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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1091 of 2013

1. Smt.Durga Devi Singh W/o Late Gambhir Singh Aged About 33 Years
2. Ku. Shweta Singh D/o Late Gambhir Singh Aged About 20 Years
3. Ku. Sakshi Singh D/o Late Gambhir Singh Aged About 18 Years
4. Suraj Kumar Singh S/o Late Gambhir Singh Aged About 15 Years Minor, Through Mother Smt. Durga Devi Singh
5. Ku. Savita Singh D/o Late Gambhir Singh Aged About 7 Years Minor, Thru- Mother Smt. Durga Devi Singh
6. Smt. Radha Devi W/o Vanshpati Singh, aged about 63 years.
7. Vanshpati Singh s/o Late Jangbahadur Singh, aged about 71 years

All belong to caste Rajput, R/o Bhatgaon (new mines) P.S. Bhatgaon Tahsil Bhaiyathan, Civil & Revenue District Surguja C.G.

----Appellants/Claimants

VERSUS

1. Dinanath Shrivastava S/o Gokul Prasad R/o Shivsadan, High Court Road, Bilaspur, P.S. , Tah. And Distt. Bilaspur C.G., Chhattisgarh

(**Non-applicant No. 1/owner**)

2. Holsai Rajwade S/o Jaikaran Rajwade Aged About 31 Years R/o Barpara, P.S. And Post Bhatgaon, Tah. Bhaiyathan, Distt. Surguja C.G., District : Surguja (Ambikapur), Chhattisgarh (**Non-applicant No. 2/Driver**)

3. The Iffco Tokiyo General Insurance Company Ltd S/o Through- The Branch Manager, Branch Raipur C.G.

-------**Non-applicants**

For Appellants : Mr. Dashrath Prajapati, Advocate with Mr. Abhishek Pandey, Advocate

For Non-applicant No. 3 : Mr. K. Rohan on behalf of Mr. Amrito Das, Dy. G.A.

Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

16/08/2019

1. The appellants-claimants have challenged the impugned award dated 19-06-2013 passed by learned first Additional Motor Accident Claims Tribunal,

Surajpur, District Surguja in Claim Case No. 140/2011, whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs. 3,80,000/- as compensation.

2. Facts of the case, in nutshell, are that on 10-11-2009, Gambhir Singh was going to his village Bhatgaon from Ambikapur on his motor cycle bearing No. CG15-CA-0845. On the way he met with an accident with one Hyva Tipper (offending truck) bearing number CG10-A-8994, as a result of which, he suffered grievous injuries over his person and succumbed to those injuries on the spot. On account of death of Gambhir Singh, appellants/claimants have filed an application before the concerned Claims Tribunal claiming compensation of Rs. 56,05,000/- from the non-applicants therein.

3. Non-applicant No. 1 & 2 owner and driver of the offending vehicle, even after service of notice, did not appear before the Claims tribunal therefore they were proceeded *ex parte*.

4. Non-applicant No. 3/insurance company submitted its reply to claim application and denied all adverse pleadings made in claim application. It was pleaded that on the date of accident, offending truck was being plied in violation of conditions of insurance policy as non-applicant No. 2/driver of offending vehicle was not possessing valid and effective driving license.

5. Learned Claims tribunal on the basis of the pleadings and evidence brought on record by respective parties has held that accident took place due to negligence on the part of non-applicant No. 2/driver of offending vehicle and awarded a total sum of Rs. 3,80,000/- as compensation to the claimants.

6. Learned counsel appearing for the appellants submits that learned Claims Tribunal committed error in assessing income of the deceased as Rs. 3,000/- p.m. only whereas salary certificate (Ex. C-9) produced before the learned Claims tribunal reflects gross income of deceased as Rs. 24,126/- and net pay as Rs. 18,964/-. He also submits that claimants have also produced certificate

issued under Section 203 of the Income Tax Act, 1961 by South Eastern Coal Limited (SECL) employer of deceased, wherein income tax was also deducted by assessing income of the deceased as Rs. 2,19,034/- p.a.

7. Per contra, learned counsel for respondent No. 3 submits that though the claimants have only produced salary slip and tax deduction certificate issued by the SECL, but they failed to examine author of the said documents or the employee of SECL who had issued aforesaid documents. Therefore, the contents of documents could not be proved in the manner as required under the law. He further submits that as income of the deceased could not be proved, therefore, learned Claims tribunal, looking to the date of accident, has rightly assessed income of the deceased as Rs. 3,000/- p.m. on notional basis.

8. I have heard learned counsel for the parties and perused the documents available on record.

9. Claimants in their pleadings have specifically pleaded that on the date of accident, deceased Gambhir Singh was working in SECL at Bhatgaon Colliery and thereby earning Rs. 23,000/- p.m. In support of their pleadings, the claimants have examined Durga Devi w/o late Gambhir Singh as AW-1, who has proved filing of salary slip (Ex.C-9) and Form-16 (Ex. C-10) said to have been issued by the SECL. Claimants/appellants have also examined two other witnesses namely Kunwar Singh as AW-2 and Chandra Deep Singh as AW-3. These witnesses have stated in their examination-in-chief that deceased Gambhir Singh was working with SECL at Bhatgaon, Colliery and was earning about Rs. 25,000/- p.m. The claimants have neither examined any of the employees of the SECL under whom deceased was working with nor salary slip or Form-16 has been proved by calling its author as witness before the learned Claims tribunal.

10. Proceedings before the learned Claims tribunal under the provisions of Section 166 of the Motor Vehicles Act, 1988 is summary enquiry in nature. Section 167

of the Motor Vehicles Act, 1988 also casts a duty upon the Claims tribunal to award just and proper compensation after taking assistance of the persons possessing special knowledge in conducting inquiry.

11. Considering the material available on record particularly documentary and oral evidence, and particularly considering the fact that the claimants have produced salary slip and Form-16 issued by the SECL in the name of deceased employee, although not proved in accordance with law. The claimants who lost their bread earner cannot be deprived of the just compensation for the mistake on the part of the third person. The Motor Vehicles Act is a beneficial piece of legislation and also the object of the Act is to award just and proper compensation to the claimants who suffered injuries or legal heirs of deceased. Looking to the fact and documents placed on record by claimants i.e. salary slip and Form 16, in the opinion of this Court, it will be appropriate to remand back the case to the concerned Claims Tribunal for deciding the case after giving an opportunity to the parties to amend their pleadings, adduce additional evidence in support of their case and hereafter to pass an award afresh in accordance with law considering all the materials available on record.

12. Consequently, appeal is allowed in part and the matter is remitted back to the learned Court of Additional Motor Accident Claims Tribunal, Surajpur District Surguja, C.G. for deciding the claim application afresh with a direction to conclude the proceedings within a period of 3 months from the date of receipt of the copy of this order.

13. Records be sent back forthwith to the concerned Court.

Sd/-
(Parth Prateem Sahu)
Judge

Pawan