NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 35 OF 2011

1. Vinod Kumar Kuswaha, S/o Somnath Kuswaha, aged about 30 years, R/o Village Kewra, Police Station: Bhaiyathan, Tahsil: Surajpur, District Surgua (C.G.)
2. Ritesh Kumar Kuswaha, S/o Vinod Kumar Kuswaha, aged about 1½ years, through his natural guardian father Vinod Kumar, S/o Somnath, R/o Village Kewra, Police Station: Bhaiyathan, Tahsil: Surajpur, District Surgua (C.G.)

… Appellants

versus

1. Brij Bihari Gupta, S/o A.P. Gupta, aged about 22 years, R/o Village Darripara, Tahsil Surajpur, District Surguja (C.G.)
2. Vinod Kumar Agrawal, S/o Tekchand Agrawal, aged about 40 years, R/o Bhaithan Road, Surajpur, District Sarguja (C.G.)
3. United India Insurance Company Limited, Branch Office, near Ram Mandir, Ambikapur, District Surguja (C.G.)

… Respondents

MISC. APPEAL (C) NO. 54 OF 2011

1. Jeerman Bai, Wd/o Late Kishun Ram, Caste Koier, aged about 52 years
2. Smt. Urmila Bai, W/o Shyam Lal, D/o Late Kishun Ram, Caste Koier, aged about 22 years
3. Ku. Meena, D/o Late Kishun Ram, Caste Koier, aged about 15 years through natural guardian appellant no.1 Jeerman Bai

All R/o Village Jhamanpara (Darripara), Post Darripara, Police Station Jhilmili, Tahsil Surajpur, District Surguja (C.G.)

… Appellants

versus

1. Brij Bihari Gupta, S/o Ambika Prasad Gupta, aged about 22 years, R/o Village Darripara, Tahsil Surajpur, District Surguja (C.G.)
2. Vinod Kumar Agrawal, S/o Tekchand Agrawal, aged about 40 years, R/o Bhaithan Road, Surajpur, District Sarguja (C.G.)
3. United India Insurance Company Limited, Branch Office, near Ram Mandir, Ambikapur, District Surguja (C.G.)

… Respondents

MISC. APPEAL (C) NO. 55 OF 2011

1. Ramcharitra Kushwaha, S/o Late Manohar Ram, aged about 30 yrs
2. Ram Bai, W/o Ramcharitra Kushwaha, aged about 28 years

Both are R/o Village Kewara, Police Station Bhaiyatha, Tahsil Surajpur, District Surguja (C.G.)

… Appellants

versus

1. Brij Bihari Gupta, S/o Ambika Prasad Gupta, aged about 22 years, R/o Village Darripara, Tahsil Surajpur, District Surguja (C.G.)
2. Vinod Kumar Agrawal, S/o Tekchand Agrawal, aged about 40 years, R/o Bhaithan Road, Surajpur, District Sarguja (C.G.)
3. United India Insurance Company Limited, Branch Office, near Ram Mandir, Ambikapur, District Surguja (C.G.)

… Respondents

MISC. APPEAL (C) NO. 302 OF 2011

United India Insurance Company Limited, through its Branch Office, near Ram Mandir, Ambikapur, District Surguja (C.G.)

… Appellant

versus

1. Jirman Bai, W/o Late Kishun Ram, Caste Koier, aged about 52 years
2. Smt. Urmila Bai, W/o Shyam Lal, D/o Late Kishun Ram, Caste Koier, aged about 22 years
3. Ku. Meena, D/o Late Kishun Ram, Caste Koier, aged about 15 years, minor through natural guardian-mother-Jirman Bai (respondent no.1)

All R/o Village Jhamanpara (Darripara), Post Darripara, Police Station Jhilmili, Tahsil Surajpur, District Surguja (C.G.)

4. Brij Bihari Gupta, S/o A.P. Gupta, aged about 22 years, R/o Village Darripara, P.S. Bhaiyathan, Tahsil Surajpur, District Surguja (C.G.)
5. Vinod Kumar Agrawal, S/o Tekchand Agrawal, aged about 40 years, R/o Bhaiyathan Road, Surajpur, District Sarguja (C.G.)

