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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 574 of 2018

- Smt. Jhunnu Nayak Wd/o Late Tarini, aged about 43 years, R/o Purana Minus Quarter, West Chirmiri, Police Station Podi, Tahsil Baikunthpur, District Korea (C.G.)

---- Appellant/Claimant

Versus

1. Vijay Singh S/o Heera Singh, aged about 23 years, R/o Nawapara, Podi, P.O. West Chirmiri, Police Station Podi, Tahsil Baikunthpur, District Korea (C.G.)

   (*Driver of offending vehicle Jeep bearing registration No. C.G.-15-A-1166*)
2. Shivanand Tiwari S/o Santosh Tiwari, aged about 27 years, R/o Haldibadi Chirmiri, Tahsil Khadgawa, District Korea (C.G.)

   (*Owner of offending vehicle Jeep bearing registration No. C.G.-15-A-1166*)
3. Branch Manager, United India Insurance Company Limited, Branch Office Stadium Road, T.P. Nagar, Korba, District Korba (C.G.)

   (*Insurer of offending vehicle Jeep bearing registration No. C.G.-15-A-1166*)

---- Respondents/Non-applicants

And

Miscellaneous Appeal (Civil) No. 1564 of 2018

- Branch Manager, United India Insurance Company Limited, Branch-Office, Stadium Road, T.P. Nagar, Korba, District (C.G.)

---- Appellant/Non-applicant No.3

Versus

1. Smt. Jhunnu Nayak, W/o Late Tarini, aged about 43 years, R/o Old Minus Quarter, West Chirmiri, P.S. Pondi, Tahsil- Baikunthpur, District Korea (C.G.) **(Claimant)**
2. Vijay Singh, S/o Hira Singh, aged about 23 years, R/o Navapara, Pondi, P.O. West Chirmiri, P.S. Pondi, Tahsil Baikunthpur, District Korea (C.G.) **(Dirver/Non-applicant No.1)**
3. Shivanand Tiwari, S/o Santosh Tiwari, aged about 27 years, R/o Haldobadi Chirmiri, Tahsil Khadganwa, District Korea (C.G.) **(Owner/Non-applicant No.2)**

---- Respondents

For Claimant	:	Shri Anil Gulati, Advocate
For Driver & Owner/ Non-applicants No.1 & 2	:	None
For Insurance Company/ Non-applicants No.3	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

12.03.2019

1. As both above appeals arise out of the accident occurred on 28.10.2013 involving the vehicle Mahindra Jeep bearing registration No. CG-15/A/1166 (hereinafter referred to as the 'offending vehicle'), they are being disposed of by this common judgment.

2. M.A.(C) No. 574 of 2018 has been filed the Claimant for seeking enhancement of compensation. M.A.(C) No. 1564 of 2018 has been filed by the Insurance Company/non-applicant No.3 challenging the liability fastened upon it on the ground that no any policy was issued in favour of the owner of the offending vehicle and policy submitted before the Tribunal is fake. Both appeals arise out of common award dated 11.12.2017 passed by the First Additional Motor Accident Claims Tribunal, Manendragarh, District Korea (C.G.) in Claim Case No. 22/2016 awarding compensation in favour of the Claimant of Rs.31,20,000/- with interest @ 7% per annum from the date of claim application till realization and fastening liability upon the non-applicant No.3/Insurance Company to pay compensation to the Claimant.

3. Brief facts of the case are that deceased- Tarini, aged about 52 years, was Mechanical Fitter in SECL, West Chirmiri Colliery of Chirmiri Region. On 28.10.2013, deceased- Tarini was coming to West Chrimiri Podi from Regional Hosptial Kurasiya Godaripara by his Scooter bearing registration No. CG-16/ZE/1319. On the way, near Haldibadi Taxi Stand, non-applicant No. 1, driver of the offending vehicle Mahindra Jeep bearing registration No. CG-15/A/1166 driving the same in a rash and negligent manner, dashed the scooter of Tarini. As a result thereof, Tarini received grievous injuries and was taken to Kurasiya Godaripara Hospital from where he was referred to Appolo Hospital Bilaspur and died when he reached Appolo Hospital.

