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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No.817 of 2015

Branch Manager, National Insurance Company Ltd., Branch No.1, Naveen Bazar, Foolchowk, G.E. Road, Raipur, District Raipur (C.G.) Insurer of Tanker No.CG-04-ZC/1323

(Insurer)
---- Appellant

Versus

1. Maheshwar Jal, Age 50 years, S/o Late Vasu Jal
2. Smt. Sulochana Jal, Age 48 years, W/o Shri Maheshwar Jal
3. Pooja Jal, Age 11 years,
4. Kaushal Jal, Age 7 years,
5. Krish Jal, Age 2 years,

   Respondent No.3 to 5 are sons of Bhagirathi Jal, Through Respondent No.1 Grand Father & Natural Guardian

   All are R/o Utkal Nagar, Akashwani, P.S. Civil Line, Tahsil & District Raipur (C.G.)

   (Claimants)

6. Shaukat Khan, Age 62 years, S/o Mohammad Khan, R/o Behind Vivekanand Ashram, Idgah Bhata, P.S. Azad Chowk, District Raipur (C.G.)

   (Driver)

7. M/s Ahmad Ji Bhai and Sons, Through Proprietor A Ahmad Ji Bhai, R/o Malviya Road, P.S. Golebazar, Tahsil & District Raipur (C.G.)

   (Owner)

8. Kailashchand Dahiya, R/o Through Dahiya Embroidery, In front of City Kotwali, P.S. City Kotwali, Raipur (C.G.)
   Owner of Tabera

9. Divisional Manager, The New India Assurance Co. Ltd., Divisional Office, 1st Floor, Jeevan Bhima Marg, Pandri, Raipur, District Raipur (C.G.)
   Insurer of Tabera

---- Respondents

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For Appellant: Mr. Raj Awasthi, Advocate.
For Respondents No.1 to 5: -
Mr. Badruddin Khan, Advocate.
For Respondents No.6 and 7:
Mr. Sakib Ahmed, Advocate.
For Respondents No.8 and 9: -

None present, though served.

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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/11/2021

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 is preferred against the award dated 24-2-2015 passed by the 3rd Additional Motor Accident Claims Tribunal, Raipur in Motor Accident Claim Case No.46/2012, by which a compensation of ₹ 7,90,000/- has been awarded to the claimants / respondents No.1 to 5 herein along with 6% interest per annum from the date of making the claim application. The claimants have also preferred cross-objection for enhancement of the amount under award.

2. Mr. Raj Awasthi, learned counsel appearing for the appellant herein / National Insurance Company Limited, would submit that the Claims Tribunal has committed legal error in fastening the liability on the Insurance Company, as the offending vehicle was a tanker and there was no specific authorisation to drive the said vehicle, therefore liability could not have been fastened upon the appellant Insurance Company. Mr. Awasthi would also oppose the cross-objection made by the claimants / respondents No.1 to 5 herein and submit that the claimants are not entitled for enhancement of the amount under award.

3. Mr. Badruddin Khan, learned counsel appearing for the claimants / respondents No.1 to 5 herein, would oppose the submission made by Mr. Awasthi, learned counsel for the appellant Insurance Company, and would submit that no such statement was taken by the appellant Insurance Company in the written statement filed before the Claims

Tribunal and therefore the learned Claims Tribunal has rightly fastened the liability on the appellant Insurance Company.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

5. Plea of the appellant Insurance Company was that the driver did not have the valid and effective driving license to drive the offending vehicle owned by respondent No.7, insured by the appellant Insurance Company and driven by respondent No.6 in which the Claims Tribunal has returned a finding that the tanker was light motor vehicle for which the driver did have license for driving the vehicle No.CG-04/ZC-1323 and he was authorised to transport the vehicle. The learned Claims Tribunal has negatived the plea raised by the appellant Insurance Company.

6. A careful perusal of the written statement filed by the Insurance Company would show that no such plea of specific authorisation for driving the tanker was taken and the driver did have the license to drive the light motor vehicle and the transport vehicle also. Therefore, the finding of the learned Claims Tribunal cannot be taken exception to and it is a valid and correct finding based on the evidence available on record.

7. Now, the cross-objection of the claimants has to be taken into consideration.

8. Only two objections have been raised that deceased Bhagirathi Jal was a Driver and earning ₹ 7,500/- per month, but the learned Claims Tribunal has accepted it to be only ₹ 3,500/- per month.

9. Taking into consideration oral and documentary evidence on record,

monthly income of the deceased is taken to be ₹ 4,000/- and thus, yearly income would be ₹ 48,000/-, deducting ¼[th] towards personal living expenses, it will come to ₹ 36,000/-. Applying the multiplier of 17, it will come to ₹ 6,12,000/-. Following amount of compensation is awarded under the relevant conventional and traditional heads: -

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| (i) | Loss of consortium | ₹ 50,000/- to each claimant (total ₹ 2,50,000/-) |
| (ii) | Funeral expenses | ₹ 2,000/- |
| (iii) | Loss of estate | ₹ 2,500/- |

10. The Constitution Bench of the Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**[1] has held that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. Here, in the present case, the deceased was admittedly, aged about 29 years, therefore, 40% of the established income, would come to ₹ 2,44,800/-.

11. On totality of the facts and circumstances of the case, the total compensation works out to ₹ 11,11,300/- (6,12,000 + 2,44,800 + 2,50,000 + 2,000 + 2,500) which the claimants are entitled to along with 6% interest per annum from the date of making the claim application. The appellant / Insurance Company is directed to deposit the amount of compensation within 45 days.

12. Thus, the appeal of the appellant Insurance Company is dismissed and the cross-objection of the claimants is partly allowed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

1 (2017) 16 SCC 680