… Respondents

MISC. APPEAL (C) NO. 303 OF 2011

United India Insurance Company Limited, through its Branch Office, near Ram Mandir, Ambikapur, District Surguja (C.G.)

… Appellant

versus

1. Manmet, W/o Pullu Ram, aged 60 years, R/o Village- Kenwra (Ghunchapara), P.S. Bhaiyathan, Tah. Surajpur, Distt. Sarguja (C.G.)
2. Brij Bihari Gupta, S/o A.P. Gupta, aged about 22 years, R/o Village Darripara, P.S. Bhaiyathan, Tahsil Surajpur, District Surguja (C.G.)
3. Vinod Kumar Agrawal, S/o Tekchand Agrawal, aged about 40 years, R/o Bhaiyathan Road, Surajpur, District Sarguja (C.G.)

… Respondents

MISC. APPEAL (C) NO. 330 OF 2011

United India Insurance Company Limited, through its Branch Office, near Ram Mandir, Ambikapur, District Surguja (C.G.)

… Appellant

versus

1. Vinod Kumar Kuswaha, S/o Somnath Kuswaha, aged about 30 years
2. Ritesh Kumar, S/o Vinod Kumar, aged about 1½ years, minor through father Vinod Kumar Kushwaha (respondent no.1)

Both are R/o Village Kenwra, Police Station: Bhaiyathan, Tahsil: Surajpur, District Surgua (C.G.)

3. Brij Bihari Gupta, S/o A.P. Gupta, aged about 22 years, R/o Village Darripara, P.S. Bhaiyathan, Tahsil Surajpur, District Surguja (C.G.)
4. Vinod Kumar Agrawal, S/o Tekchand Agrawal, aged about 40 years, R/o Bhaiyathan Road, Surajpur, District Sarguja (C.G.)

… Respondents

- Mr. Dashrath Kushwaha, Advocate, for the respective Claimants.
- Mr. Dashrath Gutpa, Advocate, for United India Insurance Company.
- Mr. Atanu Ghosh, Advocate, for Driver-Brij Bihari Gupta.
- Mr. Sourabh Sharma, Advocate, for Owner-Vinod Kumar Agrawal.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/01/2018

1. These are six appeals under Section 173 of the Motor Vehicles Act, 1988, arising out of the same accident.

2. M.A.(C) No. 35/2011 is an appeal by the claimants, Vinod Kumar Kushwaha and Ritesh Kumar Kushwaha, seeking enhancement of compensation and in the same case M.A.(C) No. 330/2011 has also been filed by the United India Insurance Company (*hereinafter referred to as 'the insurance company'*) assailing the liability which has been fastened upon the insurance company.

3. M.A.(C) No. 54/2011 again is an appeal by the claimants, Jeerman Bai, Smt. Urmila Bai and Ku. Meena, seeking enhancement of compensation, against which also there is an appeal filed by the insurance company, *i.e.*, M.A.(C) No. 302/2011, assailing the liability.

4. In addition, the insurance company has also filed an appeal, *i.e.*, M.A.(C) No. 303/2011, assailing the award which has been passed in favour of claimant, Manmet, in an injury case.

5. M.A.(C) No.55/2011 is an appeal filed by the claimants, Ramcharitra Kushwaha and Ram Bai, seeking enhancement of compensation, wherein the insurance company has been exonerated of its liability and the liability has been fastened upon the driver-Brij Bihari Gupta who is also the possessive owner of the vehicle involved in the accident.

6. The impugned award in all these six appeals is dated 12.10.2010 passed by the First Additional Motor Accident Claims Tribunal, Surajpur, District Sarguja, in Claim Cases No. 120/2006, 37/2006, 119/2006 and 4/2007.

7. In Claim Cases No. 120/2006 and 37/2006, *i.e.*, the death case, the learned Tribunal has awarded a compensation of Rs. 1,00,000/- as a lump sum compensation in favour of the claimants. In Claim Case No. 119/2006, which is also a death case, the learned Tribunal has awarded a compensation of Rs. 50,000/- as a lump sum compensation in favour of the claimant. In Claim Case No. 4/2007, *i.e.*, an injury case, the learned Tribunal has awarded a compensation of Rs. 25,000/- in favour of the claimant.

