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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1599 OF 2017

1. Sukhram Suryavanshi, S/o Late Bodhan Suryavanshi, aged about 60 years (father of deceased)
2. Rukhmani Bai Suryavanshi, W/o Shri Sukhram Suryavanshi, aged about 58 years (mother of deceased)
3. Bajrang Suryavanshi, S/o Shri Sukhram Suryavanshi, aged about 20 years (brother of deceased)
4. Ku. Dhaneshwari Suryavanshi, D/o Shri Sukhram Suryavanshi, aged about 18 years (younger sister of deceased)
5. Jyoti Suryavanshi, D/o Shri Sukhram Suryavanshi, aged about 15 years (younger sister of deceased)

Appellant No.5 is minor, through natural guardian father Sukhram Suryavanshi, S/o Late Bodhan Suryavanshi.

All R/o Pondikhurd, P.S. & Tahsil- Champa, District Janjgir-Champa (C.G.)

… Appellants

versus

1. Nand Kumar Yadav, S/o Suresh Prasad Yadav, aged about 30 years, R/o Kateya, Post Office- Jai Govind Nagar, Makhra, P.S. Jamhor, District Aurangabad (M.H.), presently, residing at House of Priyesh Agrawal, near Lal Tanki, Raigarh, District Raigarh (driver of vehicle)
2. Priyesh Agrawal, S/o Narayan Agrawal, aged about 30 years, R/o Plot No.16, Sai Horitag Colony, Urdana Road, Raigarh, District Raigarh (C.G.) (Owner of vehicle)
3. Branch Manager, The New India Assurance Co. Ltd., Raigarh, District Raigarh (C.G.) (insurer)

… Respondents

MISC. APPEAL (C) NO. 1469 OF 2017

Branch Manager, New India Insurance (correct name Assurance) Company Limited, Raigarh, District Raigarh (C.G.)

… Appellant

versus

1. Sukhram Suryavanshi, S/o Late Bodhan Suryavanshi, aged about 60 years (father of deceased)
2. Rukhmani Bai Suryavanshi, W/o Shri Sukhram Suryavanshi, aged about 58 years (mother of deceased)
3. Bajrang Suryavanshi, S/o Shri Sukhram Suryavanshi, aged about 20 years (brother of deceased)
4. Ku. Dhaneshwari Suryavanshi, D/o Shri Sukhram Suryavanshi, aged about 18 years (sister of deceased)
5. Jyoti Suryavanshi, D/o Shri Sukhram Suryavanshi, aged about 15 years (sister of deceased), minor, through natural guardian father Sukhram Suryavanshi, S/o Late Bodhan Suryavanshi.

   All R/o Podikhurd, P.S. & Tahsil- Champa, District Janjgir-Champa (C.G.)
6. Nand Kumar Yadav, S/o Suresh Prasad Yadav, aged about 30 years, R/o Kateya, Post Office- Jai Govind Nagar, Makhra, P.S. Jamhor, District Aurangabad, presently, residing at House of Priyesh Agrawal, near Water Tank, Raigarh, District Raigarh (C.G.)

7. Priyesh Agrawal, S/o Narayan Agrawal, aged about 30 years, R/o Plot No.16, Sai Horiteg Colony, Urdana Road, Raigarh, District Raigarh (C.G.)

… Respondents

- Mr. C.K. Sahu, Advocate, for the Appellant in M.A.(C) No. 1599/2017 and for Respondents No. 1 to 5 in M.A.(C) No. 1469/2017.
- Mr. Pankaj Agrawal, Advocate, for the Appellant in M.A.(C) No. 1469/2017 and for Respondent No.3 in M.A.(C) No. 1599/2017.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/01/2018

1. These are two appeals under Section 173 of the Motor Vehicles Act, 1988, assailing the award dated 3.8.2017 passed by the Chief Motor Accident Claims Tribunal, Janjgir, District Janjgir-Champa, in Motor Accident Claim Case No. 82/2016.

