NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 366 of 2011

1. Smt. Laxmi Bai Wd/o late Karam Singh Sahu, aged about 43 years, (wrongly written as 23 years).
2. Ku. Durga Sahu, D/o late Karam Singh, aged about 23 years.
3. KU. Chandra Kiran, D/o late Karam Singh, aged about 21 years.
4. Ku. Vimla, D/o late Karam Singh, aged about 19 years.
5. Pushpa Sahu, D/o late Karam Singh, aged about 17 years.
6. Pushpendra Sahu, S/o late Karam Singh, aged about 11 years.
7. Ku. Gitanjali, D/o late Karam Singh, aged about 09 years.
8. Smt. Mogra Bai, W/o Ghasiram Sahu, Aged about 70 years.
   Appellants No.5 to 7 are minors represented through mother Smt. Laxmi Bai, Appellant No.1.
   All R/o Village Nagarda, Thana Baradwar, Tehsil Sakti, Distt. Janjgir Champa (CG).

---- Appellants

Versus

1. Gandiram Rathore S/o Siyaram Rathore, Aged about 42 years.
2. Nathuram S/o Devdayal Sahu, aged about 32 years,
   Both R/o Village Mohadih, Thana Baradwar, Tehsil Champa, District Janjgir Champa.
3. The Oriental Insurance Company Ltd. Through Its Branch Manager, Bus Stand Road, Bilaspur, Tehsil and District Bilaspur (CG).

---- Respondents

MAC No. 346 of 2011

Gandiram Rathore S/o Siyaram Rathore, Aged about 42 years, R/o village Mouhadih, PS Baradwar, Tehsil Champa, Distt. Janjgir Champa (CG).

---- Appellant

Versus

1. Smt. Laxmi Bai Wd/o late Karam Singh Sahu, aged about 43 years, (wrongly written as 23 years).
2. Ku. Durga Sahu, D/o late Karam Singh, aged about 23 years.
3. KU. Chandra Kiran, D/o late Karam Singh, aged about 21 years.
4. Ku. Vimla Sahu, D/o late Karam Singh, aged about 19 years.
5. Ku. Pushpa Sahu, D/o late Karam Singh, aged about 17 years.
6. Pushpendra Sahu, S/o late Karam Singh, aged about 11 years.
7. Ku. Gitanjali, D/o late Karam Singh, aged about 09 years.
   Appellants No.5 to 7 are minors represented through mother Smt. Laxmi Bai, Appellant No.1.
8. Smt. Mogra Bai, W/o Ghasiram Sahu, Aged about 70 years.
   All R/o Village Nagarda, thana Baradwar, Tehsil Sakti, Distt. Janjgir Champa (CG).
9. Nathuram S/o Devdayal Sahu, aged about 32 years, R/o village Mouhadih, PS Baradwar, Tahsil Champat, Distt. Janjgir Champa

(CG).

10. The Oriental Insurance Company Ltd. Through Its Branch Manager, Bus Stand Road, Bilaspur, Tehsil and District Bilaspur (CG).

---- Respondents

MAC No. 350 of 2011

Gandiram Rathore S/o Siyaram Rathore, Aged about 42 years, R/o village Mouhadih, PS Baradwar, Tehsil Champa, Distt. Janjgir Champa (CG).

---- Appellant

Versus

1. Smt. Nalini W/o late Dauram Sahu, aged about 23 years.
2. Ku. Poornima D/o Late Dauram Sahu, aged about 3 years.
3. Ku. Priya D/o Late Dauram Sahu, aged about 8 months.
   Appellants No.2 & 3 are Minor Through Mother Smt. Nalini- Appellant No.1.
4. Smt. Mogra Bai, W/o Ghasiram Sahu, Aged about 70 years.
   All R/o Village Nagarda, Thana Baradwar, Tehsil Sakti, Distt. Janjgir Champa (CG).
5. Nathuram S/o Devdayal Sahu, aged about 32 years, R/o village Mouhadih, PS Baradwar, Tahsil Champat, Distt. Janjgir Champa (CG).
6. The Oriental Insurance Company Ltd. Through Its Branch Manager, Bus Stand Road, Bilaspur, Tehsil and District Bilaspur (CG).

