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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1167 OF 2011

United India Insurance Company Limited, through its Branch Manager, Branch Office, Bramha Road, Ambikapur, District Surguja (C.G.)

… Appellant

versus

1. Beauty Samddar, W/o Gopal Samddar, aged about 40 years
2. Ku. Hima, D/o Gopal Samddar, aged about 21 years
3. Ku. Momita Samddar, D/o Gopal Samddar, aged about 19 years
4. Manish, S/o Gopal Samddar, aged about 17 years
5. Vivekanand, S/o Gopal Samddar, aged about 15 years

Respondents No. 4 & 5 are minor, through their mother- Beauty Samddar (Respondent No.1).

All are R/o J.M.Q. Colony, Vishrampur, Qr. No. 113, Tah. Surajpur, Distt. Surguja (C.G.)

6. Sunil Samddar, S/o Devendranath, aged about 67 years
7. Smt. Malti, W/o Sunil Samddar, aged about 67 years

Both Respondents No. 6 & 7 are R/o Village- Mahaveerpur, Sanjaynagar, P.O. Ajabnagar, Tahsil Surajpur, District Surguja (C.G.)

8. Ankur Hada, W/o Ramdas Hada, aged about 18 years, occupation- Owner of Pickup, R/o Mahamaya Road, Ambikapur, P.S. & Tah. Ambikapur (C.G.)
9. Kristo Sahu, S/o Kandarpo, aged about 36 years, occupation- owner pickup bearing Registration No. CG15-A/6527, R/o Village- Dandgaon, P.O. Lundra, P.S. & Tah. Lundra, District Surguja (C.G.)
10. Lomas Ram, S/o Budhsai Ram, aged about 33 years, occupation- Driver, R/o Village- Bulanga, P.O. Udari, P.S. & Tah. Lundra, District Surguja (C.G.)
11. Ashutosh Satpute, S/o Madhavram, aged about 31 years, occupation- Under Manager, South East Coal Area, Gayatri Mines, R/o 2A/103, officer colony, Vishrampur, P.S. Vishrampur, Tah. Surajpur, District Surguja (C.G.)
12. Iffco Tokiyo General Insurance Company Limited, 4th and 5th Floor, Iffco Tower Plant No.3, Sector-29, Gudgaon, Hariyana-122001

… Respondents

MISC. APPEAL (C) NO. 1171 OF 2011

1. Smt. Beauty Samadar, Wd/o Gopal Samddar, aged about 40 years
2. Ku. Heema, D/o Gopal Samadar, aged about 21 years
3. Ku. Momita Samadar, D/o Gopal Samadar, aged about 19 years
4. Manish Samadar, S/o Gopal Samadar, aged about 17 years
5. Vivekanand Samadar, S/o Gopal Samadar, aged about 15 years

No. 4 & 5 minors represented through mother: Appellant-1.

No. 1 to 5 R/o J.M.Q. Colony, Vishrampur, Qr. No. 113, Tah. Surajpur, Distt. Surguja (C.G.)

6. Sunil Samadar, S/o Devendranath, aged about 67 years
7. Smt. Malti, W/o Sunil Samadar, aged about 67 years

No. 6 & 7 are R/o Mahavirpur, Sanjay Nagar, P.O. Ajabnagar, Tahsil Surajpur, District Surguja (C.G.)

… Appellants

versus

1. United India Insurance Company Limited, through its Branch Manager, Branch Office, Bramha Road, Ambikapur, District Surguja (C.G.)
2. Ankur Hada, W/o Ramdas Hada, aged about 18 years, R/o Mahamaya Road, Ambikapur, Distt. Ambikapur (C.G.)
3. Kristo Sahu, S/o Kandarapo, aged about 36 years, R/o Village-Dandgaon, P.O. Lundra, Tah. Lundra, District Surguja (C.G.)
4. Lomas Ram, S/o Budhsai Ram, aged about 33 years, R/o Village-Bulanga, P.O. Udari, Tah. Lundra, District Surguja (C.G.)
5. Ashutosh Satpute, S/o Madhavram, aged about 31 years, Under Manager, South East Coalfields Limited, Gayatri Mines, R/o 2-A/103, officer colony, Vishrampur, Tah. Surajpur, District Surguja (C.G.)
6. Iffco Tokiyo General Insurance Company Limited, 4th and 5th Floor, Iffco Tower Plant No.3, Sector-29, Gudgaon, Haryana

