

(2015) 07 CHH CK 0040
In the Chhattisgarh High Court
Case No : MAC No. 898 of 2013

Faimida Begum

APPELLANT

Vs

Mahesh Kumar

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2017) 2 ACC 44 : (2017) ACJ 201

Hon'ble Judges : Shri Goutam Bhaduri, J.

Bench : Single Bench

Advocate : Mr. Sourabh Sharma, Advocate, for the Respondent No. 3; Mr. Amiyakant Tiwari, Advocate, for the Appellants

Final Decision : Allowed

Judgement

Shri Goutam Bhaduri, J. - This appeal is by the claimants against the award dated 03.05.2013, passed by the Court of IInd Additional Motor Accident Claims Tribunal, Durg in claim case no.30/2011, whereby non-applicants 1 & 2 i.e., driver and owner have been directed to pay a total compensation of Rs .4,34,000/- to the claimants/appellants with interest @ 6% per annum.

2. Briefly stated facts of the case are that on 13.06.2010, deceased Taaj Mohammad along-with his friend Mohd. Motalib were travelling in a tempo bearing registration No. C.G.-04/T-0577 from Durg to Dongargarh. When they reached near a village Banbhedi, at that time, the truck bearing registration no. A.P.10/V-4949 driven by non-applicant no.1 in rash and negligence manner dashed the tempo whereby the deceased sustained severe injuries on his head and during the course of treatment he died. The claim petition was filed by the widow of the deceased and four minor children as also the mother and father of deceased Taaj Mohammad claiming compensation of amount of Rs. 35,00,000/- on various heads.

3. Non-applicants 1 & 2, the driver and owner of the offending truck, contended

that the driver of the tempo bearing registration no. C.G.- 04/T-0577 was in drunken condition and thereby he drove the vehicle in rash and negligent manner and while coming on wrong side, dashed the truck No.A.P.10V-4949. It was further contended that the truck was insured with respondent no.3 and the award of compensation is liable to be paid by the Insurance Company.

4. The insurance Company refuted the averments of the claim and contended that in such accident, two vehicles were involved and therefore, the vehicle wherein the deceased was travelling is liable for contributory negligence and since there is breach of terms of Insurance Policy, the Insurance Company cannot be directed to pay the compensation.

5. The Tribunal after evaluating the facts and evidence passed an award of Rs. 4,34,000/- and exonerated the Insurance Company.

6. Learned Counsel for the claimants would submit that without there being any pleading or evidence, the Insurance Company has been exonerated on the ground that on the date of accident, the offending vehicle was not having valid fitness certificate. It is further contended that such ground was neither part of pleading nor it was established during the course of evidence, therefore, the insurance Company should have been fastened with the liability. He further submits that the claimants have adduced evidence that the deceased was working as driver and was getting a salary of Rs. 9000/- per month but the Tribunal has taken the salary of the deceased as Rs. 3,000/- per month which is too meagre and being driver, the salary of Rs. 9,000/- which was projected was also not exorbitant. He further submits that future prospects have not been considered and on conventional heads also, meagre amounts have been awarded, therefore, suitable enhancement be made.

7. Per contra, learned counsel appearing on behalf of the Insurance Company, vehemently submits that the company has adduced the evidence that at the time of accident, the offending vehicle was not having a valid fitness certificate, consequently the award passed is well merited which do not call for any interference. He further submits that so far as quantum of compensation, no documentary evidence is on record to substantiate the fact that the deceased was permanently employed as driver, therefore, the notional income which has been taken by the learned Tribunal is also correct and the award do not require any interference.

8. I have heard learned counsel for the parties and have also perused the pleadings and evidence on record.

9. The Tribunal has discharged the Insurance Company from payment of compensation on the ground that there has been a breach of Insurance Policy. The said finding is arrived at on the basis of statement of Abhishek Singh (NAW-1) who was examined on behalf of the Insurance Company. The witness has stated in his examination-in-chief that on the date of accident, the vehicle did not have the valid fitness certificate, which was necessary under the Motor

Vehicles Act and thereby there was a breach of terms of Policy. When the pleadings of the Insurance Company are examined, it appears that no such pleading was made by the Insurance Company in their written statement. It is settled preposition of law that in order to substantiate any fact, necessary pleadings have to be on record. In the written statement, no specific pleading of fact that at the relevant time the offending vehicle was not having valid fitness certificate was made. Therefore, the evidence which was adduced by the Insurance Company becomes inadmissible.

10. Furthermore, when the evidence of the Insurance Company is further examined, it reveals that the witness has proved the Policy and a letter as Exhs./ D-1 & D-2(C) which was addressed to the owner of the offending vehicle i.e. Sukhdeep Singh. It is stated that by such letter the owner was required to place on record the fitness certificate, the driving license, the Insurance Policy, Permit etc. But it is further stated that despite such letter the same was not produced by owner of the offending vehicle. In the cross examination of the witness, he admitted the fact that the terms are not engrafted in Ex.D-1 that fitness certificate was necessary as per terms of the policy. Further perusal of the evidence would go to show that though the letter was purported to be sent on 16.05.2012 which was marked as Ex.D-2, but it has not been proved on record as to whether the letter was sent by registered post or it bears the endorsement of receipt of the owner. Therefore, from the admission of the respondent witness that the postal receipt has not been placed on record, it cannot be presumed that the said letter was sent.

