NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 163 of 2012

The Oriental Insurance Company, Through: Division Office Geetanjali Bhawan, Korba, District Korba Chhattisgarh

---- Appellant

Versus

1. Smt. Anita Devi Wd/o Late Jaiprakash, Aged about 37 years,
2. Ku. Sempi D/o Late Jaiprakash, Aged about 14 years,
3. Vivek Kumar S/o Late Jaiprakash, Aged about 10 years,
4. Ku. Chandni, D/o Late Jaiprakash, Aged about 8 years,

   Minors Through natural guardian mother Smt. Anita Devi,

   All are R/o. Village Katainar, Bankimongra, District Korba Chhattisgarh (Claimants)
5. Hemlal, S/o. Madan Lal, Aged about 19 years,
6. Madan Lal Suryavanshi, S/o. S.R. Suryavanshi,

   Respondent No. 4 & 5 are R/o. Village Dhelwadih Colony, Qtr. No. A-488, Katghora, District Korba Chhattisgarh

---- Respondents

AND

MAC No. 227 of 2012

1. Smt. Anita Devi Wd/o Late Jaiprakash, Aged about 37 years,
2. Ku. Sempi D/o Late Jaiprakash, Aged about 14 years,
3. Vivek Kumar S/o Late Jaiprakash, Aged about 10 years,
4. Ku. Chandni, D/o Late Jaiprakash, Aged about 8 years,

   Appellant No. 2 to 4 are Minors Through natural guardian mother Smt. Anita Devi,

   All are R/o. Village Katainar, Bankimongra, District Korba Chhattisgarh (Claimants)

---- Appellant

Versus

1. Hemlal, S/o. Madan Lal, Aged about 19 years,
2. Madan Lal Suryavanshi, S/o. S.R. Suryavanshi,

   Both are R/o. Village Dhelvadih Colony, Qtr. No. A-488, Katghora, District Korba Chhattisgarh
3. The Oriental Insurance Company Limited, Through: Divisional Office Geetanjali Bhawan, Korba, District Korba Chhattisgarh

---- Respondents

For Insurance Company	:	Mr. Pankaj Agrawal, Advocate
For Claimants	:	Mr. Amiyakant Tiwari, Advocate along with Ms. Pragya Pandey

Hon'ble Shri Justice P. Sam Koshy
Order on Board

20/02/2018

1. These are two appeals challenging the award dated 09.09.2011, passed by the Additional Motor Accident Claims Tribunal, Katghora, District Korba, Chhattisgarh, in Claim Case No. 278/2007.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.18,83,500/- with interest @ 6% per annum with a clause of penalty interest if the amount is not deposited within 45 days @ 9% per annum.

3. MAC No. 163/2012 is an appeal by the Insurance Company and MAC No. 227/2012 is an appeal by the Claimants seeking enhancement. For convenience, we take up the appeal of the Insurance Company first.

4. The challenge by the Insurance Company is that the Driver of the offending motorcycle was not having a license at the time of accident. He further submits that the Driver Hemlal in fact was a minor and therefore there is a clear breach of policy condition and the liability of payment of compensation should therefore have been passed upon the Owner and the Insurance Company should have been exonerated.

5. The counsel for the appellant refers to the records of the criminal case registered wherein the age of the said Hemlal-the Driver is 15 years. Perusal of the record would show that the Insurance Company has only led an evidence of one Surendra Kumar Agrawal,

the officer of the Insurance Company, who in his deposition has only suggested that the fact that the respondent No.5 being a minor stands proved from the fact that the Owner had compromise one of the claim applications filed before the Tribunal in the Lok Adalat, which was held at Katghora Court on 20.11.2010 and it was Owner of the said motorcycle who had satisfied the claim of the injured and thus the Insurance Company in the present case also should have been exonerated of its liability

6. He further submits that it is a case where the F.I.R. and other documents show the age of the Hemlal- Respondent No.5 as 15 years. Further, it is a case, where the Owner and Driver of the motorcycle have not produced any document to show that the respondent No.5 was not a minor and also the fact that he had a valid license on the date of accident, therefore an adverse inference should have been drawn.

7. However considering the fact that the Insurance Company has not led any evidence to prove the fact that the respondent No.5 was a minor nor was there any evidence with which it could be ascertained that the respondent No.5 was a minor, nor has the Insurance Company produced any evidence to show that the respondent No.5 has been convicted in the criminal case that was lodged against him to establish that he was a minor. Further the Insurance Company has also not led any evidence to establish the fact that the Driver of the offending motorcycle i.e. Hemlal did not have a valid license on the date of accident. The evidence of the Insurance Company was all the more necessary since the Owner and Driver had been proceeded exparte.

8. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that an adverse inference against the Owner and Driver can only be drawn to the extent of applying the doctrine of 'pay and recovery' and it is ordered accordingly that the Insurance Company shall satisfy the awarded amount by depositing the amount before the Tribunal with the liberty of recovering the same by initiating appropriate recovery proceedings against the respondents No.5 & 6. The appeal of the Insurance Company thus stands allowed in part to the extent that the responsibility of payment of compensation shall be upon the Insurance Company, however with a liberty of recovering the same from the Owner and Driver i.e. respondents No.5 & 6. However, the finding of imposing penal interest in the given facts stands quashed. The appeal of the Insurance Company thus stands allowed in part.

9. So far as the appeal of the Claimants is concerned, the undisputed fact is that the deceased in the instant case was an employee working as an operator at S.E.C.L. He was drawing a gross salary of Rs.15,941.63. The net salary was Rs.12,416/-.

10. This Court does not find any discrepancy on the part of the Tribunal in assessing the monthly income of the deceased at Rs.12,416/-. The Claimants in addition to the monthly income would also be entitled for 50% of the monthly income towards future prospects, which comes to Rs.6208/, which brings the monthly income at Rs.18,624/- and the yearly income at Rs.2,23,488/-. If 1/4th is deducted from the said amount, the amount left is Rs.1,67,616/-, which if multiplied applying the multiplier of 15, the amount comes to Rs.25,14,240/-. It is ordered that the Claimants shall be entitled for

loss of dependency of Rs.25,14,240/-. In addition, the Claimants would also be entitled for a lump sum amount of Rs.70,000/- under the conventional head to make the total compensation payable at Rs.25,84,240/- instead of Rs.18,83,500/-.

11. The enhanced amount shall also carry interest at the same rate as awarded by the Tribunal, which is 6% from the date of application.

12. The appeal of the Claimants thus stands allowed and disposed of

Sd/-
(P. Sam Koshy)
Judge

Ved