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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1137 of 2014

1. Mathura Bai wife of Dujram, aged about 25 years
2. Minor Harish son of Dujram, aged about 05 years
3. Minor Vikas son of Dujram, aged about 01 years

   Both minors represented through legal guardian mother Mathura Bai wife of Dujram
4. Dhanaram Sahu son of Gayaram, aged about 50 years
5. Ramkunwar Sahu wife of Dhanaram, aged about 45 years
6. Baratram, son of Dhanaram, aged about 30 years
7. Bhojram son of Dhanaram, aged about 22 years
8. Bharatlal son of Dhanaram, aged about 18 years

   All are resident of Village-Siriyagarh, Police Station and Tahsil-Dabhra, District- Janjgir-Champa (C.G.)

---- Appellants/Claimants

Versus

1. Motilal son of Mahadev (wrongly mentioned as Mahodav), aged about 20 years, resident of Village-Siriyagarh, Police Station and Tahsil-Dabhra, District – Janjgir-Champa (C.G.)
   (Vehicle Driver)/Non-applicant No.1
2. Narayan Chandra son of Bhogilal Chandra, aged about 30 years, resident of Village- Siriyagarh, Police Station and Tahsil- Dabhra, District- Janjgir-Champa (C.G.)
   (Vehicle Owner)/Non-applicant No.2
3. United India Insurance Company Limited, Raigarh, District Raigarh (C.G.)
   (Insurer)/Non-applicant No.3

---- Respondents/Non-applicants

For Appellants	:	Shri Goutam Khetrapal, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri H.B. Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

08.01.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of the compensation awarded by the Second Additional Motor Accident Claims Tribunal, Sakti, District

Janjgir-Champa (C.G.) vide award dated 04.08.2014 passed in M.A.C.C. No. 21 of 2013.

2. The Claimants, unfortunate wife, children, mother, father and brother of deceased- Dujram, claimed compensation of Rs.26,74,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for the death of Dujram in the motor accident.

3. Facts of the case, in brief, are that on 29.04.2013 deceased- Dujram was coming from Saradih to Dabhra by the offending vehicle- motorcycle- Bazaj Platina bearing registration No. CG-11/CK/1013, Dujram was a pillion rider and non-applicant No.1 was ridding the motorcycle, owned by non-applicant No.2 and insured with non-applicant No.3. When they reached Saradih-Dipapara main Raod, non-applicant No.1, rider of the offending vehicle, ridding the said vehicle in a rash and negligent manner fell down the motorcycle, as result thereof, Dujram sustained injuries on his head, ear, nose, mouth and other parts of the body. Dujram was hospitalized in Ramkrishna Hospital and thereafter he was hospitalized in KG Hospital and during treatment, he died on 02.05.2013.

4. The learned Tribunal, in the impugned award, has awarded a total compensation of Rs.4,96,500/- in favour of the Claimants No. 1 to 5 with interest @ 7% per annum from the date of award till its realization and has fastened the liability upon the non-applicants No. 1 & 2/driver & owner jointly and severally to pay compensation to the Claimants 1 to 5 and has exonerated the Insurance Company/non-applicant No.3.

5. As submitted by both the parties, no counter appeal has been filed by the Respondents.

6. Learned counsel for the Appellants submits that as per pleadings and evidence adduced by non-applicant No.2/owner of the offending vehicle and also written statement, non-applicant No.2 had handed over the offending vehicle to non-applicant No.1/Motilal, rider of the motorcycle, after verifying the driving licence and after testing his skill to drive the motorcycle. Therefore, there is no breach of policy conditions by the owner/non-applicant No.2 and the Tribunal has wrongly exonerated the Insurance Company to satisfy the award. He further submits that the deceased was aged about 27 years, was doing the work of stitching and tailoring and was earning Rs.6,000/- per month as skilled labour, but the Tribunal has considered the income of the deceased as Rs.3,000/- per month which is on the lower side. He also submits that no amount towards future prospect has been granted to the Claimants and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and others*** Vs. ***Delhi Transport Corporation and another, (2009) 6 SCC 121*** and ***National Insurance Co. Ltd.*** Vs. ***Pranay Sethi, (2017) 16 SCC 680***.

7. Learned Senior Counsel appearing on behalf of non-applicant No.3/Insurance Company submits that the driving licence of non-applicant No.1 produced before the Tribunal is fake licence, therefore, he emphasizes the evidence of Narayan Chandra examined as NAW-1, Mukesh Kumar Kuldeep examined as NAW-2 and Umesh Kumar Tripathi examined as NAW-3. Therefore, there is no liability cast upon the Insurance Company/non-applicant No.3 to pay compensation and the Tribunal considering all the relevant aspects of the matter has rightly exonerated the Insurance Company which needs no interference by this Court.

