(2012) 09 CHH CK 0007

In the Chhattisgarh High Court

Case No : M.A. (C) No. 822 of 2012

Oriental Insurance Co. Ltd. APPELLANT

Vs

Smt. Rose Mery Daan and Others RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 168, 173

Citation : (2012) 3 CG.L.R.W. 69

Hon'ble Judges : Gulam Minhajuddin, J;Abhay Manohar Sapre, J

Bench : Full Bench

Advocate : Neelkanth Malviya, for the Appellant;

Final Decision : Dismissed

Judgement

Gulam Minhajuddin, J.—Heard on the question of admission. This appeal has been filed by the appellant u/s 173 of the Motor Vehicles Act, 1988 (''the Act'' for short) against the award dated 14-6-2012 passed by the Fifth Additional Motor Accident Claims Tribunal, Raipur (''Claims Tribunal'' for short) in Claim Case No. 106/2011 where liability to pay compensation to the claimants/respondents No. 1 to 4 herein, has been fastened jointly and severally upon the non-applicant No. 3/appellant herein alongwith non-applicants No. 1 & 2/respondents No. 5 & 6 herein.

2. Facts of the case, in brief, are that on 21-12-2010 at 8.00 a.m. one Accent Car No. CG05-A/5551 was dashed by a Dumper No. CG04-ZC/8376 (hereinafter called "offending vehicle") owned by non-applicant No. 2, insured with non-applicant No. 3 and driven by non-applicant No. 1 rashly and negligently at that time, which resulted in death of Ishu Daan and driver Sandeep Singh on the spot, death of Sanjay Christopher during the course of treatment and grievous injuries to Neeta Singh who were traveling in the said Accent Car. Therefore, the claimants being legal heirs of the deceased Ishu Daan, filed a claim petition before the Claims Tribunal claiming a total compensation of Rs. 17,40,000/- with interest @ 12% against the non-applicants No. 1 to 3 and the Claims Tribunal

vide impugned award, partly allowed the claim petition awarding an amount of Rs. 10,51,450/- with interest @ 9% thereon from the date of filing of claim petition, in favour of the claimants and against the non-applicants No. 1 to 3 jointly and severally.

3. Heard learned counsel for the appellant and perused the impugned award.

4. Learned counsel for the appellant has contended that there had been contributory negligence on the part of the driver (Sandeep Singh) of the Accent Car but this fact has not been taken into consideration by the Claims Tribunal and the entire liability to pay compensation has been fastened upon the appellant. The counsel has further contended that income of the deceased Ishu Daan has wrongly been assessed as Rs. 8,147/- per month instead of Rs. 5,795/- resulting in exorbitant assessment of compensation and also wrong multiplier has been applied in computing the same.

5. From perusal of the impugned award dated 14-6-2012, it is found that the deceased Ishu Daan was undoubtedly not the driver of the Accent Car at the time of accident but the same was being driven by owner-cum-driver Sandeep Singh who also died in the said accident and the deceased Ishu Daan was only an occupant of the Accent Car. As such so far as the deceased Ishu Daan is concerned, the case is not of contributory negligence but of composite negligence because the deceased Ishu Daan had not contributed to any extent towards the accident in question. In such a case the claimants/dependents of the deceased Ishu Daan has the option to claim the entire amount of compensation from either of the owners and insurers of the vehicles and the owner, driver and insurer of the Accent Car are not necessary parties. In this connection, the law laid down by the Hon''ble Supreme Court in the case of T.O. Anthony Vs. Karvarnan and Others, makes an illuminating reading.

6. So far as the quantum of compensation is concerned, from the evidence oral and documentary which has been adduced before the Claims Tribunal, it is found that the deceased Ishu Daan was working as Pastor in the Saint Paul Church, Raipur and was getting a salary of Rs. 8,147/- inclusive of provident fund and superannuation fund. The Claims Tribunal has rightly not deducted these amounts in assessing the monthly income of the deceased. The age of the deceased Ishu Daan has rightly been assessed as 43 years on the basis of date of birth mentioned in his PAN Card and a multiplier of 14 has also rightly been applied. As the age of the deceased Ishu Daan was 43 years at the time of his death and the nature of his job was permanent, therefore as per the law laid down by the Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, 30% of the salary should have been added as his promotional prospects but the same has not been taken into consideration by the Claims Tribunal. The Claims Tribunal has deducted 1/4th towards personal and living expenses of the deceased Ishu Daan which cannot be termed as faulty as the number of dependents/claimants are four including mother of the deceased. Though the Claims Tribunal has awarded 9% interest on

the amount of compensation which looking to the prevailing rate, is higher but as the promotional prospects i.e. 30% of the salary has not been taken into consideration, the amount of compensation assessed cannot, by any stretch of imagination, be termed as arbitrary, excessive or unjust but is certainly a just compensation as envisaged u/s 168 of the Act.

7. In view of the above, there is no merit in this appeal which deserves to be and is hereby dismissed in limine. There shall be no order as to cost.