S/o Shri Santosh Rungata, aged about 32 years, Director, Rungata College of Dental Science and Resource, Kurud Road, Kohka, Bhilai, P.S. Supela, Tahsil and District Durg (C.G.), R/o Rungta Bhawan, Ganjpara, Durg, Post, Tahsil and District Durg (C.G.)
3. Regional Manager, The Oriental Insurance Company, Durg, Region Office, Parmanand Bhawan, near Rajendra Chowk, beside Bal Petrol Pump, Durg, Post, P.S. Mohan Nagar, Tahsil and District Durg (C.G.)

… Respondents

MISC. APPEAL (C) NO. 1053 OF 2012

1. Jagdish Naik, S/o Shri Chandramani Naik, aged about 34 years, R/o Bhatapara, Borsi Road, Ruabandha, Bhilai, Sector 6, Bhilai Nagar, District Durg (C.G.)
2. Sonal Rungta, S/o Shri Santosh Rungta, aged about 33 years, Director, Rungta College of Dental Science and Resource, Kurud Road, Kohka, Bhilai, P.S. Supela, Tahsil and District Durg (C.G.)

… Appellants

versus

1. Smt. Pramodni Kashyap, W/o Late Shri Dinesh Kumar Kashyap, aged about 29 years
2. Avinash Kashyap, S/o Late Shri Dinesh Kumar Kashyap, aged about 9 years (Minor) through his natural guardian mother Smt. Pramodni Kashyap.
3. Ku. Prachi Kashyap, D/o Late Shri Dinesh Kumar Kashyap, aged about 8 years (Minor) through her natural guardian mother Smt. Pramodni Kashyap.

All are R/o Q.No. 6/I, Street No.46, Sector 6, Bhilai Nagar, P.S. Kotwali (Sector 6 Bhilai Nagar), Tahsil and District Durg (C.G.)

4. The Regional Manager, The Oriental Insurance Company Ltd., Durg, Office at Parmanand Bhawan, near Rajendra Chowk, Bal Petrol Pump, Durg, Post Office- Durg, P.S. Mohan Nagar, Tahsil and District Durg (C.G.)

… Respondents

• Mr. Shikhar Bhaktiyar, Advocate, under instructions of Mr. B.P. Singh, Advocate, for the Claimants.
• Mr. Utkal Pradhan, Advocate, under instructions of Mr. Sourabh Dangi, Advocate, for the Owner & Driver.
• Mrs. Chitra Shrivastava, Advocate, for the Insurance Company.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/02/2018

1. These are two appeals filed under Section 173 of the Motor Vehicles Act, 1988, assailing the same award dated 1.8.2012 passed by the Motor Accident Claims Tribunal, Durg, in Motor Accident Claim Case No. 1/2011.

2. 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.16,85,741/- in favor of the claimants with interest thereon at the rate of 7% per annum from the date of claim application. While passing the award, the learned Tribunal has fastened the liability for payment of compensation jointly and severally upon the owner and driver of the offending vehicle, exonerating the insurance company of its liability.

3. M.A.(C) No. 1075/2012 is an appeal by the claimants seeking for enhancement of the compensation awarded and M.A.(C) No. 1053/2012 is an appeal filed by the owner and driver assailing the liability part which has been fastened upon them.

4. So far as the appeal of the owner and driver, *i.e.*, M.A.(C) No.1053/2012, is concerned, learned counsel for the owner and driver submits that the offending vehicle, *i.e.*, a bus, bearing registration no. CG07-ZA/0442, was duly insured with the Oriental Insurance Company and thus the insurance company has been wrongly exonerated by the learned Tribunal. He further submits that the offending vehicle was duly insured and a copy of policy was also brought on record and thus once when there is a policy, the insurance company should indemnify the owner. He further submits that it was the responsibility of the insurance company, to have proved before the Tribunal that, the offending vehicle was being run in breach of policy conditions. He next submits that the insurance company has not led sufficient evidence to establish the breach of policy condition and for this reason also the liability should had been shifted upon the insurance company instead of owner and driver. He also submits that the finding of the Tribunal in holding that the owner in the instant case had moved an application before the insurance company claiming the owner's damage so far as the damage caused to the bus belonging to the owner is concerned the same is wrong and is without any strong basis. He submits that the said finding could not have been arrived at based on the hand writing expert's opinion and for this reason also the liability should had been shifted upon the insurance company.