---- Respondents

MAC No. 367 of 2011

1. Smt. Nalini W/o late Dauram Sahu, aged about 23 years.
2. Ku. Poornima D/o Late Dauram Sahu, aged about 3 years.
3. Ku. Priya D/o Late Dauram Sahu, aged about 8 months.
   Appellants No.2 & 3 are Minor Through Mother Nalini- Appellant No.1.
4. Smt. Mogra Bai, W/o Ghasiram Sahu, Aged about 70 years.
   All R/o Village Nagarda, Thana Baradwar, Tehsil Sakti, Distt. Janjgir Champa (CG).

Versus

1. Gandiram Rathore S/o Siyaram Rathore, Aged about 42 years.
2. Nathuram S/o Devdayal Sahu, aged about 32 years,
   Both R/o Village Mohadih, Thana Baradwar, Tehsil Champa, District Janjgir Champa.
3. The Oriental Insurance Company Ltd. Through Its Branch Manager, Bus Stand Road, Bilaspur, Tehsil and District Bilaspur (CG).

---- Respondents

For Claimants	:	Shri DK Singh, Advocate.
For Owner	:	Shri Sunil Otwani, Advocate.
For Insurance Com.	:	Shri Deepak Gupta, Advocate.
For Driver	:	Shri Suresh Tandon, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

10.01.2018

1. These four appeals arise out of same accident and from two separate claim cases i.e. 03/2009 and 02/2009, decided on 25.08.2010 by the Additional Motor Accident Claims Tribunal, Sakti, Distt. Janjgir Champa (CG).
2. MAC No. 366 of 2011 and 346 of 2011 arise out of Claim Case No.03/2009. MAC Nos. 350 of 2011 and 367 of 2011 arise out of Claim Case No.02/2009. These are the cases where two deceased persons namely Karam Singh Sahu, aged about 45 years and Dauram Sahu, aged about 25 years met with an accidental death on 07.06.2008. The offending vehicle involved in the accident was a Matador-407 bearing registration No.CG-11-AB-0198 which was driven by respondent-Nathuram and owned by respondent-Gandiram Rathore.
3. The legal representatives of two deceased persons filed two claim applications i.e. Claim Case Nos. 03/2009 and 02/2009. The Tribunal, after considering the evidence which have come on record, vide impugned award awarded compensation of Rs.6,41,500/- for death of deceased Karam Singh in Claim Case No.03/2009 and Rs.5,21,500/- for death of deceased Dauram in Claim Case No.02/2009 along with interest @ 7 percent per annum from the date of application. While passing the impugned award, the Tribunal had exonerated the insurance company and had fastened the liability of

payment of compensation upon the owner of vehicle Matador i.e. Respondent-Gandiram.

4. Learned counsel appearing for the owner submits that the present is a case which is squarely covered by the decision of the Supreme Court in case of Mukund Dewangan Vs. Oriental Insurance Co. Ltd, AIR 2017 SC 3668, wherein it has been held that merely because there is no endorsement on the licence of the driver who otherwise has a licence to drive the Light Motor Vehicle by itself would not absolve the insurance company of its liability. Therefore, prayed for the award to be suitably modified.

5. This aspect, on verification of facts, is not disputed by the counsel for the insurance company.

6. Admittedly, in the instant case, the vehicle involved was a Matador-407, which, as per registration certificate itself, would fall within a category of Light Motor Vehicle. The fact that there was no endorsement on the license of the Nathuram to drive commercial vehicle is no longer required as per the judgment of Supreme Court in case of Mukund Dewangan (Supra). The Supreme Court in a recent decision in case of Sant Lal Vs. Rajesh & Ors., AIR 2017 SC 4054 in relation to the use of tractor and trolley has also applied the judgment of Mukund Dewangan (Supra) and have ordered that the liability of payment of compensation under such circumstances would be that on the insurance company.