8. So far as the three appeals filed by the insurance company is concerned, *i.e.*, M.A.(C) No. 302/2011, 303/2011 and 330/2011 arising out of Claim Case No. 37/2006, 4/2007 and 120/2006, the challenge is on the liability part.

9. Contention of Shri Dashrath Gupta, learned counsel appearing for the insurance company, is that it is a case where the vehicle involved in the accident was a goods carrying commercial vehicle, *i.e.*, a Truck, bearing registration no. CG15-ZB-0377. One Mr. Vinod Kumar Agrawal (*hereinafter referred to as 'the registered owner'*) was the registered owner of the said vehicle which was subsequently sold to one Brij Bihari Gupta (*hereinafter referred to as 'the possessive owner'*) who was the driver of the said vehicle at the time of accident also. Shri Gupta, submits that it is a case where a large number of people were being carried on the said vehicle by the said Brij Bihari Gupta at the time of accident and also a large number of people had sustained injuries and there were also three causalities from the said accident. That about 11 claim cases were filed before the Tribunal. All these persons were travelling in the said vehicle as gratuitous passenger and since they were not covered under the policy which was issued, the liability could not have been fastened upon the insurance company. He next submits that since the vehicle involved in the accident was a goods carrying commercial vehicle it did not permit carrying of passengers and this by itself is an apparent breach of policy condition and for which the liability cannot be fastened upon the insurance company. He also submits that the policy which was issued in the instant case was an Act Only policy and that there was no extra premium paid by the owner for covering the risk of any gratuitous passenger to be ferried by the owner. He further submits that even otherwise once when it is established that the vehicle has been sold to Brij Bihari Gupta, the contract which was entered into by the insurance company with the registered owner, Vinod Kumar Agrawal, automatically stood terminated and the insurance company cannot be forced to indemnify the person who has not paid any premium to the insurance company for covering the risk of vehicle involved in the accident, and thus prayed for the setting aside of the award and for exonerating the insurance company of its liability. He further submits that the sale as such was also not intimated to the insurance company.

10. Shri Gupta, relies upon a recent decision of this Court rendered in a bunch of appeals decided on 24.4.2015 in **M.A.(C) No. 301/2006** and two other analogous appeals attached to it. He further bases his argument on the two decisions of the Hon'ble Supreme Court, *i.e.*, **National Insurance Co. Ltd.** v. **Cholleti Bharatamma & Others**, **2008 (1) SCC 423**, and **National Insurance Company Limited** v. **Rattani and Others**, **2009 (2) SCC 75**.

11. Shri Sourabh Sharma and Shri Atanu Ghosh, learned counsels appearing for the respective respondents, *i.e.*, Vinod Kumar Agrawal and Brij Bihari Gupta, opposing the appeals submit that it is a case where the principles of estoppel would apply against the insurance company as admittedly there were 11 claim cases filed arising out of the same accident and in 10 cases, the liability of payment of compensation has been fastened upon the insurance company and the insurance company has however preferred the appeal only in 3 of the cases and not in all and therefore once when the insurance company has accepted its liability in 7 of the cases, they cannot restrict their challenge to 3 of the awards out of total 10 awards passed against the insurance company and thus prayed for the rejection of the appeals of the insurance company.

12. It was further contended by the learned counsels appearing for the respective respondents that the appeal of the insurance company also is devoid of merits for the reason that there is no substantive evidence produced by the insurance company to prove their contentions that, the injured as well as the deceased persons were travelling in the vehicle as gratuitous passengers. That, on the contrary, there is specific averment made by the claimants before the Tribunal that each of the injured and deceased persons were travelling in the said vehicle along with their goods and since it was a goods carrying vehicle, the owner or the representative of the owner was permitted to travel along with goods in the vehicle and therefore the insurance company cannot be exonerated of its liability. Thus, the finding of the Tribunal so far as fastening the liability upon the insurance company is concerned, the same is proper, legal and justified and does not warrant any interference, and prayed for the rejection of the appeals of the insurance company.

13. It was next contended by the learned counsels for the respondents that the insurance company has only led evidence of an administrative officer and that the said witness has not been able to establish the fact that the injured as well as the deceased persons were travelling as passengers in the vehicle and not with their goods.

