NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 762 of 2011

1. Kamal Prasad Patel, Age-43 yrs, S/o Shri Ganeshram Patel
2. Smt. Surekha Bail Patel, Age-38 Yrs, W/o Shri Kamal Prasad Patel

   Both the above are R/o village – Rawanbhata (Chanat), Post Chanat, PS Basna, District Mahasamund, at present R/o village – Jagat, PS Basna, District Mahasamund (CG)

---- Appellants

Versus

1. Santosh Sawaie, Age-32 Yrs, S/o Shri Raghu Sawaie, R/o village Bhajan-Nagar, Durgaprasad Mohalla Ganjam, P.S. Bhanjanagar, District Ganjam (Orissa) through Naresh Rohra, Age-35 year, S/o Shri Narottam Das Rohra, R/o Lakhe Nagar, Raipur, district Raipur (CG) (Driver of truck No. C.G.04/CF/5286)
2. Naresh Rohra, Age-35 year, S/o Shri Narottam Das Rohra, R/o Gandhinagar Para, Balangir, District Balangir (Orissa) at present R/o Lakhe Nagar, Raipur, District Raipur (CG) (Owner of truck No. C.G.04/CF/5286)
3. The Oriental Insurance Company Limited, through Regional Office, the Oriental Insurance Company, Kachhari Chowk, madina Manzil, Raipur, Tahsil & District Raipur (CG) (Insurance Co. of truck No. C.G.04/CF/5286)

---- Respondents

For Appellants	:	Shri Jameel Akhtar Lohani, Advocate
For Respondent No.3	:	Shri Amar Tamboli on behalf of Shri R. S. Marhas, Advocate

---

Hon'ble Shri Justice P. Sam Koshy

Order On Board

19/01/2018

Present is an appeal by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 25.09.2010 passed by the Motor

Accident Claims Tribunal, Mahasamund in Claim Case No. 208/2009. Vide the impugned award, the Tribunal in a death case has awarded compensation of Rs.82,000/- to the claimants with interest @ 6% per annum from the date of application.

2. Contention of the counsel for the appellants is that the Insurance Company in the instant case has been wrongly exonerated as the vehicle was duly insured during the relevant period of time. Counsel for the appellants submits that the compensation awarded by the Tribunal is unreasonably low and the same deserves enhancement on the following factors:

i) The income assessed is unreasonably low, ii) the claimants are also entitled for compensation under the future prospects, iii) the multiplier applicable in the instant case would be 18 instead of 10 as awarded by the Tribunal and iv) the compensation awarded under the conventional head is too low.

3. Counsel for the Insurance Company, however, opposing the appeal submits that the Tribunal has rightly exonerated the Insurance Company as there was a clear breach of policy condition and the accident occurred because of the misuse of the truck owned by respondent no.2. He submits that a perusal of the record would show that while the deceased Dharam Singh Patel was travelling sitting on top of the cabin of the truck, he came in contact with a live electricity wire crossing the road as a result of which he got electrocuted and succumbed to the injuries. He submits that no person is permitted to travel on top of the cabin of the truck but in the instant case, the deceased was travelling on top of the cabin of the truck and therefore, the Insurance Company cannot be held liable indemnifying for such lapse on the part of the owner and the driver. He further submits that the deceased in the instant case was not engaged for working in the truck as a driver or a cleaner nor was he travelling in the truck as a labourer. Rather from the claim application itself it reveals that the deceased had boarded in the truck as a passenger for transportation of his goods. Thus, prayed for rejection of the appeal.

4. Having considered the contentions put forth on either side and on perusal of the record, this Court does not find any material to set aside the finding of exoneration of the Insurance Company as the case of the claimants themselves was that the deceased had engaged the vehicle for transportation of his goods from one field to another field and as such it is proved that he was not a labour working in the said truck. Moreover, the accident occurred when the deceased was travelling on the roof top of the cabin which otherwise is not a place meant for sitting or carrying passengers for which also the Insurance Company cannot be held liable for payment of compensation. Thus, the finding of exoneration of the Insurance Company stands affirmed.

5. So far as the quantum of compensation to be enhanced is concerned, undisputedly, the accident in the instant case was of October, 2007 and the deceased was aged around 20 years. Therefore, the income assessed by the Tribunal at Rs.1,500/- a month is unreasonably low as at the relevant point of time, the wages of even an unskilled labour would have been rupees 100 to 150 a day. Taking the minimum of Rs.100/- a day, this Court assesses the income of the deceased at Rs.3,000/- a month i.e. Rs. 36,000/- yearly and proceeds to calculate the compensation accordingly. 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 also be entitled for 40% of the income towards future prospects which would make the yearly income of the deceased at Rs.50,400/-. If 50% of the said amount is deducted towards personal expenses, the amount comes to Rs.25,200/- which if multiplied applying the multiplier of 18, the amount comes to Rs.4,53,600/- as compensation towards loss of dependency. In addition, the claimants shall also be entitled for a lump sum compensation of Rs.40,000/- under the conventional head making the claimants entitled for a total compensation of Rs.4,92,600/- in stead of Rs.82,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

6. The present appeal thus stands allowed and disposed of.

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

Bhola