NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 240 of 2011

1. Mus. Maanmati, aged about 38 years, widow of late Gulab Singh Gond
2. Basant Singh, aged about 20 years, son of late Gulab Singh Gond
3. Veer Singh Gond, aged about 75 years, son of late Mangal Singh Gond (died)
4. Jhuna Bai, aged about 70 years, wife of Shri Veer Singh Gond

All are resident of village Jagatpur, Tah. Baikunthpur, District Korea (CG) Present resident village Mohanbhata, Tah. Kota, District Bilaspur, CG)

---- Appellants

Versus

1. Sukhdeo Khairwar, aged about 26 years, S/o Shri Amol Khairwar, R/o village Nagpur, P.S. Nagpur, P.S. Manendragarh, District Korea (CG) (Driver of the vehicle/Jeep No. CG16A/0346)
2. Ganesh Prasad Sahu, aged about 45 years, S/o Shri Daniram Sahu, R/o village Lai, Tah. Manendragarh, District Korea (CG) (Owner of the vehicle/Jeep No. CG16A/0346)
3. Branch Manager, the United India Insurance Company Limited near Ram Mandir, Ambikapur, District Sarguja, through the Branch Manager, United India Insurance Co. Ltd. Branch Office Rajendra Nagar Chowk, Bilaspur (CG)

---- Respondents

For Appellants	:	Smt. Bhagwati Kashyap, Advocate
For Respondent no.3	:	Shri H. B. Agrawal, senior advocate along with Ms. Meera Jaiswal, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

23/01/2018

Present is a claimants' appeal under Section 173 of the Motor Vehicles Act assailing the award dated 29.11.2010 passed by the 9th Additional Motor

Accident Claims Tribunal, Bilaspur (CG) in Claim Case No. 37 of 2010. Vide the impugned award, the Tribunal, in a death case under Section 166 of MV Act, has awarded a compensation of Rs.9,54,880/- with interest @ 6% per annum from the date of application.

2. Contention of the counsel for the appellants is that the amount of compensation awarded by the Tribunal is on the lower side in as much as the Tribunal has not properly appreciated the income of the deceased. The claimants before the Tribunal had produced salary slip of the deceased for the period immediately before his death that clearly reflected that the deceased in the instant case was drawing a salary of more than Rs.14,000/- a month whereas the Tribunal has erroneously accepted his wages at Rs.299/- a day which is unreasonably low and is also contrary to the evidence. Counsel for the appellants submits that since the nature of employment proves the deceased to be a permanent employee of SECL, the claimants would also be entitled for compensation under future prospects. She submits that the amount of compensation awarded under conventional head is also on the lower side and prayed for the award to be suitably enhanced.

3. Learned senior counsel appearing for the Insurance Company, however, opposing the appeal submits that the award as it is bad in law for the reason that the vehicle which hit the Jeep in which the deceased was travelling was not made a party. He submits that the Tribunal has rightly assessed the income of the deceased at Rs.299/- a day which is based on the evidence and therefore it does not warrant any interference. He submits that the Insurance Company has also challenged the award by way of a separate cross objection under Order 41 Rule 22 of CPC assailing the liability part. He argued that at best, the liability which could be fastened upon the Insurance Company is only to the extent of Rs.7.5 lakhs. It was also argued that awarding of interest from the date of application is also bad in law for the reason that the earlier claim application stood rejected and it was remitted back for fresh adjudication, therefore, the interest part should be liable only from the date of award and not from the date of application.

4. Having heard the contentions put forth on either side and on perusal of the record, if we look into Ex.P-1 the pay slip of the deceased of the month immediately before his death, it would reflect that the gross income of the deceased was Rs.14,390/-. There is deduction of Rs.2256/- and after deductions, the net payment is shown as Rs.12,134/-. A perusal of the record would also show that there are a lot of allowances which have been paid to the deceased which otherwise may not fall within the definition of wages but when we look into the deduction part, it would reveal that all the deductions made are towards different social security schemes and provisions of Provident Fund and also towards pension which are definitely part and parcel of the wages payable to an employee.

5. Thus, this Court has no hesitation in reaching to the conclusion that the Tribunal should have taken the net salary of the deceased at Rs.12,134/- as the basis for calculating compensation. This Court assesses the monthly income of the deceased at Rs.12,134/- instead of Rs.8970/- as assessed by the Tribunal.

6. Taking Rs.12,134/- as monthly income, the yearly income would be Rs.1,45,608/-. The claimants would also be entitled for the income towards future prospects to the extent of 30% which comes to Rs.43,682/- making the yearly income at Rs.1,89,290/-. If 1/3rd of the said amount is deducted towards personal expenses, the amount would come to Rs.1,26,194/- which when multiplied applying the multiplier of 13, the amount would reach to Rs.1640522/-. In addition, the claimants would also be entitled for a lump sum compensation of Rs.70,000/- under conventional heads making the total compensation payable to the claimants at Rs.17,10,522/- in stead of Rs.9,54,880/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

7. So far as the cross objection filed by the Insurance Company is concerned, if we look into the deposition/evidence led by the insurance Company, it would reflect that except for one witness on behalf of the Insurance Company namely Manoj Rai, no other evidence has been led by the Insurance Company to substantiate its contention. The said witness of the Insurance Company has no where deposed before the Tribunal that the policy was issued with a maximum limit of rupees 7.5 lakhs. On the contrary, if we look into the documents which have been produced before the Tribunal particularly the standard form for the commercial vehicle package policy issued by the Insurance Company in favour of the owner, it would show that there was no such limit prescribed under any of the conditions enumerated in the policy. In the absence of any strong evidence led by the Insurance Company in this regard, the said ground of liability to the extent of 7.5 lakhs would not be acceptable. Even otherwise, a perusal of the document would show that the policy which was issued by the Insurance Company was a comprehensive policy which is also known as a package policy where there is no limit prescribed.

8. So far as the interest part is concerned, the said ground of the Insurance Company also would not be acceptable for the reason that from the record it appears that the earlier rejection of the claim application was found to be erroneous by the High Court. Once when it has been found to be erroneous, the Tribunal if on reassessment has reached to a conclusion, the entitlement of interest of the claimants cannot be denied only because in an earlier round their claim application was rejected. In view of the same, the cross objection filed by the Insurance Company stands rejected.

9. Accordingly, the appeal filed by the claimants stands allowed and the cross objection filed by the Insurance Company stands dismissed.

(**P. Sam Koshy)**
JUDGE

Bhola