5. Having perused the record what undisputedly comes out before this Court is, the date of accident i.e. 22.12.2008; the resultant death of Dinesh Kumar Kashyap aged around 38 years from the said accident; the bus involved in the accident belonging to owner Sonal Rungta and was being driven by driver Jagdish Nayak on the date of accident and the vehicle involved was duly insured with the Oriental Insurance Company Limited.

6. What apparently appears from the perusal of record is that the owner and driver have not been able to produce the permit before the Tribunal to show that there was a breach of policy condition. The insurance company on the contrary has led evidence of one Sukhdev Singh, Development Officer, who has categorically stated that the vehicle was being run without permit on the date of accident, which by itself amounts to a breach of policy condition. What also pertinent to take note of is the fact that the owner and driver in the instant appeal also have not been able to produce permit of the offending vehicle, if they had one at the relevant point of time. In the absence of any such document being produced by the owner and the driver in the present appeal, it is difficult to hold the finding arrived at by the learned Tribunal to be either erroneous or contrary to the evidence which have come on record, nor can it be said to be a perverse finding of fact.

7. Under the given circumstances, this Court does not find any strong case made out by the owner and driver calling for an interference with the impugned award so far as liability part is concerned. The appeal of the owner and driver thus deserves to be and is hereby dismissed.

8. As regards the appeal of the claimants, i.e., M.A.(C) No. 1075/2012, seeking for enhancement of compensation is concerned, if we look into the findings of the learned Tribunal it would show that the deceased in the instant case was working as a Technician in the Electrical Department of Bhilai Steel Plant and as such he was a permanent employee of a Central Public Sector Undertaking. As per Exhibit P-53, which is salary slip of the deceased, the gross income was Rs.17,762/- per month and the net income was shown as Rs.7,040/-. There were certain deductions which were being made towards EPF, CPF, loan towards CPF and also insurance scheme, which for all practical purposes otherwise would be an income of the deceased and such amount when totalled comes to Rs.5,340. If the said amount of Rs.5340/- is added to the net payment of the deceased, i.e. Rs.7040/-, the amount comes to Rs.12,380/-. This Court thus assesses the monthly income of the deceased for the purpose of quantifying the compensation at Rs.12,380/-.

9. Taking into consideration a recent judgment of the Hon'ble Surpeme Court in the case of **National Insurance Company Limited** v. **Pranay Sethi & Others**[1], the claimants in the instant case would also be entitled for 50% of the income of the deceased towards future prospects while quantifying the compensation.

10. Accordingly, accepting the monthly income of the deceased at Rs.12,380/-, the yearly income comes to Rs.1,48,560/- to which if 50%, *i.e.*, Rs.74,280/- is added towards future prospects, the amount comes to Rs.2,22,840/- of which if 1/3rd, *i.e.*, Rs.74,280/-, is deducted towards the personal expenses of the deceased, the amount left would be Rs.1,48,560/- which if multiplied applying the multiplier of 15, the amount would reach to Rs.22,28,400/- which is the amount towards the loss of dependency to which the claimants shall be entitled for. In addition, the claimants shall also be entitled for an additional lump sum compensation of Rs.70,000/- under the conventional heads. Thus, making the total compensation payable to the claimants at Rs.22,98,400/- instead of Rs.16,85,741/- which the learned Tribunal has awarded.

11. The appeal of the claimants thus is allowed and the impugned award stands accordingly modified and enhanced to the extent, that the claimants shall be entitled for a total compensation of **Rs.22,98,400/-**. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

12. As a consequence, the appeal of the owner and driver, *i.e.*, M.A.(C) No.1053/2012, stands dismissed and the appeal of the claimants, *i.e.*, M.A.(C) No.1075/2012, stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/

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