NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1025 OF 2011

ICICI Lombard General Insurance Co. Ltd., through its Legal Manager, ICICI General Insurance Co. Ltd., Ground Floor, Vanijya Bhawan, Devendra Nagar Road, Raipur (C.G.)

… Appellant

versus

1. Chotelal Singh Thakur, S/o Shri Bisahu Singh Thakur, aged about 43 years
2. Smt. Rani Thakur, W/o Shri Chotelal Singh Thakur, aged about 42 years

Both R/o Village Kariyatola, Tahsil and Post Dongargaon, District Rajnandgaon (C.G.)

3. Dhanesh Kumar Mandavi, S/o Shri Kanhaiyalal Mandavi, aged about 31 years, R/o Urai Dabri, Thana Chichola, District Rajnandgaon (C.G.) (Driver)
4. Gurdayal Singh Bhatiya, S/o Shri Harbansh Singh Bhatiya, R/o Anupam Nagar, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.) (Owner)
5. Palvinder Singh Gill, S/o Shri Bhajan Singh Gill, R/o Gill Transport, G.E. Road, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.) (Registered owner)

… Respondents

For Appellant	:	Mr. Amrito Das, Advocate.
For Respondents No. 1 & 2	:	Mr. P.R. Patankar, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/01/2018

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the appellant-insurance company assailing the award dated 2.7.2011 passed by the 3rd Additional Motor Accident Claims Tribunal, Durg, in Claim Case No. 13/2011.

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.2,71,000/- to respondents no. 1 and 2/claimants with interest thereon at the rate of 7.5% per annum from the date of presentation of the claim application.

3. Learned counsel for the appellant-insurance company assailing the liability which has been fixed upon them, submits that it is a case where the Tribunal has wrongly fastened the liability upon the insurance company. He submits that it has been conclusively proved before the Tribunal that the licence which the driver was having was a fake licence though it was subsequently duly renewed by the concerned Regional Transport Office. He further submits that once when the original licence itself is fake and fabricated, even if it is renewed subsequently by a competent authority it would not legalize the fake licence, and thus he prayed for the setting aside of the impugned award to the extent of fastening of liability upon them.

4. Learned counsel for respondent-claimants on the contrary submits that so far as the finding of liability is concerned the same does not warrant any interference as the licence of the driver was duly renewed and that there is evidence also which has been brought on record in this regard. He thus prayed for the rejection of the appeal.

5. Learned counsel for the respondent-claimants further submits that the claimants have also filed a cross-objection seeking for enhancement of compensation awarded by the Tribunal. According to him, the compensation awarded is on the lower side and the income assessed is unreasonably low so also the claimants shall also be entitled for income of the deceased towards future prospects and appropriate compensation under conventional heads. He thus prayed for a suitable enhancement of the amount of compensation awarded.

6. So far as the ground of fake licence is concerned, it is relevant at this juncture to refer to a decision of the Hon'ble Supreme Court in the case of **Pushkar Mehra** v. **Brij Mohan Kushwaha & Others**, **2015 (12) SCC 688**.

7. Considering the judgment of the Hon'ble Supreme Court in **Pushkar Mehra** (supra) as also the earlier decisions referred therein, this Court has no hesitation in reaching to the conclusion that it is a fit case where the doctrine of 'pay and recovery' can be applied. Accordingly, it is ordered that the appellant-insurance company shall deposit the compensation awarded, however they shall have the liberty of recovering the same by initiating appropriate recovery proceeding against the owner and driver of the offending vehicle. The appeal preferred by the insurance company thus stands allowed in part.

8. So far as the ground of enhancement of compensation is concerned, there is evidence of one officer of the company in which the deceased was working, who has been examined as AW-3 Vishal Bilani, Area Sales Manager, Meditia Labs Pvt. Ltd. The said witness has categorically deposed that the deceased was working as a trainee Sales Officer and that his pay-slip is Exhibit P-10 and it was deposed that he was earning Rs.9,508/- per month and there would had been a periodical increase in the salary.

9. Considering the date of accident to be July, 2008, this Court has no hesitation in reaching to the conclusion that a Medical Representative working in a Pharmaceutical company would had been easily getting an income as has been stated by AW-3 Vishal Bilani that of Rs.9500/- per month. This Court thus assesses the income of the deceased at Rs.9500/- instead of Rs.4100/- which has been assessed by the Tribunal.

10. Accordingly, accepting Rs.9500/- as the monthly income of the deceased, the yearly income comes to Rs.1,14,000/- to which if 40%, *i.e.*, Rs.45,600/-, is added towards future prospects, the amount would come to Rs.1,59,600/- of which if 50%, *i.e.*, Rs.79,800/-, is deducted towards the personal expenses, the remaining amount would come to Rs.79,800/-

which if multiplied applying the multiplier of 18, the amount would reach to Rs.14,36,400/- which is the amount towards the loss of dependency to which the claimants shall be entiteld for, instead of Rs.2,46,000/- as has been assessed by Tribunal. In addition, the claimants are also entitled for an additional compensation of Rs.40,000/- under conventional heads, instead of what has been awarded by the Tribunal. Thus, making the total compensation payable to the claimants at Rs.14,76,400/-, instead of Rs.2,71,000/- which the Tribunal has awarded.

11. The mpugned award stands accordingly modified and enhanced to the extent that the claimants shall be entitled for a total compensation of Rs.**14,76,400/-** and that the enhanced amount shall also carry the interest at the same rate as has been fixed by the Tribunal. It shall be the responsibilty of the appellant-insurance company to pay the entire amount of compenastion. However the appellant-insurance company shall be at liberty to recover the amount of compensation from the owner and driver of the offending vehicle by initiating appropriate recovery proceedings.

9. The appeal of the insurance company and the cross-objection of the claimant stand allowed to the extent reflected in the preceding paragraphs.

Sd/-
(P. Sam Koshy)
Judge

/sharad/