

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1389 of 2019**

1. Lalan Yadav S/o Late Mahabir Yadav Aged About 42 Years Occupation Agriculturist R/o Village Alakhdiha (Bhedaghat) P. S. And Tahsil Rajpur District Balrampur-Ramanujganj Chhattisgarh,
2. Smt. Phulmatiya W/o Lalan Yadav Aged About 40 Years Occupation House Wife, R/o Village Alakhdiha (Bhedaghat) P. S. And Tahsil Rajpur District Balrampur-Ramanujganj Chhattisgarh

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1. Phouji Prasad Yadav S/o Rameshwar Yadav Aged About 26 Years Occupation Driver Pick-Up Vehicle No. C.G. 15/d A 6792) R/o Village Parsagudi Tendupara Near High School P. S. and tahsil Rajpur District Balrampur-Ramanujganj Chhattisgarh.
2. Hergovind Yadav S/o Sarju Prasad Yadav Aged About 25 Years Occupation Owner Vehicle No. C.G. 15/d A 6792, R/o Village Serangdag Post Jamripath, P. S. Samri, Tahsil Kushami, District Balrampur-Ramanujganj Chhattisgarh.
3. Divisional Manager The New India Insurance Company Ltd. Divisional Office Riwan Road Satna District Satna M. P. Through The Branch Manager, New India Insurance Company Ltd. Sada Complex Transport Nagar Korba District Korba Chhattisgarh.

---- Respondents

For Appellants:

: Shri A.N. Pandey, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

20.08.2019

1. Heard on I.A. No. 1/2019, an application for condonation of delay of 4 days in filing this appeal.

2. On due consideration and for the reasons assigned therein, I am inclined to allow the same.
3. The application is allowed and the delay is accordingly condoned.
4. Heard on admission.
5. This Miscellaneous Appeal has been preferred by the claimants under Section 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as the 'Act of 1988') questioning the legality and propriety of the award dated 09.04.2019 passed by the Additional Motor Accident Claims Tribunal (hereinafter referred to as the 'Claims Tribunal'), Ramnujganj, District Balrampur-Ramnujganuj in Claim Case No. 9/2017, by which, the learned Claims Tribunal while allowing the claim in part awarded a total amount of compensation to the tune of Rs. 8,29,000/-(Eight Lakhs Twenty Nine Thousand Only) with 6% interest per annum from the date of filing of Claim Petition till its realization. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.
6. Briefly stated the facts of the case are that on 16.12.2016, deceased Lallu Prasad Yadav was coming from Bhedaghat to Ramnujganj while traveling in the offending vehicle "Pickup Van" bearing its Registration No. CG/15DA/6792 which was owned by Non-Applicant No.1- Hargovind Yadav and insured with the Non-Applicant No. 2- New India Insurance Company Limited. At the relevant time, the vehicle in question was being driven rashly and negligently by its driver Phouji Prasad Yadav, Non-Applicant No. 1 and as soon as he reached near the village Damodarpur, he lost his control resulting into the sad demise of Lallu Prasad Yadav, who expired on the spot.

7. On account of the aforesaid accident, the Claimants being legal representatives of the deceased instituted a claim petition enumerated under Section 166 of the Act of 1988 alleging therein that the deceased, who was 20 years old, was a helper and used to earn Rs. 6000/- (Six Thousand Only) per month, therefore, total amount of compensation to the tune of Rs. 16,14,000/- (Sixteen Lakhs Fourteen Thousand Only) has been claimed under various heads.
8. The aforesaid claim has been contested by Non-Applicants No. 1 and 2, the driver and owner of the vehicle in question, by saying that no accident as such was occurred with the said vehicle and pleaded further that since the vehicle in question was insured with Non-Applicant No.2 at the relevant time, therefore, in case of any liability being fastened, the same could be indemnified by the said Insurance Company.
9. Non-Applicant No. 2/Insurance Company while disputing the monthly income of the deceased contested the claim mainly on the ground that the vehicle in question was being used in violation of the insurance policy as the driver of it was not holding the effective and valid driving license and pleaded further that the vehicle in question was insured as a Goods Vehicle, however, it was carrying passengers at the relevant, therefore, no liability could be fastened upon it.
10. After considering the evidence laid by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 16.12.2016 due to rashness and negligent driving of its driver, namely, Phouji Prasad Yadav and held further that the insurer has failed to prove by way of any cogent and reliable evidence that the alleged vehicle was

being used in violation of the Insurance Policy. As a consequence, while assessing monthly income of the deceased to the tune of Rs. 4,500/- (Four Thousand Five Hundred) and that by considering the future prospects of the income of the deceased and that by applying the multiplier of 18 awarded total amount of compensation to the tune of Rs. 8,29,000/-, along with other conventional heads, with 6% per annum from the date of filing of Claim Petition till its realization.

11. Being aggrieved, the Claimants have preferred this appeal. Shri Pandey, learned counsel for the Appellants/Claimants submits that the award impugned as passed by the Claims Tribunal is apparently in lower side. According to him, the deceased was a Khalashi (Helper) and used to earn Rs. 6000/- per month, however, the Tribunal has assessed his monthly income only to the tune of Rs. 4,500/- and as such erred in awarding the meagre amount of compensation. The award impugned is, therefore, liable to be enhanced and/or modified.
12. I have heard learned counsel for the Appellants and perused the entire record carefully.
13. The main contention of the learned counsel for the Claimants herein is that the amount of compensation as awarded by the Claims Tribunal is extremely on lower side and, therefore, deserves to be enhanced. However, I do not find any substance in his contention as from a bare perusal of the record, it is evident that the claimants have failed to produce any documentary evidence showing the monthly income of the deceased to the tune of Rs. 6,000/-. In absence thereof, the Claims Tribunal has not committed any illegality in considering the notional income of the deceased as Rs. 4,500/- per month. It appears further

from the record that while awarding the amount of compensation the Claims Tribunal has not only considered the future prospect of his income but multiplier of 18, looking to his age, was applied properly. In addition, a sum of Rs. 1,00,000/- has also been provided under various heads. Considering the totality of the case, I do not find any legal ground so as to enhance the amount of compensation, as contended by the learned counsel for the Claimants.

14. Consequently, the appeal being devoid of merit is hereby dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

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