(2018) 03 CHH CK 0013

In the Chhattisgarh High Court

Case No : MAC No. 361, 445, 466 of 2015

GIRDHAR KUMAR NETAM AND ORS. APPELLANT

Vs

DUSHYANT SHARMA AND ORS. RESPONDENT

Date of Decision : 08-03-2018

Acts Referred:
Motor Vehicle Act, 1988 — Section 173

Citation : (2018) 03 CHH CK 0013

Hon'ble Judges : P. SAM KOSHY

Bench : Single Bench

Advocate : RK Pali, Amit Kumar Sahu, AS Rajput, Anil Gulati, RN Pusty

Final Decision : Disposed Of

Judgement

1. These are four appeals under Section 173 of the Motor Vehicles Act against the award dated 15.01.2015 passed by the Chief Motor Accident

Claims Tribunal, Dhamtari, (in short the Tribunal) in two Claim Cases i.e. 162 of 2013 and 163 of 2013. In Claim Case No. 162 of 2013, the Tribunal

has awarded a compensation of Rs.3,66,000/- whereas, in Claim Case No. 163 of 2013, the Tribunal has awarded compensation of Rs. 3,52,000/-

along with interest @ 6 percent per annum from the date of application in both the cases.

2. While passing the award, the Tribunal has exonerated the insurance company of its liability and has fastened the same upon the owner and driver of

the offending vehicle.

3. MAC No.361 of 2015 and MAC No.466 of 2015 both arise out of Claim Case No.162 of 2013 where MAC No.361 of 2015 is by the claimants

seeking enhancement of compensation and MAC No.466 of 2015 is by the owner challenging liability part. Likewise, MAC No.371 of 2015 and MAC

No. 445 of 2015 arise out of Claim Case No.163 of 2013 where again MAC No.371 of 2015 is by the claimants seeking enhancement and MAC No.

445 of 2015 is by the owner.

4. The claimants have questioned the quantum of compensation awarded alleging that the income assessed is extremely low and the same deserve to

be enhanced. Likewise, the aspect of future prospects also have not been taken into consideration while quantifying the compensation. Further, the

compensation awarded under conventional heads are also too meager an amount. Thus prayed for suitable enhancement of compensation in both the

appeals filed by the claimants.

5. So far as the appeals of owner is concerned, the contention of the owner is that the issue raised by the owner in the two appeals i.e. MAC Nos.466

of 2015 and MAC No.445 of 2015 are squarely covered by the recent larger Bench decision of Supreme Court in case of Mukund Dewangan Vs.

Oriental Insurance Co. Ltd, AIR 2017 SC 3668, wherein it has been held that merely because there is no endorsement on the licence of the driver

who otherwise has a licence to drive the Light Motor Vehicle by itself would not absolve the insurance company of its liability. Therefore, prayed for

the award to be suitably modified.

6. According to counsel for the owner, it is a case where the insurance company was exonerated only on the ground that the vehicle involved in the

accident i.e. Jeep bearing registration No.CG-04-T-5626 was being used for Taxi purpose and was being driven by a person who did not have a valid

license. This, according to counsel for the owner is not a proper reasoning, as admittedly the driver Dushyant Sharma had a license to drive light motor

vehicle. There is no dispute so far as the vehicle involved. The offending vehicle falling within the category of light motor vehicle is also not in dispute.

In the light of decision of Supreme Court in case of Mukund Devangan (Supra) the endorsement for granting permission to drive a transport vehicle is

no longer required. Thus, prayed that both the appeals preferred by the owner be allowed and the liability be shifted upon the insurance company

which has insured the vehicle involved in the accident.

7. Dealing with the appeals filed by the owner, the counsel for the insurance company opposing the appeals submits that though the ground raised of

the driver not having valid license has dealt by the Supreme Court in case of

Mukund Devangan (Supra), but the fact remains that the offending

vehicle on the date of accident did not have a valid permit or fitness from the concerned transport authority as is required under the provisions of the

Motor Vehicles Act. Therefore, there would still be a breach of policy conditions and the insurance company would still be required to exonerate of its

liability.