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.6,10,000/- in favor of the claimants with interest thereon at the rate of 8% per annum from the date of presentation of the claim application and has fastened the liability for payment of the said amount upon the insurance company indemnifying the driver and owner of the offending vehicle, i.e., a Trailer bearing registration no. CG13-LA-2681.

3. M.A.(C) No. 1599/2017 is an appeal by the claimants seeking for enhancement of compensation awarded and the M.A.(C) No. 1469/2017 is an appeal filed by the insurance company assailing the liability which has been fastened upon it.

4. For convenience sake, we are taking the appeal of the insurance company first.

5. Challenge by the insurance company to the award is on the ground that the insurance company has been wrongly saddled with the liability of payment of compensation and that the driver of the offending vehicle at the relevant point of time did not have a valid and effective driving licence. According to the learned counsel for the insurance company, the offending vehicle was a trailer, but the driver and the owner of the offending vehicle have not produced any documents to show that they had a valid licence in their favour. Both the owner and the driver were proceeded ex parte before the Tribunal and that on verification by the insurance company it was found that the driver of the offending vehicle had a licence valid only for driving a Light Motor Vehicle whereas the offending vehicle is a Heavy Goods Vehicle and its laden weight itself was more than 13000kg, which bring it in the category of a Heavy Goods Vehicle and therefore it stands established that the driver of the offending vehicle did not have a valid licence.

6. However, perusal of record available with the case would show that the insurance company in the instant case has not led any evidence so as to substantiate their contentions, neither was any witness from the concerned RTO examined to hold that the driver did not have a valid licence. Perusal of record also shows that the insurance company has also not led evidence of the investigator who is said to have investigated into the matter. In the absence of any evidence by the insurance company, this Court does not find the burden of proof to have been discharged by the insurance company to establish that the driver did not have a valid and effective licence. The appeal of the insurance company, i.e., M.A.(C) No. 1469/2017, thus deserves to be and is accordingly dismissed.

7. So far as the appeal of the claimants seeking for enhancement is concerned, learned counsel for the claimants submits that the income assessed by the Tribunal is on the lower side and that the claimants are also entitled for compensation under the future prospects head and the award deserves to be modified and enhanced suitably.

8. Perusal of record would show that the Tribunal has taken into consideration the monthly wage of the deceased only for 20/- days of a month and assessed Rs.5000/- as the monthly wage of the deceased. The claimants have led specific evidence before the Tribunal that the deceased was working as a Rajmistry (Mason) and was having employment all through the month and therefore for the purpose of calculation of wages, it cannot be assessed for a period of only 20 days. It has to be calculated for the entire month, that is of 30 days. This Court therefore assessing the daily wage of the deceased at Rs.250/- assesses the monthly income at Rs.7500/- instead of Rs.5000/- as assessed by the Tribunal. Likewise, it is also held that in view of a recent Larger Bench decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited** v. **Pranay Sethi & Others**[1], the claimants would also be entitled for a compensation under the future prospects at the rate of 40% and the award deserves for a suitable enhancement accordingly.

9. Thus, accepting the monthly income of the deceased at Rs.7500/-, the yearly income comes to Rs.90,000/- to which if 40% is added towards future prospects, the amount comes to Rs.1,26,000/- of which if 50% is deducted towards the personal expenses considering the fact that the deceased was a bachelor, the amount left would be Rs.63,000/- which if multiplied applying the multiplier of 18, the amount would reach to Rs.11,34,000/- which is the amount towards the loss of dependency for which the claimants shall be entitled, instead of Rs.5,40,000/- as assessed by the Tribunal. In addition, the claimants shall also be entitled for a lump sum compensation of Rs.70,000/- as has been awarded by the Tribunal. Thus, making the total compensation payable to the claimants at Rs.12,04,000/-.

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

10. It is thus ordered that the claimants shall be entitled for a total compensation of **Rs.12,04,000/-** and that the enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

11. As a consequence, the appeal of the insurance company, i.e., M.A. (C) No. 1469/2017, stands rejected and the appeal of the claimants, i.e., M.A.(C) No. 1599/2017, stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/