11. Even otherwise, if the Insurance Company was sanguine of the fact that there has been a breach of policy conditions for want of certain documents, then they were under obligation to call the primary witness to substantiate such evidence. Therefore, in absence of any such document, it cannot be presumed that because of non-production of the fitness certificate, there has been a breach of terms of policy when such terms were not proved to be part of the Insurance Policy. Consequently, the finding of the learned court below that there has been breach of policy is apparently wrong on the face of it and it is set aside.

12. Now coming to the quantum of compensation, the wife has stated that her husband was driver, aged about 35 years and was getting a salary of Rs. 6,000/- as also Rs. 100/- as daily allowance. Admittedly, no document has been placed so as to prove the salary. However, considering the statement made by the wife that the husband was getting a salary of Rs. 6,000/- being a driver, the same cannot be stated to be exorbitant and appears to be bona fide. Taking into fact that the wages of skilled labor was Rs. 100/- to 150/- per day, it cannot be expected from an unorganized sector that they will keep the documents. Therefore, considering the fact that at the relevant time the minimum wages were more than Rs. 150/- of a skilled labour, I deem it proper to assess the income of deceased to Rs. 4,500/- per month.

13. Further more, the deceased was self employed and was stated to be aged

about 35 years by the wife. Reading of the award would show that the Tribunal has not considered the future prospects while assessing the compensation. Therefore, in view of the law laid down in *Rajesh and others v. Rajbir Singh and others* (2013) 9 SCC 54, it would be just and proper to take the addition of 50% over the income of the deceased. Thus after adding 50%, the total income comes to Rs. 6,750/- (4500 plus 2250) per month or Rs. 81,000/- per annum.

14. Now coming to the deduction, the claim petition was filed by the widow, three minor children as also mother and father of deceased, total six in number. As per the norms laid down in *Sarla Verma v. DTC* (2009) 6 SCC 121, 7th is to be deducted towards personal expenses. Thus after deducting 7th, the annual dependency comes to Rs. 60,750/- (Rs. 81,000 - 20,250). Thereafter, considering the age of the deceased that he was 35 years old and belongs to the age group of 31-35 years, therefore, in view of the multiplier table given in *Sarla Verma's* case (supra), multiplier 16 would be applicable. Thus the total dependency comes to Rs. 9,72,000/- (60750 x 16).

15. Further, the Tribunal has granted meagre sums under the conventional heads i.e., Rs. 2500/- for funeral expenses; Rs. 2500/- for loss of estate; Rs. 4000/- for loss of consortium to wife; Rs. 20,000/- that is @ Rs. 4000/- each for loss of love and affection to 3 minor children and mother and father of deceased, which in my opinion, taking into the age of deceased as also the age of his widow and minor children, require reassessment. Consequently, I propose to grant Rs. 1,00,000/- for loss of consortium to the wife; Rs. 75,000/- for loss of love and affection, care and guidance, loss of estate etc., towards 3 minor children; Rs. 50,000/- for loss of love and affection towards mother and father of deceased and Rs. 15,000/- for funeral expenses. Thus, applying the principles laid down in *Sarla Verma* (supra), the compensation to be reassessed as follows :

S. No. Heads Calculation Amount

- (i) Annual income of deceased at Rs. 4500/- per month Rs. 54,000/-
- (ii) 50% of (i) above to be added as future prospects (Rs. 54,000 + Rs. 27,000/-) Rs.81,000/-
- (iii) 7th of (ii) deducted as personal expenses of the deceased Rs. 81,000 - Rs. 20,250 Rs. 60,750/-
- (iv) Compensation after multiplier of 16 is applied Rs. 60,750 x 16 Rs.9,72,000/-
- (v) Loss of consortium to wife Rs. 1,00,000/-
- (vi) Loss of care and guidance, loss of love and affection for minor children, loss of estate etc.(3 Children) Rs. 75,000/-
- (vii) Loss of love and affection towards loss of son to mother and father of deceased Rs. 50,000/-

(viii) Funeral expenses Rs. 15,000/-

Total Rs. 12,12,000/-

16. Thus the total compensation will be Rs. 12,12,000/-. After deducting Rs. 4,34,000/- awarded by the tribunal, the enhancement would be Rs. 7,78,000/-

17. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 7,78,000/- in addition to what is already awarded with interest at the rate of 6% per annum from the date of filing of the claim petition till the date of realisation. The claimants are entitled to receive the amount from the Insurance Company. So far as it relates to apportionment, out of Rs. 9,72,000/- worked out for loss of dependency, the mother and father of deceased namely Smt. Nazma Khan and Mohammad Vazeer Khan will get Rs. 1,50,000/- apart from loss of love and affection of Rs. 50,000/- i.e. total Rs. 2 lakhs. The claimants/3 minor children will get Rs. 2,00,000/- each which shall be deposited in their name for a period of 5 years in any Nationalized Bank in the form of fixed deposit. The remaining amount shall be disbursed to the claimant wife. No order as to costs.

18. The registry is further directed to communicate the claimants in writing the "amount of award enhanced in this appeal" as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language.

19. No order as to costs.