14. So far as the appeals of the claimants are concerned, Shri Dashrath Kushwaha, learned counsel appearing for the respective claimants, submits that the award passed by the learned Tribunal is highly cryptic inasmuch as the learned Tribunal has awarded a lump sum compensation of Rs. 1,00,000/- each in two of the claim cases and Rs.50,000/- in the case of a minor, whereas the Tribunal ought to have assessed the income or the notional income of these persons and then should have proceeded further to decide the compensation in accordance with law. In addition, the claimants would have also been entitled for compensation under the conventional heads which had not been given and therefore the compensation needs to be properly assessed and quantified and thus the award deserves to be suitably enhanced.

15. Having considered the rival contentions put forth on each side and on perusal of record, it would be relevant at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of **Cholleti Bharatamma** (supra) where the Hon'ble Supreme Court referring to the judgment passed in **New India Assurance Co. Ltd.** v. **Asha Rani and Others**, **2003 (2) SCC 223**, and also the judgment passed in **New India Assurance Co. Ltd.** v. **Vedwati and Others**, **2007 (9) SCC 486**, has reached to the conclusion that only in the event if the vehicle was being used for commercial purpose and the person travelling in the vehicle apart from the driver and helper was the owner of the goods, the insurance company would be liable to pay compensation and not otherwise. Further, it laid down a principle that merely because few passengers were travelling in the vehicle along with some goods by itself would not mean that they would be the owners of the goods in goods carrying vehicle.

16. Applying the same analogy, a coordinate Bench of this Court in a bunch of appeals decided on 24.4.2015, leading appeal being **M.A.(C)**

No.301/2006 (Branch Manager v. **Smt. Damayanti Bai and Others)** and other analogous appeals, while deciding the appeal has taken a view that in the event if the injured and the deceased persons were travelling as gratuitous passengers and no extra premium having been paid by the owner of the vehicle covering the risk of gratuitous passengers or similar passengers in goods vehicle, the insurance company would be held liable for indemnifying the owner for payment of compensation in the event of accident that arose in the course of use of the said motor vehicle.

17. Applying the principle of law and ratio laid down in the aforesaid decisions of the Hon'ble Supreme Court as well as the decision of the coordinate Bench of this Court, if we look into the evidence which have been adduced in the instant case, except for bald averment made by each of the claimants that they were travelling in the Truck as owners of the goods which they were carrying, what reflected is the fact that none of the claimants have said that they had took the vehicle or engaged the vehicle for transportation of the goods that they intended to transport and that they were travelling in the vehicle as the owners of the goods to be transported. On the contrary, the statement is that they were travelling in the Truck along with either a basket or bag of goods which they were carrying. This by itself establishes the fact that the injured or the deceased persons had primarily boarded the vehicle as passengers and had not engaged the vehicle for transportation of the goods.

18. In the given facts and evidence which have come on record, the finding of the learned Tribunal, fastening the liability upon the insurance company more particularly when the policy which was issued was an Act Only policy with no extra premium paid, is not sustainable and the liability ought to have been shifted upon the possessive owner of the vehicle, *i.e.*, Brij Bihari Gupta.

19. The appeals of the insurance company, *i.e.*, M.A.(C) No. 302/2011, 303/2011 and 330/2011, deserve to be and are accordingly allowed and the insurance company stands exonerated of its liability in these appeals.

20. So far as the liability part is concerned, since there is no dispute as to the fact that Brij Bihari Gupta was the possessive owner of the vehicle at the time of accident as is also established from the documents which have been produced before the Tribunal. It shows that there was an affidavit filed by the said possessive owner Brij Bihari Gupta stating that he had purchased the vehicle from the registered owner Vinod Kumar Agrawal and was operating the vehicle when the accident occurred and which establishes the fact that he was the possessive owner of the vehicle. In view of the said factual matrix of the case, applying the principles laid down by the Hon'ble Supreme Court in the case of **Rajasthan State Road Transport Corporation** v. **Kailash Nath Kothari and Others**, **1997 (7) SCC 481**, it shall be the possessive owner of the vehicle, *i.e.*, Brij Bihari Gupta, who would be responsible for payment of compensation.

