IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Civil Miscellaneous Appellate Jurisdiction)
M.A. No. 22 of 2014
…...

United India Insurance Co. Ltd. Through Branch Manager, Hazaribag
…… Appellant

Versus

1. Nazmon Khatoon
2. Shoukat Ansari
3. Samina Khatoon
4. Saidul Ansari
5. Reyazul Ansari
6. Neha Parween
7. Bijay Kumar
8. Muneshwar Bhagat ……Respondents

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

For the Appellant : Mr. Ashutosh Anand, Advocate
For the Respondents : None

16/Dated: 11/12/2020. **I.A. No.515 of 2019**

Heard, learned counsel for the appellant, Mr. Ashutosh Anand on behalf of United India Insurance Company Ltd.

Nobody appears on behalf of the respondents.

However, I.A. No.515 of 2019 has been preferred under Order 22 Rule 3 read with Sections 9, 10 and 11(g) of the CPC to substitute the names of legal representatives and heirs of claimant/respondent no.4-Saidul Ansari (deceased), who died due to died at the age of 16 years being unmarried and the other legal heirs are already on record.

Learned counsel for the appellant- Insurance Company has submitted that he has no objection if the name of respondent no.4 be deleted from the memo of appeal in view of interlocutory application filed by the respondents.

Considering the same I.A. No.515 of 2019 is allowed.

Let the name of claimant/respondent no.4, Saidul Ansari, S/o Shoukat Ansari, who died in unmarried stage be deleted from the memo of appeal.

M.A. No. 22 of 2014

Learned counsel for the appellant has assailed the impugned award dated 05.10.2013 passed by the learned 5th District Judge-cum-Presiding Officer, Motor Vehicle Accident Claims Tribunal (M.V.A.C.T.), Hazaribag in Claim Case No.137 of 2007, whereby the claimants namely, (1) Najmon

Khatoon, W/o Shoukat Ansari, (2) Shoukat Ansari, F/o Late Idul Ansri, (3) Samina Khatoon, D/o Shoukat Ansri, (4) Neha Parween, D/o Shoukat Ansari, (5) Saidul Ansari, S/o Shoukt Ansari (now deleted because of death) and (6) Reyazul Ansari, S/o Shoukat Ansari have been awarded a compensation to the tune of Rs.4,22,000/- without any interest if paid within one month of the award, failing which the company shall be liable for a penal interest @ 9% till its realization. The amount already paid under Section 140 of the MV Act shall be deducted from final amount of Rs.4,22,000/-.

Learned counsel for the appellant has submitted that during pendency of the appeal, Respondent no.4- Saidul Ansari (claimant no.5) has died in unmarried stage, as such, his name has been deleted and now altogether five persons are claimants.

Learned counsel for the appellant has further submitted that the learned Tribunal has wrongly considered the income of the deceased namely, Md. Idul Ansari, who died in motor accident on 23.06.2007 at about 07:15 A.M. while Md. Idul Ansari along with one namely Amim Ansari were riding on a cycle near Malti More dashed by one Sona-Vikas-Bus bearing registration No.BR-13P-0201 came from Bijupada side. The driver of the Bus was driving the same very rashly and negligently. Both the cyclists came under the wheels of the Bus. They sustained serious and multiple injuries in that accident. One of the cyclist namely, Md. Idul Ansari died on the spot and another cyclist namely, Amin Ansari was referred to RIMS, Ranchi for treatment. Later on, second injured Amin Ansari also died during the course of the treatment.

The FIR has been lodged as Mander P.S. Case No.41 of 2007 dated 13.06.2007 under Sections 279/304(A) and 427 IPC, in which after investigation, the driver of the offending bus bearing registration No.BR-13P-0201 Muneshwar Bhagat has been charge-sheeted by the police under the aforesaid Sections 279, 427 and 304(A) IPC.

Learned counsel for the appellant has further submitted that the vehicle was insured before the appellant and there is no violation of terms and conditions of the policy as envisaged under Section 149(2) MV Act.

