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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 131 of 2013

- United India Insurance Co. Ltd. Branch Office. Bramh Road, Ambikapur C.G., Through Its Divisional Manager, Divisional Office- 2nd Floor, Guru Kripa Towers, Vyapar Vihar Road, Bilaspur, Distt. Bilaspur (CG)

---- Appellant

Versus

1. Radheshyam, S/o Patipal, aged about 30 years, R/o Village Pampapur, Tah. Pratappur, Distt. Surguja (CG)
2. Durga Motor Service Proprietor- Brijbihari Gupta, S/o Munshi Sao, R/o Old Bus Stand, Ambikapur, Distt. Surguja (CG)
   Owner of Bus No.CG-13-ZA-0399
3. Jeetlal S/o Bichhiram, aged about 43 years, R/o Old Bus Stand, Ambikapur, Distt. Surguja (CG) Driver of Bus No.CG-13-ZA-0399

---- Respondents

For Appellant : Shri Dashrath Gupta, Advocate

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

15/01/2019

1. Appellant Insurance Company has assailed the impugned award dated 30.10.2012 passed by the Additional Motor Accident Claims Tribunal, Pratappur, District Surajpur in Claim Case No.46/2012 thereby awarding compensation of Rs.2,64,500/- to respondent No.1 herein on account of death of his daughter Miss Reena in a road accident.

2. Brief facts relevant for disposal of this appeal are that on 20.9.2011 the respondent No.1 along with his daughter was going to his in-laws house in the bus bearing registration number CG13-ZA-0399. Due to rash and negligent driving by the driver, said vehicle turned turtle near Chikni Jhariyalal brook resulting in death of one year old daughter of respondent No.1. A claim case was filed by claimant/respondent No.1 claiming

compensation to the tune of Rs.5,40,000/- on account of death of his daughter.

3. Appellant - Insurance Company filed its reply denying the averments made in the claim application and stated that at the time of accident the driver of offending vehicle was not having valid and effective driving license to drive the said vehicle. There was no valid permit and fitness certificate. The vehicle was overloaded and was carrying passengers more than its seating capacity permitted by the conditions of permit. Thus, the vehicle has been plied in breach of conditions of the insurance policy & permit and therefore the insurance company is not liable to indemnify the insured, owner of bus, or to pay compensation to respondent No.1.

4. Respondent No.2 & 3 also filed their reply to the claim application and pleaded that the bus met with the accident due to sudden mechanical failure. Notional income of Rs.30,000/- p.a., as pleaded by the claimant, cannot be made applicable in the case of death of one year old girl. On the date of accident, there was valid registration certification, fitness certificates, permit and insurance policy. Driver of the offending bus was also having effective and valid license to drive the said vehicle. In these circumstances, it has been pleaded that the insurance company is alone liable to pay compensation to the claimant if any awarded by the Claims Tribunal.

5. The Claims Tribunal while considering the pleadings, evidence and other material available on record had awarded compensation of Rs.2,64,500/- by taking notional income of the deceased as Rs.30,000/- p.a., deducting half towards personal expenditure of the deceased and by applying multiplier of 17. The Claims Tribunal has also awarded Rs.5,000/- towards loss of love and affection; Rs.2,000/- towards funeral expenses,

Rs.2,500/- towards loss of estate.

6. Learned counsel for the appellant submits that in case of death of one year old child, there cannot be any fixation of notional income and the learned Claims Tribunal has erroneously taken the notional income of the deceased i.e. Rs.30,000/- p.a. for calculating the compensation, which is not sustainable in law.

7. I have heard learned counsel for the parties and perused the record of the Claims Tribunal.

8. True it is that while calculating compensation in a case of death of one year old child, no fixed amount of income can be assessed towards dependency. A child of tender age cannot have any source of income and the parents of such child cannot say that they were in any manner dependant on the deceased child as in the case in hand the deceased was only one year old. Learned Claims Tribunal had certainly committed an error in assessing compensation by taking notional income of deceased child as Rs.30,000/- p.a., which is not sustainable in law and therefore the impugned award requires reconsideration.

9. Though while calculating the compensation the learned Claims Tribunal has not applied the correct method of calculation but at the same time it is to be seen that the object to award compensation under the Act, 1988 is to award just compensation against the death or bodily injury sustained by a person in an accident. Human life cannot be measured only in terms of loss of earning or monetary loss alone but there are emotional attachments involved and loss of a child can have a devastating effect on the family which can be easily visualized. The object of an award of damages is to give the claimant compensation for damage, loss or injury

he has suffered. The elements of damage recognised by law are divisible into two main groups: pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do.

10. In **R.K. Malik v. Kiran Pal** reported in **(2009) 14 SCC 1** the Hon'ble Supreme Court has held thus;-

> "23. Human life cannot be measured only in terms of loss of earning or monetary losses alone. There are emotional attachments involved and loss of a child can have a devastating effect on the family which can be easily visualized and understood. Perhaps, the only mechanism known to law in this kind of situation is to compensate a person who has suffered non-pecuniary loss or damage as a consequence of the wrong done to him by way of damages/monetary compensation. Undoubtedly, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness etc., which is sometimes described as compensation paid for "loss of expectation of life.
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> 26.While quantifying and arriving at a figure for "loss of expectation of life", we have to keep in mind that this figure is not to be calculated for the prospective loss or future pecuniary benefits that has been awarded under another head- pecuniary loss. Compensation payable under this head is for loss of life and not loss of future pecuniary prospects. The measure of loss is the loss of prospective happiness. Under this head compensation is paid for termination of life, which results in constant pain and suffering. This pain and suffering does not depend upon the financial position of the victim or the claimant but rather on the capacity and the ability of the deceased to provide happiness to the claimant. It is compensation paid for loss of prospective happiness which the claimant/victim would have enjoyed had the child not been snatched away at the tender age. It is payment for loss of company and companionship. The compensation payable under this head should normally be uniform and consistent and not upon the financial status of the dependants or the deceased. Non pecuniary loss by its very nature cannot be equated with economic wealth of the party."

11. Taking into consideration the proposition of law laid down by the Hon'ble Apex Court and also looking to the age of the deceased child, there cannot be any income or any amount of dependency can be awarded to the claimant as pecuniary loss. However, the claimant is certainly entitled for non-pecuniary loss i.e. loss of life, loss of company, happiness and pains & sufferings. Thus, looking to the age of the deceased child to be one year, this Court is of the view that the interest of justice would be served if a lump sum amount of Rs.2,00,000/- is awarded to the respondent No.1-father of the deceased child, on account of pains and sufferings due to loss of companionship, loss of life and happiness.

12. In view of above, the appeal is partly allowed. The impugned award is modified and it is directed that now the claimant/respondent No.1 would be entitled to Rs.2,00,000/- as compensation from the appellant insurance company. The amount already paid in terms of the impugned award shall be adjusted.

Sd/-
(Parth Prateem Sahu)
Judge

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