21. As regards the three appeals filed by the respective claimants seeking enhancement of the compensation awarded is concerned, in M.A(C) No. 35/2011, which arises out of Claim Case No. 120/2006, the deceased Lalita Bai was a 28 years old lady who had died from the accident that took place on 19.3.2006. The Tribunal has awarded a lump sum compensation of Rs. 1,00,000/- which in the opinion of this Court is totally unreasonable and that proper calculation should had been made by the Tribunal while quantifying the compensation particularly since it was a death case. It appears that the Tribunal was in a haste in deciding the matter and has therefore granted a lump sum compensation which is not at all appreciated of. Taking into consideration the period of accident, *i.e.*, of March, 2006, this Court assesses the notional income of deceased Lalita

Bai at Rs.3000/- a month taking Rs.100/- as the minimum wages for a day, which makes the yearly income to be Rs.36,000/- to which if 40%, *i.e.*, Rs.14,400/-, is added towards future expenses, the amount would come to Rs.50,400/- of which if 1/3rd, *i.e.*, Rs.16,800/-, is deducted towards personal expenses, the amount would come to Rs.33,600/- which if multiplied applying the multiplier of 17, the amount would come to Rs.5,71,200/-, in addition, the claimants shall also be entitled for a lump sum compensation of Rs.70,000/- towards conventional heads, making the total compensation payable to the claimants at **Rs.6,41,200/-**, instead of Rs.1,00,000/- as awarded by the Tribunal. It is ordered accordingly.

22. Likewise, so far as the claimants in M.A.(C) No. 54/2011 arise out of Claim Case No. 37/2006 is concerned, again the Tribunal has awarded a lump sum compensation of Rs.1,00,000/- which also is not approved of by this Court for the reasons mentioned in the preceding paragraph and thus this Court assesses the notional income of the deceased in the instant case, *i.e.*, Kisun Ram, at Rs.3000/- a month which comes to Rs.36,000/- yearly to which if 10%, *i.e.*, Rs.3600/-, is added towards future prospects as the age of the deceased was 60 years at the time of accident, the amount comes to Rs.39,600/- of which if 1/3rd, i.e., Rs.13,200/-, is deducted towards personal expenses, the amount would come to Rs.26,400/- which if multiplied applying the multiplier of 9, the amount would come to Rs.2,37,600/- to which this Court adds an additional amount of Rs.62,400/- as a lump sum compensation under the conventional heads, thus, making the total compensation payable to the claimants at **Rs.3,00,000/-**, instead of Rs.1,00,000/- which has been awarded by the Tribunal. It is ordered accordingly.

23. As regards the M.A.(C) No. 55/2011 arising out of Claim Case No.119/2006 is concerned, the deceased in this appeal, *i.e.*, Ashish Kumar, was a 11 year old school going boy, and the Tribunal has awarded a lump sum compensation of Rs.50,000/- in this case which again in the opinion of this Court is totally unreasonable and the assessment made is without any basis whatsoever. It would be relevant at this juncture to refer to the decisions of the Hon'ble Supreme Court in the case of **Lata Wadhwa and Others** v. **State of Bihar and Others**, **2001 (8) SCC 197**, which has been further reiterated and improved upon in the case of **Kishan Gopal and Another** v. **Lala and Others**, **2014 (1) SCC 244**. Applying the principles laid down by the Hon'ble Supreme Court in the case of **Kishan Gopal** (supra), this Court quantifies notional income of the deceased at Rs.30,000/- yearly and applies the multiplier of 15, which makes the compensation at Rs.4,50,000/- to which Rs.50,000/- is also added under the conventional heads, thus, making the total compensation payable to the claimants at **Rs.5,00,000/-**, instead of Rs.50,000/- as awarded by the Tribunal, and it is ordered so.

24. As a consequence, all the six appeals preferred by the respective claimants as well as by the insurance company stand allowed. The liability of payment of compensation now stands shifted upon Brij Bihari Gupta, the owner of the vehicle at the time of accident. The enhanced amount of compensation in each of three appeals shall carry interest at the rate of 6% per annum from the date of presentation of respective claim application.

Sd/-
(P. Sam Koshy)
Judge

/sharad/