4. At the time of accident, non-applicant No. 2 was owner of the offending vehicle which was insured with non-applicant No.3.

5. Learned counsel for the Insurance Company/non-applicant No.3 submits that as per policy produced by the owner of the offending vehicle, no any premium was taken by the Insurance Company and no policy was issued by the Insurance Company. As per evidence adduced by the Insurance Company, NAW-1 Daniel Lakra, examined by non-applicant No.3, stated in para-2 that policy submitted before the Tribunal was not issued by the Insurance Company and also as per remittance inward register and premium register submitted before the Tribunal no premium was taken by the Insurance Company towards insurance of the offending vehicle. He also submits that the policy (Ex.-NA-3) submitted before the Tribunal bears different seating capacity, cubic capacity and engine number as mentioned in the R.C. Book. Therefore, the Tribunal has wrongly fastened the liability on the Insurance Company to satisfy the award.

6. Learned counsel for the Claimants opposes the contention made by learned counsel for the Insurance Company. He submits that as per statement of witness examined by the Insurance Company Daniel Lakra as NAW-1 he admitted in paras 5 to 8 that the insurance policy was issued by Korba Branch, NAW-1 has not verified and original record has not been brought before the Tribunal to verify whether the policy was actually issued by Korba Branch. Therefore, the contention made by the Insurance Company has no substance and no any cogent evidence adduced by the Insurance Company to prove that the insurance policy is fake and RC book is fake. He also submits that as per Ex-NA-3, insurance policy was issued by Korba Branch but no any witness of Korba Branch has been examined by the Insurance Company. According to the evidence adduced by the owner himself, the premium was paid by non-applicant No.2/owner to agent and policy was obtained from the agent, therefore, the Insurance Company is liable to indemnify the owner in respect of the claim of the Claimant.

7. M.A.(C) No. 574 of 2018 filed by the Claimant seeking enhancement of compensation. Learned counsel for the Claimant submits that the deceased was aged about 52 years and was permanent salary paid employee in SECL, West Chirmiri Colliery of Chirmiri Region, but, no amount towards future prospects has been granted to the Claimant by the Tribunal, therefore, in view of the decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd.*** Vs. ***Pranay Sethi, (2017) 16 SCC 680***, the Claimant is entitled to 15% towards future prospects. He further submits that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

8. Learned counsel for the Insurance Company opposes the contention made by learned counsel for the Claimant and submits that the compensation awarded by the Tribunal is just and proper.

9. First this Court considers regarding liability to pay compensation. Insurance Company examined NAW-1 Daniel Lakra, Senior Assistant in United India Insurance Company Limited, Ambikapur, who stated that the insurance policy was issued by United India Insurance Company Limited, Korba Branch, but none of the officers of Korba Branch has been examined by the Insurance Company. As per statement of Shivanand Tiwari, owner of the offending vehicle, he specifically stated in para-3 that he deposited the premium with one Satyam who is agent of United India Insurance Co. Ltd., but the Insurance Company has not examined Satyam. Insurance Company has not adduced any evidence to prove that Satyam is not authorized agent of the Insurance Company and the statement of Shivanand Tiwari remains uncontroverted.

10. NAW-1, Daniel Lakra, witness of non-applicant No.3 posted at Ambikapur Branch as Senior Assistant produced the documents regarding remittance inward register, premium register, but no original documents have been produced before the Tribunal. Daniel Lakra admitted, in para 5 & 6, that the policy was issued by Korba Branch and he has not signed on the policy because he is posted in Ambikapur Branch. As per admission of Daniel Lakra, in para-8, he had never gone to Korba Branch and had not verified document Ex.- NA-3. He also admitted that he had not verified Ex.-NA-3(1), premium register and Ex.-NA-3(2), remittance inward register and he has not come with original documents because the same were kept in Korba Branch. Therefore, no cogent evidence is adduced by the Insurance Company regarding policy issued by Korba Branch being fake policy. Counsel for the Insurance Company appeared before the Tribunal on 23.04.2014 and that policy Ex.-NA-3 was produced by the non-applicant No. 2, owner of the offending vehicle, pursuant to the application filed by non-applicant No.3 under Order 8 Rule 1 (3) CPC. Non-applicant No.2 specifically stated that the insurance policy submitted by him is true and correct document but thereafter, no action was taken by the Insurance Company to rebut the said contention by proving that the policy was fake till the award was passed by the Tribunal.