… Respondents

- Mr. Dashrath Gupta, Advocate, for the Appellant in M.A.(C) No. 1167/2011 and for Respondent No.1 in M.A.(C) No. 1171/2011.
- Mr. A.D. Shrivastava, Advocate, for the Appellants in M.A.(C) No.1171/2011 and for Respondents No. 1 to 7 in M.A.(C) No.1167/2011.
- Mr. Rishi Mahobia, Advocate, for Respondents No. 9 & 10 in M.A.(C) No.1167/2011 and for Respondents No. 3 & 4 in M.A.(C) No.1171/2011.
- Mr. Amrito Das, Advocate, for Respondent No.12 in M.A.(C) No.1167/2011 and for Respondent No.6 in M.A.(C) No.1171/2011.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

31/01/2018

1. These are two appeals filed under Section 173 of the Motor Vehicles Act, 1988, assailing the same award dated 23.8.2011 passed by the Additional Motor Accident Claims Tribunal, Surajpur, District Surguja, in Motor Accident Claim Case No. 75/2011.

2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a lump sum compensation of Rs.18,00,000/- in favor of the claimants with interest thereon at the rate of 9% per annum from the date of claim application and in default of non-deposit of the amount awarded within a period of two months from the date of award, the interest would be at 12% per annum from the date of claim application.

3. M.A.(C) No. 1167/2011 is an appeal filed by the appellant-insurance company assailing the liability part which has been fastened upon it. M.A. (C) No. 1171/2011 is an appeal by the claimants seeking for enhancement of the compensation awarded.

4. So far as the appeal of the appellant-insurance company, i.e., M.A. (C) No.1167/2011, is concerned, the challenge is on the ground that the driver did not have a valid licence at the relevant point of time. According to the learned counsel for the appellant-insurance company, the accident in the instant case took place on account of a clash between a car and a pickup van and the deceased was an occupant in the said car. Contention of the appellant-insurance company is that the driver of the pickup van did not have a valid and effective licence to drive a commercial/transport vehicle. That the pickup van which was being used by the driver was a commercial vehicle and the licence which he had was only that of a Light Motor Vehicle. Thus, there is a breach of policy condition and therefore the liability fastened upon the appellant-insurance company should be set aside and the same should be shifted upon the owner.

5. The aforesaid issue raised by the appellant-insurance company is no longer *res integra* for the reason that the Hon'ble Supreme Court has already laid to rest the said issue by two recent judgments, i.e., a Larger Bench decision rendered in the case of **Mukund Dewangan v. Oriental Insurance Company Limited**[1] which has been further reiterated in **Santlal** v. **Rajesh & Others**[2] wherein it has been held that no such endorsement is required in a case where the vehicle involved is a Light Motor Vehicle. Admittedly, the vehicle involved in the instant case was a car as well as a pickup van, both of which come within the definition of 'Light Motor Vehicle'. The driver of the offending vehicle in the instant case had a valid

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1 AIR 2017 SC 3668
2 AIR 2017 SC 4054

licence for driving a Light Motor Vehicle. Thus, the appeal of the appellant-insurance company is squarely hit by the said judgments of the Hon'ble Supreme Court rendered in the case of **Mukund Dewangan** (supra) and **Santlal** (supra).