8. Having heard the contentions put forth on either side and on perusal of records, what reflects is that the so far as the issue of breach of policy

conditions raised by the insurance company is concerned, the insurance company has laid evidence of two witnesses namely Pradeep Kumar Biswas,

NAW-1 and Jai Prakash Sahu, NAW-2. The former being the Officer of the insurance company and the latter being the witness from the RTO. So

far as the witness from the RTO, NAW-2 is concerned, has deposed only in respect of driver Dushyant Sharma not having a license to drive transport

vehicle. So far as permit and fitness part is concerned, the only witness adduced was the oral statement of Pradeep Kumar Biswas, NAW-1 who had

relied upon the report of Investigator of the insurance company wherein it has been stated that the owner did not have a permit on the said date.

However, the Investigator's report has not been proved by the author of the report i.e. by examining the Investigator himself before the Tribunal.

Unless the report is proved by the author of the report, it cannot be accepted to be a genuine proof of the insurance company discharging its burden so

far as permit and fitness is concerned. Thus, the ground raised by the insurance company is not acceptable and the same deserves to be and is hereby

negated. So far as the issue of license is concerned, the same is squarely covered by the decision in the case of Mukund Devangan (Supra).

9. Thus, the two appeals filed by the owner i.e. MAC Nos. 445 of 2015 and MAC No. 466 of 2015 deserve to be and are hereby allowed and the

liability of payment of compensation shall fall jointly and severally upon the driver, owner and the insurer of the vehicle and the responsibility of

payment of compensation shall be that of the insurance company.

10. Any amount, if any, deposited by the owner before the Tribunal shall be refunded back to him on the insurance company depositing the entire

amount of compensation before the Tribunal.

11. Now coming to the appeals of the claimants, the income assessed by the

Tribunal in both the cases is Rs.3000/- per month. It is anybody's guess

that at the relevant point of time i.e. in September, 2013, the minimum income of even an unskilled labour was between Rs.150-200/- per day i.e.

Rs.4500-6000/- per month. This court, thus, has no hesitation in accepting the contention of the claimants that the deceased were earning Rs.150/- per

day. Thus, this court assesses the monthly income of both the deceased at Rs.4500/- which would bring the yearly income at Rs.54,000/-. Further,

keeping in view the decision 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 be further entitled for 25 percent of their income towards future prospects which comes to Rs.13,500/-. Thus, total yearly

income would bring to Rs.67,500/-. Taking into consideration total number of claimants, the deduction towards personal expenses would be 1/4th in

both the cases. After deducting the same, the yearly income would come to Rs.50,625/-in both the cases.

12. In case of death of deceased Kanturam in MAC No.371 of 2015, if the said amount of Rs.50,625/- is multiplied by applying the multiplier of 13, the

amount would come to Rs. 6,58,125/-. Thus, the claimants are entitled for Rs.6,58,125/- towards loss of dependency. In addition, they are further

entitled for a lump sum compensation of Rs.70,000/- under the conventional heads to make the total compensation payable at Rs.7,28,125/- instead of

Rs.3,66,000/- as awarded by the Tribunal.

13. Likewise, in case of death of deceased Mangli Bai in MAC No.361 of 2015, if the said amount of Rs.50,625/- is multiplied by applying the

multiplier of 14, the amount would come to Rs. 7,08,750/-. Thus, the claimants are entitled for Rs.7,08,750/- towards loss of dependency. In addition,

they are further entitled for a lump sum compensation of Rs.70,000/- under the conventional heads to make the total compensation payable at

Rs.7,78,750/- instead of Rs.3,52,000/- as awarded by the Tribunal.

14. The above amount of compensation enhanced in both the appeals shall also carry the same rate of interest as has been awarded by the Tribunal.

The responsibility of payment of aforesaid amount shall be upon the insurance company.

15. Thus, the four appeals, two preferred by the claimants i.e. MAC Nos. 361 of 2015 and 371 of 2015, so also the two appeals preferred by the

owners i.e. MAC Nos. 466 of 2015 and 445 of 2015 all stand allowed and disposed of.