11. Looking to the statement of Daniel Lakra (NAW-1)and non-applicant No.2 Shivanand Tiwari, owner of the offending vehicle, who had disclosed the name of agent i.e. Satyam, but the Insurance Company has not denied the fact that Satyam is not agent of the Insurance Company and he was not examined on behalf of it, the Tribunal has rightly fastened the liability upon the Insurance Company to indemnify the owner and pay the compensation as awarded. Therefore, in view of the above discussions, the appeal, i.e. M.A.(C) No. 1564 of 2018, filed by the Insurance Company deserves to be dismissed.

12. Learned counsel for the Insurance Company also submits that after passing the impugned award, a written complaint dated 24.01.2018 was made to Superintendent of Police, District Korea as Annexure-A/1 against non-applicant No. 2 regarding fake policy and the same was produced before the Tribunal with review petition. He prayed that specific direction may be issued to concerned Superintendent of Police to take action and investigate the matter. But, the learned counsel for the Insurance Company failed to give details regarding status of the said complaint and as to what action was taken by the Superintendent of Police there on. Since the Claimant had filed the appeal before this Hon'ble Court seeking enhancement of compensation awarded by the Tribunal, the record of the Tribunal was requisitioned by this Court and as such the review petition filed by the Insurance Company could not have been decided without original record, the Insurance Company withdrew the review petition vide order dated 20.08.2018 (Annexure-A/3 in MAC No. 1564/2018).

13. M.A.(C) No. 574 of 2018 filed by the Claimant for enhancement of compensation:

As regards income of the deceased, the Claimant has pleaded that the deceased was permanent salary paid employee in SECL, West Chirmiri Colliery of Chirmiri Region and was earing Rs.50,000/- per month as Mechanical Fitter and in that regard, documentary evidence (Ex.-P/17 & Ex.-P/18) in support thereof has been adduced. Therefore, as per Ex.-P/17 & Ex.-P/18, the Tribunal was justified in considering the income of the deceased as Rs.35,000/- per month. Further, considering the age of the deceased i.e. 52 years and he was married at the time of accident, the dependency, the nature of his job and the decisions of the Hon'ble Supreme in ***National Insurance Co. Ltd.*** Vs. ***Pranay Sethi, (2017) 16 SCC 680*** and ***Smt. Sarla Verma and others*** Vs. ***Delhi Transport Corporation and another, (2009) 6 SCC 121***, the Claimant is held entitled for compensation in the following manner:

Sl.No.	**Heads**	**Calculation (In rupees)**
1.	Income of the deceased @ Rs.35,000/- per month	Rs.4,20,000/- per annum
2.	15% towards future prospects added to annual income	(Rs.4,20,000/- + Rs.63,000/-) Rs.4,83,000/-
3.	1/3rd deduction towards personal and living expenses of Deceased	(Rs.4,83,000/- – Rs.1,61,000/-) Rs.3,22,000/-
4.	Multiplier of 11 applied	Rs.3,22,000/- x 11 = Rs.35,42,000/-
5.	Conventional heads:- Loss of estate; loss of consortium & funeral expenses	Rs.70,000/-
	Total Compensation	**Rs.36,12,000/-**

14. Since the Tribunal has already awarded Rs.31,20,000/-, after deducting the same from the above amount, the Claimant is held entitled for additional compensation of Rs.4,92,000/- with interest @ 7% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

15. In the result, the appeal i.e. M.A.(C) No. 574 of 2018 filed by the Claimant is allowed in part with modification in the impugned award to the above extent and the appeal i.e. M.A.(C) No. 1564 of 2018 filed by the Insurance Company/non-applicant No.3 is dismissed.

16. No order as to cost.

Sd/-
(Gautam Chourdiya)
Judge

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