8. Heard learned counsel for the parties and perused the material available on record.

9. Firstly, I consider whether the Tribunal has rightly exonerated the Insurance Company ?

10. As per document produced by the owner i.e. copy of driving licence of non-applicant No.1, NAW-1- owner of vehicle has stated in his statement in para-3 that after verifying and seeing the driving licence and also testing the skill to drive the vehicle by non-applicant No.1, he handed over the vehicle to non-applicant No.1-

Motilal and that fact was not challenged in cross-examination. NAW-2 – Mukesh Kumar Kuldeep, Administrative Officer, in his evidence stated that he inquired the matter about driving licence of non-applicant No1 through Vivek Kumar Vishwakarma, Investigator of Insurance Company and he found that non-applicant No.1 has no driving licence. NAW-3 – Umesh Kumar Tripathi, Asstt.Grade-3 in R.T.O. Bilaspur stated in his evidence that the driving licence No. M/11091/04 of non-applicant No.1 was not issued by R.T.O. Bilaspur. He also admitted in paras 5 & 6 that in the year 2004 he was posted in the R.T.O. and said that the entry of M-series of driving licence was not in the register and the said register was torn. He also admitted that he cannot said that M- series 11091/04 in whose name was issued or not. Therefore, there is no breach of policy conditions by the owner because after verifying the driving licence of non-applicant No.1 and after testing the driving skill of non-applicant No.1 , he handed over the vehicle to him.

11. In the matter ***United India Insurance Co. Ltd.*** Vs. ***Lehru and Others, (2003) 3 SCC 338***, the Hon'ble Supreme Court while considering the liability of the Insurance Company in the case of fake driving license observed as under:

> "In order to avoid liability under Section 149(2)(a)(ii) it must be shown that there was a "breach" on the part of the insured. To hold otherwise would lead to absurd results. The aim and purpose of the provision for compulsory third-party risk is that an insurance company would be available to pay. The business of the company is insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer loss. These provisions meet these requirements. Therefore, it has to be held that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance company must establish that the breach was on the part of insured."

12. In the matter ***Lal Chand*** Vs. ***Oriental Insurance Co. Ltd., (2006) 7 SCC 318***, the Hon'ble Supreme Court held in para-9 as under:

> “9. In the instant case, the owner has not only seen and examined the driving licence produced by the driver but also took the test of the driving of the driver and found that the driver was competent to drive the vehicle and thereafter appointed him as driver of the vehicle in question. Thus, the owner having satisfied himself that the driver had a licence and was driving competently, there would be no breach of Section 149(2)*(a)(ii)* and the Insurance Company would not then be absolved of its liability.”

13. In the instant appeal, non-applicant No.2/owner of the vehicle after seeing the licence produced by non-applicant No.1 and also testing the driving skill of non-applicant No.1 handed over his vehicle to non-applicant No.1 and the Tribunal has fastened liability on the non-applicant No.2 on the ground of breach of policy conditions and exonerated the Insurance Company from its liability. In the view of the decisions of the Supreme Court in *Lehru* and *Lal Chand* (supra), the Tribunal has certainly fallen in error in exonerating the Insurance Company/non-applicant No.3 of its liability of payment of compensation and the same is not sustainable in the present case. Therefore, non-applicant No.3/Insurance Company is held liable jointly and severally alongwith non-applicants No. 1 & 2/driver & owner of the offending vehicle to satisfy the award.

14. So far as arguments regarding income of the deceased, non-grant of future prospect and the low amount awarded under conventional heads are concerned, the Claimants have pleaded that the deceased was earing Rs.6,000/- per month by doing stitching and tailoring work but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.4,500/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 27 years, the dependency i.e. five, the nature of his job and the decisions of the Hon'ble Supreme Court in *Smt. Sarla Verma* and *Pranay Sethi* (supra), the Claimants are held entitle for compensation in the following manner:

Sl.No.	**Heads**	**Calculation (In rupees)**
1.	Income of the deceased @ Rs.4,500/- per month	Rs.54,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.54,000/- + Rs.21,600/-) Rs.75,600/-
3.	1/4th deduction towards personal and living expenses of Deceased	(Rs.75,600/- – Rs.18,900/-) Rs.56,700/-
4.	Multiplier of 17 applied	Rs.56,700/- x 17 = Rs.9,63,900/-
5.	Towards loss of estate; loss of consortium and funeral expenses	Rs.70,000/-
	Total Compensation	**Rs.10,33,900/-**

15. Since the Tribunal has already awarded Rs.4,96,500/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.5,37,400/- with interest @ 7% per annum from the date of award till realization. However, rest of the conditions of the impugned award shall remain intact.

16. If any amount has been deposited by non-applicant 1 and 2 (driver and owner of offending vehicle) and disbursed to the Claimants 1 to 5, they are entitled to recover the same from Respondent No.3/Insurance Company.

17. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

18. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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