NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 27 of 2012

1. Neelam Dhurwa, S/o. Sudru Dhurwa, Aged about 30 years,
2. Ku. Reena, D/o. Neelam Dhurwa, Aged about 12 years,
3. Mannu, S/o. Neelam Dhurwa, Aged about 10 years,
   Appellant No.2 & 3 through their local guardian appellant No.1.
4. Smt. Bhalu W/o. Late Lekhan, Aged about 50 years,
5. Dhanmati D/o. Late Lekhan, Aged about 40 years,
   All above R/o. Village Dogam, Police Station Parpa, District Bastar Chhattisgarh

---- Appellants

Versus

1. Suman S/o. Dayaram Baghel, Aged about 28 years, R/o. Village Adawal, Police Station Parpa, District Bastar, Chhattisgarh (Driver)
2. Smt. Anju Naidu, W/o. Laxmi Rao, R/o. Village Adawal, Tahsil Jagdalpur, District Bastar Chhattisgarh
3. United India Insurance Company, Through: Branch Manager, Jagdalpur, District Bastar Chhattisgarh

---- Respondents

For Appellants	:	Mr. Chakresh Tiwari, Advocate under instructions of Mr. B.P. Sharma, Advocate
For Respondent No.2	:	Mr. Keshav Dewangan, Advocate
For Respondent No.3	:	Mr. Pankaj Agrawal, Advocate along with Ms. Prabha Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/02/2018

1. The present is an appeal by the Claimants under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 25.11.2010, passed by the 1st Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur, Chhattisgarh, in Claim Case No. 67/2008.

2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.4,23,000/- with interest @ 6% per annum from the date of application.

3. The Tribunal while passing the award has exonerated the Insurance Company of its liability and has fastened the liability upon the Owner-respondent No.2. The Owner in the instant case has not questioned the award. The present is a Claimants' appeal seeking enhancement.

4. The counsel for the appellants-Claimants has submitted that the exoneration of the Insurance Company is bad in law, in as much as there was no sufficient proof to show that the deceased was traveling sitting on the body of the tractor and also the fact that the Tractor was not being used for agriculture purpose. It was also the contention of the Claimants that the impugned award also deserves to be enhanced in as much as the income assessed and the compensation under the conventional head is on the lower side, so also the Claimants have not been granted the compensation towards future prospects and the award deserves to be suitably modified and enhanced.

5. The counsel for the respondent-Owner submits that the exoneration of the Insurance Company is in fact bad in law and the liability ought to have been shifted upon the Insurance Company since the vehicle was duly insured at the relevant point of time. The Insurance Company had also accepted an extra premium of covering the risk of a worker under the provisions of Workmen's Compensation Act.

6. The counsel for the Insurance Company however opposing the Claimants as well as the Owner submits that it is a case where there was sufficient evidence brought on record to show that firstly, the deceased was traveling sitting on the body of the Tractor and

secondly, the vehicle was being used for commercial purpose in as much as sand was being transported for the construction of the road.

7. Having heard the contention put forth on either side and on perusal of the record, particularly taking into consideration the contents of Section 166 of the Motor Vehicles Act and also taking into consideration the deposition of the eyewitness examined on behalf of the Claimants both of whom have categorically stated that the deceased was traveling on the Tractor by itself establishes the contention of the Insurance Company.

8. In the given facts and circumstances of the case, this Court has no hesitation in reaching to the conclusion that the Insurance Company has been rightly exonerated of its liability. The finding to that extent does not warrant any interference.

9. So far as the quantum of compensation awarded is concerned, this Court does not find the amount of income assessed by the Tribunal to be on the lower side. Taking into account the period of accident and nature of work done by the deceased, the income assessed of Rs.36,000/- annually does not warrant interference. However, in the light of the recent decision of the Hon'ble Supreme Court the Claimants would be entitled for 40% of the income towards future prospects. Likewise the Claimants would also be entitled for an amount of Rs.70,000/- towards conventional head instead of Rs.15,000/- as awarded by the Tribunal.

10. Accepting Rs.36,000/- as the yearly income, if 40% is added towards future prospects, the amount comes to Rs.14,400/-, which added to the yearly income would come to Rs.50,400/-, of which if 1/3rd is

deducted towards personal expenses, the amount left would be Rs.33,600/-. This amount if multiplied applying the multiplier of 17, the amount would come to Rs.5,71,200/-. It is ordered accordingly that the Claimants shall be entitled for an amount of Rs.5,71,200/- towards loss of dependency instead of Rs.4,08,200/- as awarded by the Tribunal. In addition, the Claimants would also be entitled for a lump sum compensation of Rs.70,000/-, which would bring the total compensation payable at Rs.6,41,200/-. It is ordered accordingly that the Claimants shall be entitled for a total compensation of Rs.6,41,200/- instead of Rs.4,23,000/-.

11. The enhanced amount shall also carry interest at the same rate as awarded by the Tribunal.

12. The appeal thus stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved