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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.749 of 2014

Reserved on 26.05.2020
Pronounced on 12.06.2020

1. Smt. Sandhya Rani Nag, W/o Late Rajendra Kumar Nag, Aged About 37 Years, R/o House of Santu Lal Banjare, Mahamaya Bhawan, Green Park Colony, in front of S.B.R. College, Jarhabhata, P.S. Civil Lines, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh (Claimant).

2. Ku. Vandana Nag, D/o Late Rajendra Kumar Nag, Aged About 22 Years, R/o House of Santu Lal Banjare, Mahamaya Bhawan, Green Park Colony, in front of S.B.R. College, Jarhabhata, P.S. Civil Lines, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh (Claimant).

3. Ku. Apurva Nag, D/o Late Rajendra Kumar Nag, Aged About 20 Years, R/o House of Santu Lal Banjare, Mahamaya Bhawan, Green Park Colony, in front of S.B.R. College, Jarhabhata, P.S. Civil Lines, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh (Claimant).

4. Sumit Nag, S/o Late Rajendra Kumar Nag, Aged About 15 Years, Minor, Through Mother Smt. Sandhya Rani Nag, R/o House of Santu Lal Banjare, Mahamaya Bhawan, Green Park Colony, in front of S.B.R. College, Jarhabhata, P.S. Civil Lines, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh (Claimant).

---- Appellants

Versus

1. Mohan Chand Hathgen, S/o Mithai Lal Hathgen, Aged About 55 Years, R/o Qtr. No.37/01, Kasim Para, Torva, P.S. Torva, Bilaspur, Civil & Revenue District Bilaspur (C.G.), Presently R/o Branch Manager, State Bank of India, Mungeli Branch, P.S. Mungeli, District Bilaspur, Chhattisgarh (Owner and Driver/ Non-Applicant No.1).

2. Division Manager, The New India Assurance Co. Ltd., Rama Trade Centre, 2nd Floor, in front of Rajeev Plaza, Near Old Bus Stand, Bilaspur, P.S. Tarbahar, Civil & Revenue District Bilaspur, Chhattisgarh (Insurer/Non-Applicant No.2).

---- Respondents

For Appellants/Claimants	:	Mrs. Indira Tripathi, Advocate.
For Respondent No.2	:	Mr. B. N. Nande, Advocate.

<u>Hon'ble Shri Justice Sanjay S. Agrawal, J</u>

<u>CAV Award/Order</u>

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988'), questioning the legality and propriety of the award dated 14.05.2014 passed by the 2nd Additional Member to the Court of the 1st Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) (for short 'the Claims Tribunal') in Claim Case No.66/2013, whereby, the learned

Claims Tribunal while allowing the claim in part awarded total amount of compensation to the tune of Rs.50,03,475/- with 7% interest per annum from the date of filing of the claim petition till its realization while fastening the liability upon the Insurance Company. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 26.12.2012 at about 9:00 pm, deceased Rajendra Kumar Nag after completing his official work, was returning along with Mohan Chand Hathgen (Non-Applicant No.1) from Mungeli to Bilaspur while sitting in his offending vehicle, i.e., Alto Car bearing Registration No. CG-07-2606, which was insured with the Non-Applicant No.2/The New India Assurance Company Limited. At the relevant time, it was being driven in a rash and negligent manner by said Mohan Chand Hathgen and when they reached near the Sardar Rice Mill, it vehemently dashed the tractor, parked over there. As a result of which, deceased Rajendra Kumar Nag received serious injuries on his head and expired on 27.12.2012 during the course of his treatment in Apollo Hospital, Bilaspur (C.G.).

3. On account of the aforesaid accident, the claimants being legal representatives, who are the wife and children of the deceased, instituted a claim petition enumerated under Section 166 of the Act of 1988, alleging *inter alia* that the deceased, 46 years old, was working as a Branch Manager in R.B.D., State Bank of India, Branch Mungeli, where he used to earn Rs.51,795/- per month, and thus, total amount of compensation to the tune of

Rs.1,41,60,366/- has been claimed under various heads.

4. The aforesaid claim has been contested by the Non-Applicants and the Claims Tribunal after considering the evidence led by the claimants, arrived at a conclusion that the alleged accident occurred on 26.12.2012 due to the rash and negligent driving of the driver of the offending vehicle, resulting into the sad demise of said Rajendra Kumar Nag. It held further that the vehicle in question was not being used in violation of the insurance policy, as alleged by the insurer and that by considering the annual income of the deceased to the tune of Rs.4,00,000/- by placing its reliance upon the salary details (Ex.A-10) of the deceased, awarded total amount of compensation as mentioned hereinabove.

5. Being aggrieved, the Claimants have preferred this appeal. Mrs. Indira Tripathi, learned counsel appearing for the Appellants/Claimants submits that the amount of compensation as awarded by the Claims Tribunal by disbelieving the certificate (Ex.A-9) pertaining to the salary details of the deceased, which was submitted by the Chief Manager of the concerned bank showing the monthly income of the deceased as Rs.51,795/-, is apparently contrary to law. While inviting attention to Fitment Sheet (Ex.A-13) of the deceased based upon which the said salary details of the deceased was prepared, submitted that the basic salary of the deceased payable to him w.e.f. 01.01.2012 was shown to be Rs.26,500/-, however, by ignoring the same, the Tribunal has erred in holding the annual income of the deceased

as Rs.4,00,000/- only and thereby failed to provide just and proper compensation payable to the Claimants.

