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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1190 of 2012

1. Adhaniya Bai Wd/o Prem Kumar Yadav, aged about 31 years
2. Ku. Lukeshwari D/o late prem Kumar Yadav, aged about 15 years
3. Ku. Vrijbhan D/o late Prem Kumar Yadav, aged about 13 years
4. Ku. Anjali D/o late Prem Kumar Yadav, aged about 11 years
5. Ku. Umra D/o late Prem Kumar Yadav, aged about 9 years
6. Lomash Kumar S/o late Prem Kumar Yadav, aged about 5 years
7. Ku. Kajal D/o late Prem Kumar Yadav, aged about 1 year
8. Kalesari Bai W/o Panchram Yadav, aged about 60 years
9. Panchram S/o Bastiram Yadav, aged about 64 years

Appellant No. 2 to 7 are minor, through the natural guardian mother Adhaniya Bai

All are R/o village Budhwara, Post Chatan, Police Station and Tahsil Lormi, District Bilaspur

---- Appellants

Versus

1. Ramchandra Sapre S/o Khorbahara, aged about 33 years, driver of Tractor No. CG 10-D 1109, R/o village Devri, Police Station and Tahsil Mungeli, District Mungeli (CG)

2. Muniram Sahu S/o Khemhai Sahu, aged about 62 years, owner of Tractor No. CG 10-D 1109, R/o Daupara Mungeli, Police Station and Tahsil Mungeli, District Mungeli (CG)

3. United India Insurance Company Limited, Branch Office Rajendra Nagar Chowk, Bilaspur (CG) Insurer of Tractor No. CG 10-D 1109

---- Respondents

For Appellants	:	Shri R. K. Pali, Advocate
For Respondents 1 to 2	:	Shri Sourabh Sharma, Advocate
For Respondent no. 3	:	Shri H. B. Agrawal, senior advocate along with Smt. Iturani Mukherjee, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

22/02/2018

Present is an appeal by the claimants under Section 173 of the Motor Vehicles Act. The challenge is to the award dated 22.09.2012 passed by the Additional Motor Accident Claims Tribunal, Mungeli, District Bilaspur (CG) in Claim Case No.162/2011. Vide the impugned award, in a death case under Section 166 of the MV Act, the Tribunal has awarded compensation of Rs.7,00,700/- with interest @ 6% per annum from the date of application.

2. While passing the impugned award, the Tribunal has exonerated the Insurance Company of its liability and has fastened the liability of payment of compensation upon the owner and the driver i.e. respondents 1 & 2 herein who in turn have also preferred a cross objection/application under Order 41 Rule 27 of CPC assailing the liability part.

3. For convenience sake, we take the cross objection of the owner and the driver i.e. respondents 1 & 2 first.

4. Contention of the counsel for respondents 1 & 2 is that the Insurance Company has been exonerated only on the ground that the owner and the driver have not produced driving licence before the Tribunal. He submits that perusal of the record would show that the criminal record which was produced before the Tribunal had a document Ex. P-6 which was the seizure memo of the licence of the driver of the offending vehicle at the time of accident. He submits that along with the cross objection, he has also produced the original driving licence which the driver respondent no.1 had at the time of accident and the said driving licence was also got verified by the Insurance Company and they found the original driving licence to be genuine. He submits that the only objection which the counsel for the Insurance Company now takes is that the driver had a licence to drive motorcycle with gear, L.M.V. non transport vehicles. According to the counsel for respondents 1 & 2, the said issue involved in the case stands squarely covered by the judgment of the Supreme

Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in **AIR 2017 SC 3668.** Thus, prayed for shifting the liability of payment of compensation upon the Insurance Company from that of the owner and the driver.

5. Undisputedly, the vehicle involved in the instant case was a tractor which is a light motor vehicle. The driver of the offending vehicle respondent no.1 had a licence for driving a light motor vehicle. Thus, this Court does not have any hesitation in reaching to the conclusion that the exoneration of the Insurance Company was not proper and the finding of the Tribunal to that extent stands set aside. It is held that the liability of payment of compensation now shall jointly and severally fall upon the driver, the owner and the Insurance Company and the responsibility of payment of compensation would be upon the Insurance Company.

6. So far as the appeal of the claimants is concerned, counsel for the appellant-claimants submits that the compensation awarded by the Tribunal is unreasonably low in as much as the income under future prospects has not been considered while computing the compensation. He submits that the compensation awarded under the conventional head is also on the lower side and the same deserves for suitable enhancement. He further submits that the Tribunal in the instant case has assessed the income of the deceased at Rs.4,500/- a month whereas the deceased was operating a grains shop and the claimants have deposed before the Tribunal that the deceased was earning Rs.12,000/- per month from the said business. Thus, prayed for enhancement of the compensation suitably.

7. Perusal of the record would show that there was no sufficient proof produced by the claimants to establish the income part of the deceased. Only on account of a document pertaining to the shop by itself cannot be sufficient proof to assess the income of the deceased as what has been claimed by the claimants.

8. Under the given facts and circumstances of the case and taking into consideration the period of accident, this Court assesses the income of the deceased at Rs.6,000/- per month and the yearly income at Rs.72,000/-. In the light of the recent decision of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Ors.** decided on 31st October, 2017, the claimants would be entitled for 40% of the income towards future prospects which comes to Rs.28,800/- making the yearly income at Rs.1,00,800/-. If 1/5th of the said amount is deducted towards personal expenses considering the total number of claimants being 9, the amount comes to Rs.80,640/- which if multiplied applying the multiplier of 16, the amount would be Rs.12,90,240/-. In addition, the claimants would be entitled for a lump sum compensation of Rs.70,000/- under the conventional head making the claimants entitled for a total compensation of Rs.13,60,240/- in stead of Rs.7,00,700/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as assessed by the Tribunal.

9. At this juncture, counsel for respondents 1 & 2 submits that the original driving licence which he had filed along with the cross objection may be returned. Subject to the respondent no.1 furnishing photocopy of the same, the original driving licence shall be returned to him. Any amount which the owner and the driver had deposited before the Tribunal, the same shall be refunded to them on the Insurance Company depositing the entire amount before the Tribunal.

10. Thus, the appeal of the claimants and the cross objection of the owner and the driver stand allowed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola