NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No.1172 of 2013

HDFC ERGO General Insurance Company Limited, Through its Assistant Legal Manager, HDFC ERGO General Insurance Company Limited, 205-206 – 2nd Floor, DM Tower, 7, Race Course Road, Indore (M.P.)

(Insurer)
---- Appellant

Versus

1. Smt. Budhni @ Bhuneshwari, aged about 22 years, W/o Late Shri Sunder Uraon,

2. Amar Lal, aged about 7 years, S/o Late Shri Sunder Uraon,

3. Gudiya, aged about 6 years, D/o Late Sunder Uraon,

4. Rani @ Savita, aged about 2 years, D/o Late Sunder Uraon.

   Respondents No.2 to 4 being minor represent mother respondent No.1, all are R/o Village Kota, Tahsil Kota, District Bilaspur (C.G.)
   (Claimants)

5. Vimal Bachhad, aged about 25 years, S/o Tarachand Bachhad, Silfili (Madanpur), P.S. Jainagar, District Surguja (C.G.)
   (Driver-cum-possession holder of the vehicle)

6. Geeta Haldhar, W/o P.C. Haldhar, Kamalpur Silfili, Tahsil Surajpur, District Surguja (C.G.)
   (Registered owner of the vehicle)

7. Jagro Bai, aged about 60 years, W/o Late Khusu Uraon, Village Bundiya, Tahsil Surajpur, District Surguja (C.G.)
   (Non-applicant)
   ---- Respondents

For Appellant: Mr. N.K. Thakur and Mr. Rohitashva Singh, Advocates.
For Respondents No.1 to 4: -
Mr. Pushkar Sinha, Advocate.
For Respondents No.5 and 6: -
Mr. Vivek Bhakta, Advocate.
For Respondent No.7: -
None present though served.

AND

Misc. Appeal (C) No.1096 of 2013

1. Mus. Budhni @ Bhuneshwari, aged 22 years, Wd/o late Sundar Uraon

2. Amar Lal, aged about 7 years, S/o Late Sundar Uraon

3. Gudiya, aged about 6 years, D/o late Sundar Uraon

4. Rani @ Savita, aged about 2 years, D/o late Sundar Uraon

   Appellant No.2 to 4 (Minors) through their natural guardian – appellant No.1

   All are R/o Village Kota, Tahsil Kota, Civil and Revenue Distt. Bilaspur (C.G.)

(Claimants)
---- Appellants

Versus

1. Vimal Bachhad, aged about 25 years, S/o Shri Tarachand Bachhad, R/o Silphili (Madanpur), P.S. Jainagar, Civil and Revenue Distt. Surguja (C.G.) (Possessor owner & driver of vehicle No. CG 15 A 2427)

2. Geeta Haldhar, W/o Shri P.C. Haldhar, R/o Kamalpur, Silphili, Tahsil Surajpur, Civil and Revenue Distt. Surguja (C.G.) (Regd owner of vehicle No. CG 15 A 2427)

3. Branch Manager, HDFC General Insurance Company limited, Raipur, Distt. Raipur (C.G.) (Insurer)

4. Jagro Bai, aged about 60 years, widow of Late Khusu Uraon, R/o Village Bundiya, Tahsil Surajpur, Civil and Revenue Distt. Surguja (C.G.) (Mother of deceased)

---- Respondents

For Appellants: Mr. Pushkar Sinha, Advocate.
For Respondents No.1 and 2: -
Mr. Vivek Bhakta, Advocate.
For Respondent No.3: -
Mr. N.K. Thakur and Mr. Rohitashva Singh, Advocates.
For Respondent No.4: -
None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/12/2021

1. Since both the above appeals arise out of common award, they are clubbed together, heard together and are being disposed of by this common order.

M.A.(C)No.1172/2013

2. The appellant Insurance Company has questioned the impugned award dated 4-7-2013 passed by the 4th Additional Member to the 1st Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.8/2012 by which the liability of ₹ 4,57,000/- with 6% interest per annum from the date of making application has been fastened upon it.
3. Mr. N.K. Thakur, learned counsel appearing for the appellant Insurance Company, would submit that the learned Claims Tribunal has committed legal error in fastening liability upon the Insurance Company, as the driver / respondent No.5 herein did not have valid and effective driving license to drive the offending vehicle and the owner / respondent No.6 herein did not have effective permit to ply the vehicle in question, therefore, the impugned award is liable to be set aside.
4. On the other hand, Mr. Pushkar Sinha, learned counsel appearing for the claimants / respondents No.1 to 4 herein and Mr. Vivek Bhakta, learned counsel appearing for respondents No.5 & 6 herein, would support the impugned award.
5. 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.
6. Though the Insurance Company while filing written statement took the plea that the vehicle did not have valid permit and fitness and the driver did not have valid and effective driving license to drive the vehicle and more persons than the sitting capacity i.e. 1 + 5, were being carried-on in the offending vehicle, but no evidence was led by the Insurance Company to that effect. In that view of the matter, the

Claims Tribunal is justified in holding that the appellant Insurance Company has failed to prove that the vehicle did not have valid permit and fitness and the driver did not have valid and effective driving license to drive the vehicle. Accordingly, the finding recorded by the learned Claims Tribunal is in accordance with law. I do not find any merit in this appeal, it deserves to be and is accordingly dismissed. No order as to cost(s).

M.A.(C)No.1096/2013

7. This is claimants' appeal for enhancement of the impugned award dated 4-7-2013 passed by the 4th Additional Member to the 1st Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.8/2012, by which the learned Claims Tribunal has awarded ₹ 4,57,000/- along with 6% interest per annum from the date of the application, to the appellants herein / claimants.

8. I have heard learned counsel for the parties and went through the record with utmost circumspection.

9. Monthly income of the deceased has been taken, by the Claims Tribunal, to be ₹ 3,000/-. Considering the provisions of the Minimum Wages Act on the date of death i.e. 26-3-2010, income of ₹ 4,000/- per month would be more appropriate. Therefore, taking into consideration the monthly income of the deceased to be ₹ 4,000/-, yearly income would be ₹ 48,000/-, deducting ¼th towards personal living expenses, it will come to ₹ 36,000/-. Applying the appropriate multiplier of 16, it will come to ₹ 5,76,000/-. Following amount of compensation is awarded under the relevant conventional and traditional heads: -

(i)	Loss of consortium	₹ 5,000/-
(ii)	Funeral expenses	₹ 5,000/-

(iii)	Loss of estate	₹ 4,000/-
(iv)	Loss of love and affection	₹ 15,000/-

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, since the deceased was self-employed and admittedly, below the age of 40 years, therefore, 40% of the actual salary towards future prospects should have to be made and it would come to ₹ 2,30,400/- (40% of 5,76,000).

11. On totality of the facts and circumstances of the case, the total compensation works out to ₹ 8,35,400/- (5,76,000 + 2,30,400 + 5,000 + 5,000 + 4,000 + 15,000) which the claimants are entitled to along with 6% interest per annum from the date of making the claim application. The amount of compensation shall be deposited within 60 days.

12. The appeal is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

1 (2017) 16 SCC 680