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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1185 of 2014

1. Goverdhan S/o Kaluram Sinha, aged about 44 years
2. Smt. Jamuna Bai W/o Goverdhan Sinha, aged about 39 years

Both R/o Village: Chaknar (Narmada), Police Station Gandai, Tahsil-Chhuikhadan, District: Rajnandgaon (C.G.)

---- Appellants/Claimants

Versus

1. Gajendra Singh S/o Puttusingh Rajawat, aged about 31 years, R/o Mehara Bujurg Lahar, Tahsil & Police Station Lahar, District Bhind (M.P.), at present residing at Kota Colony, near Masjid, Raipur, Police Station Saraswati, Nagar, Tahsil District Raipur (C.G.)
(Driver)
2. Mangal Bhadauriya S/o Gulab Singh Bhadauriya, aged about 42 years, R/o Khapra Bhatti Aamapara, Vivekanand Ashram, Raipur (C.G.) 4922001
(Owner)
3. Reliance General Insurance Company, through Branch Office 4th Floor (wrongly mentioned as 4 plier) Ravi Bhavan, Jai Stambh Chowk, Raipur (C.G.) 492011
(Insurer)

---- Respondents/Non-applicants

For Appellants	:	Shri Abhishek Sharma, Advocate
For Respondent No. 1	:	None
For Respondent No. 2	:	Shri Rajat Agrawal, Advocate
For Respondent No. 3/ Insurance Company	:	Shri Rohitashava Singh, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

15.04.2019

1. This is Claimants' appeal filed under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon (C.G.) in Claim Case No. 02 of 2012 vide award dated 29.08.2014.

2. As against compensation of Rs.17,50,000/- claimed by the Claimants by filing claim application under Section 166 of the Motor Vehicles Act, 1988 for death of Nilesh in the motor accident, the Tribunal awarded a total sum of Rs.2,00,000/- along with interest @ 6% per annum from the date of application till realization and fastened the liability upon Respondents No.1 & 2/non-applicants No.1 & 2 jointly and severally.

3. Brief facts of the case are that the Claimants are parents of deceased-Nilesh @ Raja Sinha. On 24.11.2011 deceased was going towards Thandar Chowk with his friends, at that time one black coloured offending vehicle Tata Magic bearing registration No. CG-04/T/4322 which was being driven by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3, in a rash and negligent manner, dashed Nilesh. As a result thereof, Nilesh sustained grievous injuries and succumbed to those injuries. At the time of accident, deceased Nilesh, aged about 17 years, was student of Class Eleventh and was earning Rs.3,000/- per month by doing the business of grocery shop.

4. Learned counsel for the Appellants/Claimants submits that the Tribunal has erred in not considering the income of the deceased and not applying the multiplier, and has awarded a lump sum compensation of Rs.2,00,000/- in all the heads. He further submits that no future prospects and no conventional heads have been considered by the Tribunal, therefore, the amount of compensation being meagre amount deserves to be enhanced suitably. He also submits that the Tribunal has also erred in exonerating the Insurance Company from its liability to pay compensation.

5. Learned counsel for Respondent No.2/owner submits that as per Ex.-P/6, seizure memo, the investigating officer had seized the insurance policy, but the Tribunal has wrongly exonerated the Insurance Company. He further submits that the compensation awarded by the Tribunal being just & proper needs no enhancement by this Court.

6. Learned counsel for Respondent No.3/Insurance Company submits that no any insurance policy has been issued in favour of non-applicant No.2/owner by the Insurance Company, therefore, the Tribunal has rightly exonerated the Insurance Company to pay compensation to the Claimants.

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

8. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

9. First this Court considers the liability challenged by learned counsel for the Appellants and non-applicant No. 2/Respondent No.2. It is not disputed that there is no policy produced and proved before the Tribunal. As per evidence of Abhishek Singh examined by the Insurance Company as NAW-1, he proved Ex.-D/1, premium register of 71 pages, from 01.11.2011 to 30.11.2011. As per Ex.-D/2, certificate issued by the Insurance Company, no any insurance policy issued in favour of the non-applicant No.2. Looking to the evidence of NAW-1, it is proved that no insurance policy has been issued in favour of the owner/non-applicant No.2 and no any premium has been received by the Insurance Company or any agent of the Insurance Company. Non-applicant No.2, owner of the offending vehicle, remained *ex parte* before the Tribunal and did not file any insurance policy before the Tribunal or even in the appellate Court. As per Ex.-P/6, seizure memo, one insurance policy bearing No. 2309182154100147 seized by the investigating officer in Criminal Case No. 197/2011, but no such policy issued by the Insurance Company. As per Ex.-D/2, a certificate, and Ex.-D/1, premium register, produced before the Tribunal which were proved by the Insurance Company, it is clear that they have not issued any such policy or received any premium against the insurance of the offending vehicle. Therefore, only one document mentioned in seizure memo (Ex.-P/6) cannot be treated as proved document regarding insurance policy. Thus, the Tribunal was justified in exonerating the Insurance Company/non-applicant No.3 from its liability to pay compensation.

10. It is not disputed by learned counsel for the parties that at the time of accident, deceased Nilesh, aged about 17 years, was student of Class Eleventh and was earning Rs.3,000/- per month by doing the business of grocery shop, however, 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.3,000/- per month as per minimum wages at the relevant time on notional basis. Further, considering the age of the deceased i.e. 17 years, the dependency, his qualification and 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***, the Claimants/Appellants are entitled for compensation in the following manner:-

Sl.No.	**Heads**	**Calculation (In rupees)**
1.	Income of the deceased @ Rs.3,000/- per month	Rs.36,000/- per annum
2.	40% of (1) above to be added towards future prospects	(Rs.36,000/- + Rs. 14,400/-) Rs.50,400/-
3.	50% deduction towards personal and living expenses of the deceased	(Rs.50,400/- – Rs.25,200/-) Rs.25,200/-
4.	Multiplier of 18 to be applied	Rs.25,200/- x 18= Rs.4,53,600/-
5.	For loss of estate	Rs.15,000/-
6.	For funeral expenses	Rs.15,000/-
	Total Compensation	**Rs.4,83,600/-**

11. Since the Tribunal has already awarded Rs.2,00,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.2,83,600/- with interest @ 6% per annum from the date of application till its realization. However, rest of the conditions of the impugned award shall remain intact.

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

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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