6. On the other hand, Shri B. N. Nande, learned counsel appearing for the Insurer, while supporting the award impugned submits that since the alleged certificate (Ex.A-9) with regard to the salary details of the deceased was made without the reference of any record, and therefore, while disbelieving the same, the Tribunal has rightly assessed the amount of compensation based upon his monthly details as mentioned in Ex.A-10.

7. I have heard learned counsel for the parties and perused the entire record carefully.

8. Based upon the aforesaid submissions, the question, which arises for determination is as to whether the income of the deceased was rightly assessed by the Tribunal or not. In order to substantiate the income of the deceased, the Claimants have examined one of their witnesses, namely Manoranjan Alkana (AW-3), who was the Chief Manager of the concerned bank. According to his statement, it appears that although there is no reference of document in the said certificate (Ex.A-9) pertaining to the salary details of the deceased, but it was prepared on the basis of the said Fitment Sheet of the Regional Office, as evidenced by paragraph 20 of his testimony. The said Fitment Sheet was duly certified by the said witness (AW-3). Pertinently to be noted here that although the authenticity of this document was questioned at the time of its admissibility, but, it was turned down by the Tribunal during the examination of the said witness

and the correctness of the refusal of the said objection as such has not been assailed by the insurer and, therefore, by efflux of time, the admissibility of this document cannot be doubted. That apart, no evidence was led by the insurer in order to disbelieve the same.

9. It appears further that while considering the income of the deceased, the Tribunal has completely overlooked the Fitment Sheet (Ex.A-13) based upon which, the aforesaid certificate (Ex.A-9) pertaining to the salary details of the deceased was furnished by the Chief Manager of the concerned bank and, instead assessed the income of the deceased by placing its reliance upon his monthly details as made in Ex.A-10, which was, however, only for the Financial Year 2010-2011 and was placed for showing gradual increment of deceased's salary.

10. Considering the facts and circumstances of the case and considering further the preparation of the said certificate (Ex.A-9) based upon the said Fitment Sheet (Ex.A-13), vis-a-vis, unrebutted statement of Manoranjan Alkana (AW-3), it is evident that the monthly income of the deceased as reflected from the said certificate (Ex.A-9) was Rs.51,795/-, yearly Rs.6,21,540/- and not Rs.4,00,000/- as held by the Tribunal. Consequently, the Claimants would be entitled to compensation based upon the annual income of the deceased as Rs.6,21,540/- and for determining the actual income of the deceased in the light of the decision rendered by the Supreme Court in the matter of ***National Insurance Company Limited Versus Pranay Sethi***

and Others reported **in (2017) 16 SCC 680,** an addition of 30% of it, i.e., Rs.1,86,462/- towards future prospects of his income is to be made, as the deceased was found to be 46 years old, at the relevant time.

11. The actual income of the deceased would thus, be Rs.8,08,002/- (Rs.6,21,540 + Rs.1,86,462). As the said amount of the deceased was taxable, therefore, by deducting 10% of it, i.e., Rs.80,800/- towards income tax, the actual salary of the deceased would be Rs.7,27,202/- (Rs.8,08,002 - Rs.80,800). Since the number of dependants upon the deceased was 4, therefore, by deducting one-fourth of it, i.e., Rs.1,81,800/- towards his personal and living expenses, the annual dependency of the claimants would be arrived at Rs.5,45,402/- (Rs.7,27,202 – Rs.1,81,800). As the age of the deceased at the time of accident was 46, the multiplier applicable would be 13 and by applying the multiplier as such, the total dependency would be, thus, worked out at Rs.70,90,226/- (Rs.5,45,402 x 13). In addition to the aforesaid amount of compensation, the Claimants would be entitled to a sum of Rs.2,25,000/- under conventional heads as assessed by the Tribunal and it does not require to be interfered in absence of any appeal preferred by the Non-Applicants.

12. As a consequence, the Claimants would be entitled to a total sum of Rs.73,15,226/-, instead of Rs.50,03,475/- as held by the Tribunal and, the enhanced amount of compensation, i.e., Rs.23,11,751/- (Rs.73,15,226 – Rs.50,03,475) shall carry interest

@ 7% per annum from the date of filing of claim petition till its realisation. Out of the said enhanced amount of compensation, i.e., Rs.23,11,751/- alongwith its interest, the Claimants would be entitled in equal share, which shall be deposited in their individual names in any of the Nationalized Bank for a period of 5 years and shall be disbursed to them after attaining its maturity through cheques.

13. In view of the foregoing discussions, the appeal is allowed in part to the extent indicated hereinabove with the aforesaid observations. Rest of the observations as made by the Tribunal shall remain intact. No order as to costs.

Sd/-
(**Sanjay S. Agrawal**)
Judge

Deepti Jha