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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 767 OF 2011

1. Smt. Parniya Bai, age 34 years, S/o Late Dhan Singh Banjare
2. Ku. Pushpa Banjare, age 20 years, D/o Late Dhan Singh Banjare
3. Ku. Bharti Banjare, age 18 years, D/o Late Dhan Singh Banjare
4. Ku. Duj Bai Banjare, age 15 years, D/o Late Dhan Singh Banjare (Appellant No.4, minor daughter and being represented by Appellant No.1, mother in relation)

All the above are R/o Village- Bhalukona, P.S. Kurud, District Dhamtari (C.G.)

… Appellants

versus

1. Shekhanlal Manhare, age 42 years, S/o Mehtar Satnami, R/o Village- Bhalukona, P.S. Kurud, District Dhamtari (C.G.)
2. The New India Insurance Company Limited, through- Divisional Office at Madina-Building, Jail Road, Raipur, District Raipur (C.G.)
3. Mehtar Satnami, age 60 years, S/o Sukul Satnami, R/o Village- Bhalukona, P.S. Kurud, District Dhamtari (C.G.)

… Respondents

MISC. APPEAL (C) NO. 576 OF 2011

Shekhanlal Manhare, S/o Mahettar Satnami, aged about 42 years, R/o Village Bhalukona, P.S. Kurud, District Dhamtari (C.G.)

… Appellant

versus

1. Smt. Parniya Bai, Wd/o Late Dhansingh Banjare, aged about 34 years
2. Ku. Pushpa Banjare, D/o Late Dhansingh Banjare, aged about 20 years
3. Ku. Bharti Banjare, D/o Late Dhansingh Banjare, aged about 18 years
4. Ku. Doojbai Banjare, D/o Late Dhansingh Banjare, aged about 15 years, through- her mother/natural guardian Smt. Parniya Bai, Wd/o Late Dhansingh Banjare, aged about 34 years.

   All above R/o Village Bhalukona, P.S. Kurud, District Dhamtari (C.G.)
5. The New India Assurance Company Limited, through: Divisional Office, Madina Building, Jail Road, Raipur, District Raipur (C.G.)
6. Mahettar Satnami, S/o Sukull Satnami, R/o Village Bhalukona, P.S. and Tahsil – Kurud, District Dhamtari (C.G.)

… Respondents

- Mr. J.A. Lohani, Advocate, for Appellant-Claimants in M.A.(C) No. 767/2011.
- Mr. Anurag Singh, Advocate, under instructions of Mr. Manoj Paranjpe, Advocate, for Appellant-Owner in M.A.(C) No. 576/2011.
- Mr. Dashrath Gutpa, Advocate, for Respondent No.2-New India Insurance Company Limited in M.A.(C) No. 767/2011.
- Mr. Sourabh Sharma, Advocate, for Respondent No.5-New India Assurance Company Limited in M.A.(C) No. 576/2011.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/01/2018

1. These are two separate appeals under Section 173 of the Motor Vehicles Act, 1988, assailing the same award passed on 16.11.2010 by the Chief Motor Accident Claims Tribunal, Dhamtari, in Claim Case No. 89/2010.

2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.2,92,000/- in favour of the claimants with interest thereon at the rate of 6% per annum from the date of presentation of the claim application. Further, while passing the award, the learned Tribunal has exonerated the insurance company of its liability and fastened the liability for payment of compensation upon the owner of the offending vehicle *i.e.* a Tractor & Trolley, bearing registration no. CG05-G/0688 and CG05-G/0689.

3. M.A.(C) No. 767/2011 is an appeal filed by the claimants seeking for enhancement of compensation awarded. M.A.(C) No. 576/2011 is an appeal by the owner of the offending vehicle assailing the liability which has been fastened upon him, in spite of the offending vehicle being duly insured.

4. So far as the appeal of the owner, *i.e.*, M.A.(C) No. 576/2011, is concerned, it was the contention of Shri Anurag Singh, learned counsel appearing for the appellant-owner, that the offending vehicle was duly insured with the insurance company and the policy issued was presented before the Tribunal and marked as Exhibit D-1 and the said policy would reflect that it was a Kissan Package Policy which was issued and the risk covered was for the driver and four workers engaged for the purpose of loading and unloading. He further submits that it is a case where there has been evidence brought on record to show that the deceased in the instant case was travelling sitting on the trolley of the tractor along with paddy which was being transported in the said tractor and the deceased was engaged for the purpose of unloading the same. He next submits that since there was a valid policy for the relevant period and the policy covered the risk of driver and four workers, the Tribunal ought to have fastened the liability upon the insurance company instead of shifting it upon the appellant-owner.