7. Keeping in view the aforesaid two decisions of the Supreme Court, this court is of the opinion that the instant case is squarely covered by

the aforesaid two decisions and therefore, the findings of the Tribunal exonerating the insurance company is set aside and the award is modified and ordered to the extent that the liability of payment of compensation shall be jointly and severally upon the owner, driver and the insurer of vehicle involved in the accident.

8. So far as MAC No.366 of 2011 filed by the claimants for enhancement of compensation in respect of death of Karam Singh is concerned, the contention of the claimants are that, the Tribunal has properly assessed the income of the deceased, however, multiplier has not been applied properly. So also income under future prospects has not been taken into account. Further deduction also considering total number of claimants should be 1/5th instead of 1/3rd as has been applied by the Tribunal. Accordingly, we proceed to quantify the compensation for death of Karam Singh accepting his monthly income at Rs.6000/- and Rs. 72,000/- yearly as has been assessed by the Tribunal.

9. Accepting the yearly income of the deceased at Rs.72,000/- if 40 percent of it is added towards future prospects, the amount would reach to Rs.1,08,000/-, of which if 1/5th is deducted towards personal expenses considering the total number of claimants, the income would come to Rs.86,400/-, which if multiplied applying the multiplier of 14, the compensation would reach to Rs.12,09,600/-. Thus, it is ordered that the claimants shall be entitled for Rs.12,09,600/- for loss of dependency.

10. Further, this court is of the opinion that the claimants shall also be

entitled for a lump sum compensation of Rs.70,000/- under conventional heads keeping in view the ratio laid down in Pranay Sethi's case. Thus, the total compensation payable to the claimants would become Rs.12,79,600/-. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.12,79,600/- instead of Rs.6,41,500/-.

11. So far as MAC No.367 of 2011 filed by the claimants for enhancement of compensation in respect of death of Dauram is concerned, the contention of the claimants are that, the income assessed by the Tribunal is on the lower side considering the date of accident. So also, the income under future prospects has not been taken into account. Further deduction also considering total number of claimants should be 1/4th instead of 1/3rd as has been applied by the Tribunal.

12. Considering the period of accident and the nature of employment, this court quantifies the monthly income of the deceased Dauram at Rs.4500/- instead of Rs.3500/- accepting wages @ Rs.150/- per day. Accordingly, we proceed to quantify the compensation for death of Dauram accepting his monthly income at Rs.4500/- and Rs. 54,000/- yearly.

13. Accepting the yearly income of the deceased Dauram at Rs.54,000/- if 40 percent of it is added towards future prospects, the amount would reach to Rs.75,600/-, of which if 1/4th is deducted towards personal expenses considering the total number of claimants, the income would come to Rs.56,700/-, which if multiplied applying the

multiplier of 18, the compensation would reach to Rs.10,20,600/-. Thus, it is ordered that the claimants shall be entitled for Rs.10,20,600/- for loss of dependency.

14. Further, this court is of the opinion that the claimants shall also be entitled for a lump sum compensation of Rs.70,000/- under conventional heads keeping in view the ratio laid down in Pranay Sethi's case. Thus, the total compensation payable to the claimants would become Rs.10,90,600/-. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.10,90,600/- instead of Rs.5,21,500/-.

15. The above enhanced amount of compensation in both the claim cases shall also carry interest at the same rate as awarded by the Tribunal.

16. Accordingly, both the appeals filed by the claimants seeking enhancement as well as the appeals filed by the owner are allowed and it shall be the responsibility of the the insurance company to pay the compensation to the claimants holding the insurance company jointly and severally liable for payment of compensation.

17. Whatever amount deposited by the owner before the Tribunal shall be refunded by the insurance company to the owner and the difference of the awarded amount should be deposited by the insurance company.

Sd/-
(P.Sam Koshy)
Judge

inder