6. However, so far as the penal interest is concerned, the learned Tribunal while passing the award had imposed a penal interest at 12% per annum in case the amount awarded is not deposited within a period of two months from the date of award. The issue of imposition of penal interest also already stands decided by the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd.** v. **Keshav Bahadur and Others**[3] wherein it has been categorically held that the Tribunal should not impose penal interest while awarding compensation. Thus, the order of imposition of penal interest is set aside.

7. In view of above, the appeal of the appellant-insurance company stands allowed in part.

8. Now, as regards the appeal of the claimants, i.e., M.A.(C) No. 1171/2011, seeking for enhancement of compensation is concerned, learned counsel for the claimants submits that it is a case where the learned Tribunal has erroneously assessed a lump sum compensation of Rs.18,00,000/-, whereas the deceased in the instant case was an employee of South Eastern Coalfields Limited, who had a gross income of 32,799/-. He further submits that the amount of compensation if calculated as per the guidelines of the Hon'ble Supreme Court in the case **Sarla Verma (Smt.) and others** v. **Delhi Transport Corporation and Another**[4] and subsequent decisions of the Hon'ble Supreme Court, would be much more than that has been awarded by the learned Tribunal. Further contention of the learned counsel for the appellant-insurance company is

3 2004 (2) SCC 370
4 2009 (6) SCC 121

that the deceased was getting a gross income of more than Rs.32,000/- and his net income after all permissible deductions would be more than Rs.24,000/- and therefore the calculation of compensation should had been made accordingly. He also submitted that in view of a recent Larger Bench decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited** v. **Pranay Sethi & Others**[5], the claimants shall also be entitled for a compensation under the head, future prospects, as the deceased was a permanent employee. Likewise, the amount of compensation under the conventional heads also deserves for a suitable enhancement.

9. Learned counsels appearing for the respective respondents however oppose the appeal of the appellant-claimants on the ground that the award seems to be fair and reasonable and does not warrant any interfernce in the given factual matrix of the case as the same is based on the evidence which have come on record.

10. Having heard the contentions put forth on either side and on perusal of record, if we look into Exhibit P-25 which is salary slip of the deceased it would reflect that the gross income of the deceased was around Rs.32,799/-. However, after permissible deductions, the net income comes to around Rs.24,200/- which for convenience sake is rounded off to Rs.24,500/- for the purpose of calculation. This Court thus assesses the monthly income of the deceased at Rs.24,500/-

11. Thus, accepting the monthly income of the deceased at Rs.24,500/-, the yearly income comes to Rs.2,94,000/- to which if 30%, *i.e.*, Rs.88,200/- is added towards future prospects, the amount comes to Rs.3,82,200/- of which if 1/5th, *i.e.*, Rs.76,440/-, is deducted towards the personal expenses considering the total number of claimants to be 7, the amount

5 SLP (Civil) No. 25590 of 2014, decided on 31.10.2017.

left would be Rs.3,05,760/- which if multiplied applying the multiplier of 13, the amount would reach to Rs.39,74,880/- which is the amount towards loss of dependency which the claimants shall be entitled for. In addition, the claimants shall also be entitled for a lump sum compensation of Rs.70,000/- under the conventional heads. Thus, making the total compensation payable to the claimants at Rs.40,44,880/- instead of Rs.18,00,000/- which has been awarded by the learned Tribunal.

12. The appeal of the appellant-claimants thus is allowed and the impugned award stands accordingly modified and enhanced to the extent that that the claimants shall be entitled for a total compensation of **Rs.40,44,880/-**. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal, i.e., 9% per annum from the date of claim application.

13. As a consequence, the appeal of the appellant-insurance company, i.e., M.A.(C) No.1167/2011, stands allowed in part and the appeal of the claimants, i.e., M.A.(C) No.1171/2011, also stands allowed and disposed of accordingly. It is expected that the appellant-insurance company shall honour the award at the earliest and deposit the entire award so that the same can be released to the claimants, considering the fact that it is a case where the death took place in the year 2010.

Sd/-
(P. Sam Koshy)
Judge

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