Learned counsel for the appellant has further submitted that the appeal has been preferred against the excess amount awarded by the learned Tribunal, which is not just and fair compensation.

Learned counsel for the appellant has further submitted that the deceased (Idul Ansari) was an Electrical Mechanic as per the claimant and deceased used to earn Rs.100/- to Rs.150/- per day from his occupation. Deceased was sole bread earner of his family. He died at the age of 20 years by bus which was insured with the appellant.

Learned counsel for the appellant has further submitted that the Tribunal has wrongly considered the income of the deceased to the tune of Rs.3,125/- per month by considering the minimum wage prevalent in the year, 2007 to be Rs.125/- per day and number of 25 working days in a month thus it was calculated but without any valid document.

Learned counsel for the appellant has further submitted that the learned Tribunal has wrongly awarded interest @ 9% but that too if the awarded amount is not paid within 30 days of the award, as such, this Court may reduce the compensation and also penal interest.

Learned counsel for the appellant has further submitted that the learned Tribunal has not considered the contributory negligence on the part of the deceased, who died as a bachelor, as such, deduction shall be 50% towards personal and living expenses.

Nobody appears on behalf of the respondents/claimants.

Heard, learned counsel for the appellant and also perused the impugned award, this Court is conscious of the proposition as laid down by the Hon'ble Apex Court in the case of ***Ranjana Prakash & Ors. vs. Divisional Manager & Anr.***, reported in ***2011 (14) SCC 639*** para 8 of which is profitably quoted hereunder:-

> *"**8**. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by the owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by the owner/insurer for reducing the compensation, nor can it*

> *reduce the compensation in an appeal by the claimants seeking enhancement of compensation."*

Learned counsel for the appellant has further submitted that the deceased died at the age of 20 years leaving behind six dependents on his income. The income of the deceased in absence of any documentary evidence was considered at that time by the learned Tribunal to the tune of Rs.3,125/- per month on the basis of the prevalent rate of minimum wage at Rs.125/- per day and 25 working days in a month, but from perusal of the impugned judgment, as such, this Court is not inclined to consider the submission made by the learned counsel for the appellant with regard to the income of the deceased and also in absence of any appeal for enhancement, this Court is not enhancing the same.

However, from perusal of the record, it appears that no evidence has been brought on record by the Insurance Company so as to establish the contributory negligence of the deceased.

So far the status of the deceased is concerned as submitted by the learned counsel for the appellant that he died as bachelor, as such, 50 % deduction towards personal and living expenses may be made but on the other hand, this Court has perused that there are six dependents, who were depending on the income of the deceased, but nothing has been brought on record by the Insurance Company to demolish that claimants (six in number) are not dependents on the income of the deceased, as such, this Court is not inclined to interfere with the findings recorded by the learned Tribunal.

This Court has also perused the records that future prospect has not been given as the deceased died at the age of 20 years and apart from that under the conventional head less amount has been paid.

Since no appeal has not been preferred by the claimants to enhance the same, this Court, in view of the judgment passed by the Hon'ble Apex Court in the case of ***Ranjana Prakash (Supra),*** is not enhancing the same and accordingly, the instant appeal is dismissed on merits.

So far the interest is concerned, it appears that under Section 171 of the MV Act read with judgment passed by the Hon'ble Apex Court in the case of ***Dharmpal (Supra)*** the interest should have been awarded @ 7.5%

from the date of filing of the claim application but since the appeal has been preferred by the Insurance Company and there is award of 9% interest if the awarded amount is not paid within 30 days, as such, this Court is also not inclined to interfere with the same.

Accordingly, the instant appeal being devoid of any merit is hereby dismissed.

The statutory amount deposited by the appellant at the time of filing of the instant appeal shall be remitted to the court below within a period of four weeks from the date of filing of the requisition by the learned counsel for the appellant for disbursement or indemnifying the part of the award and it is expected that the appellant shall indemnify the same within a reasonable time as the occurrence is of the year, 2007.

The rest of the awarded amount along with interest shall be paid to the claimants within a reasonable period as the accident took place on 13.06.2007.

(Kailash Prasad Deo, J.)

R.S-