(2018) 01 CHH CK 0100

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (C) No. 289 Of 2011

Fagni Madvi And Ors — APPELLANT

Vs

Munnalal Korsa And Ors — RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2018) 01 CHH CK 0100

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Keshav Dewangan, Pallav Mishra, RN Pusty

Final Decision : Allowed

Judgement

P. Sam Koshy, J

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimants seeking enhancement against the award dated

19.10.2010 passed by the Motor Accident Claims Tribunal, South Bastar, Dantewada (in short, the Tribunal) in Claim Case No.67 of 2008. Vide the

said impugned award, the Tribunal in a death case has awarded a compensation of Rs.4,11,000/- with interest @ 6 percent per annum from the date

of application. While passing the award, the Tribunal has exonerated the insurance company of its liability and has fastened the liability of payment of

compensation upon the owner.

2. Learned counsel for the appellants submits that the insurance company has wrongly been exonerated by the Tribunal and that in the instant case

there was no breach of policy conditions and as such the liability should had been fastened upon the insurance company. He further submits that the date of accident, the vehicle involved in the accident and the same being duly insured with the respondent No.3 is not in dispute. The resultant death of

deceased is also not in dispute who was aged around 35 years. The only ground of exoneration of insurance company was that the driver of the

offending vehicle did not have a proper license to drive the said particular vehicle. From the evidence of witness of RTO it clearly reflects that the

driver of the offending vehicle at the relevant point of time had a license to drive Tractor which by itself is a Light Motor Vehicle and the vehicle

involved in the accident also being a light motor vehicle, it cannot be said that the driver did not have a valid license and thus the liability should have

been fastened upon the insurance company jointly and severally.

3. As regards the enhancement of compensation is concerned, the claimants submit that the income under future prospects have not been taken into

consideration by the Tribunal while quantifying the compensation. So also the compensation under conventional heads have not been properly

assessed. Further, considering the total number of claimants i.e. 5, the deduction towards personal expenses should had been 1/4th and not 1/3rd as

has been done by the Tribunal, and thus prayed for the award amount to be suitably enhanced.

4. Learned counsel for the respondent-insurance company, however opposing the appeal submits that it is a case where the insurance company has

infact led sufficient evidence to establish the fact that at the time of accident the driver did not have a valid license to drive the vehicle which was

being driven by him i.e. a Jeep and at the same time the owner also did not have a valid permit to operate the said vehicle and and as such there is a

clear breach of policy conditions and also a breach of provisions of the Motor Vehicles Act. Thus, the Tribunal has rightly exonerated the insurance

company from its liability.

5. Having heard the conditions put forth on either side and on perusal of records, indisputably the insurance company has led evidence of witness from

the RTO to establish that the driver of the offending vehicle at the time of accident had only a license to drive a Tractor and that he did not have a

license to drive light motor vehicle. Likewise, the witness of RTO has also established that the concerned Jeep involved in the accident also did not

have a valid permit with which it could be operated. There is no rebuttal to this evidence which has come on record. Moreover, the owner of the Jeep has also not questioned the said findings nor has he challenged the award. Thus, the findings of the Tribunal exonerating the insurance company does not warrant any interference and the same is upheld.

6. So far as the enhancement of compensation is concerned, this court finds that the income assessed by the Tribunal of Rs.3000/- per month to be just and reasonable for the reason that the accident is of July, 2007 and at the relevant point of time income of Rs.3000/- per month at the rate of Rs.100/- per day does not seem to be unreasonable or in any manner on lower side. However, in view of the decision of larger Bench of Supreme Court in case of National Insurance Co. Ltd. Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014, the claimants would definitely be entitled for 40 percent of the income towards future prospects. Likewise, considering the total number of claimants, the deduction would also be 1/4th in place of 1/3rd.

7. Accordingly, accepting the monthly income of the deceased at Rs.3000/- per month and Rs.36,000/- yearly, if 40 percent of it is added towards future prospects, the yearly income would reach to Rs.50,400/-, of which if 1/4th is deducted towards personal expenses considering the total number of claimants, the income would come to Rs.37,800/-, which if multiplied applying the multiplier of 16, the compensation would reach to Rs.6,04,800/-.

Thus, it is ordered that the claimants shall be entitled for Rs.6,04,800/- for loss of dependency.

8. Further, this court is of the opinion that the claimants shall also be entitled for an additional lump sum compensation of Rs.70,000/- under the conventional heads keeping in view the ratio laid down in Pranay Sethi's case. Thus, the total compensation payable to the claimants would become Rs.6,74,800/-. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.6,74,800/- instead of Rs.4,11,000/- as awarded by the Tribunal.

9. The enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.

10. Accordingly, the appeal stands allowed and the award stands modified.