5. Shri Sourabh Sharma, learned counsel appearing for respondent no.5-insurance company, however, opposing the appeal of the appellant-owner, submits that it is a case where the policy issued was though a package policy but there was no proof on record to show that the deceased in the instant case was travelling as a loader. Rather, it appears that the deceased was travelling as a gratuitous passenger for which the insurance company had not covered the risk and therefore the insurance company has been rightly exonerated of its liability.

6. Having heard the rival contentions put forth on either side and on perusal of record, what clearly reflects is that, the claimants in the instant case have examined an eye-witness, AW-2 Maansingh, who, in his evidence, has categorically stated that the deceased at the time of accident was travelling along with said witness and they were sitting in the trolley and that they were travelling in the trolley for unloading the paddy which was being transported.

7. This witness AW-2 Maansingh clearly supports the claim of the claimants as also of the owner so far as establishing the fact that the deceased was travelling on the offending vehicle as a worker and for which the risk had already been covered under the policy issued by the insurance company.

8. In the opinion of this Court, since there was a valid policy at the relevant period, the exoneration of the insurance company does not seem to be proper and legal. Even otherwise this issue stands squarely covered by a decision of the Hon'ble Supreme Court in the case of **Hanumanagouda** v. **United India Insurance Company Limited and Others**, **2014 (9) SCC 341**.

9. The appeal of the appellant-owner, *i.e.*, M.A.(C) No. 576/2011, thus deserves to be and is accordingly allowed and it is held that the liability of payment of compensation shall jointly and severally be upon the owner, driver and insurer of the offending vehicle. The payment of compensation shall be made by respondent no.5-insurance company indemnifying the owner and driver of the offending vehicle.

10. Now coming on the appeal filed by the appellant-claimants, *i.e.*, M.A. (C) No. 767/2011, seeking for enhancement of compensation, contention of Shri J.A. Lohani, learned counsel appearing for the appellant-claimants, is that though the accident was of 2010, the income assessed by the Tribunal was on the lower side. He further submits that the amount of compensation also deserves to be enhanced on account of non-calculation of compensation under the head future prospects, multiplier applied and the deduction towards personal expenses that has been made. He thus prayed for the amount of compensation to be suitably enhanced.

11. Shri Dashrath Gupta, learned counsel appearing for respondent no.2-insurance company, opposing the appeal of the appellant-claimants submits that the amount of compensation does not warrant any interference as the award is based on evidence which have come on record and also on the pleadings of the parties, and thus prayed for the rejection of the appeal of the appellant-claimants.

12. Considering the submissions put forth on either side and on perusal of record, what clearly evident is the date of accident *i.e.* of January, 2010 where the minimum income which an unskilled labourer must have been earning would be somewhere around Rs.150/- a day which would make the monthly income at Rs.4500/-. Though the claimants have claimed that the deceased was earning Rs.100/- a day, there does not seem to be any conclusive or authoritative statement made by the claimants, but it appears that she has made a statement of the deceased earning approximately Rs.100/- a day. This Court thus considering the period of accident assesses the monthly income at Rs.4500/- instead of Rs.3000/- as assessed by the Tribunal and proceeds to quantify the compensation accordingly.

13. The claimants would also be entitled for 40% of the income of the deceased towards future prospects as his age was less than 50 years at the time of accident. Likewise, considering the total number of claimants to be 4, the deduction towards the personal expenses also would be 1/4th and that the multiplier considering the age of the deceased to be 45 years would be 14 instead of 12 as applied by the Tribunal.

14. Accordingly, taking the monthly income of the deceased at Rs.4500/-, yearly income would come to Rs.54,000/- to which if 40% *i.e.* Rs.21,600/- is added towards future prospects, the amount would come to Rs.75,600/- of which if 1/4th *i.e.* Rs.18,900/- is deducted towards personal expenses, the remaining amount would be Rs.56,700/- which if multiplied applying the multiplier of 14, the amount would reach to Rs.7,93,800/- and this is the amount of loss of dependency to which the claimants shall be entitled for. In addition, the claimants shall also be entitled for an amount of Rs.70,000/- towards conventional heads. Thus, making the total compensation payable to the claimants at Rs.8,63,800/- instead of Rs.2,92,000/- which the Tribunal has awarded.

15. It is accordingly ordered that the claimants shall be entitled for a total compensation of Rs.**8,63,800/-** instead of Rs.2,92,000/- and the enhanced amount of compensation shall also carry interest at the same rate as has been fixed by the Tribunal.

16. As a result, the appeal of the owner, *i.e.*, M.A.(C) No. 576/2011, and the appeal of the claimants, *i.e.*, M.A.(C) No. 767/2011, both stand allowed and disposed of accordingly. The liability of payment of compensation shall now stand shifted upon the insurance company i.e. New India Assurance Company Limited. Any amount which the owner has deposited while filing the appeal, the same shall be refunded to the owner by the insurance company.

Sd/-
(P. Sam Koshy)
Judge

/sharad/