



(29)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal No. 298/2003

SB: Hon'ble Shri Justice R.L. Jhanwar

APPELLANTS

Smt. Dudhmat Bai and others

Versus

RESPONDENTS

Gurucharan Yadao and others

ORDER

Post for order on 31.08.2010

Sd/-
R.L. Jhavar
Judge

(30)

HIGH COURT OF CHHATTISGARH : BILASPUR

SINGLE BENCH: HON'BLE SHRI R.L.JHANWAR, J.

Misc. Appeal No. 298/2003

APPELLANTS
Applicants

- : 1. Smt. Dudhmat bai wd/o Phool Singh, caste Kenwat, aged 50 yrs.
- : 2. Smt. Gangabai wd/o Phool Singh, aged 45 yrs,
- 3 Manharan s/o Phool Singh, aged 27 yrs
- 4 .Rukhmanibai D/o Phool Singh, aged 25 yrs
- 5 Ku. Meena D/o Phool Singh aged 13 yrs
- 6 Dilharan s/o Phool Singh aged 11 yrs.
- 5 & 6 both minor guardian mother Gangabai wd/o Phool Singh
- All resident village Ak oli, Police Station, Nandghat, Tah Nawagarh, District Durg
- 7 Smt. Draopadi bai wd/o Ram Singh, aged 30 yrs. R/o village Tarpongi, Tahsil Nawagarh, District Durg (CG)

VERSUS

RESPONDENTS
Non-applicants

- : 1 Gurucharan Yadao s/o Jageshwar Yadao, R/o Madhapali (BALCO) Tah & District Korba (CG)
- 2 Umashankar Singh s/o Shivsahay Singh, R/o Behind Balco Housing Board, Balco Nagar, Tah & District Korba (CG)

3 The New India Insurance Company
(Bima Company) Branch Manager
Korba Tah & District Korba (CG)

**MISCELLANEOUS APPEAL UNDER SECTION 173 OF THE
MOTOR VEHICLES ACT**

Appearance:

Shri Sudhir Verma, counsel for the appellants.

Shri Sunil Sahu, counsel for respondents No. 1 & 2.

Shri Sreekumar Agrawal, Sr. Advocate with Shri Anand
Gupta, counsel for respondent No.3.

ORDER

(31.08.2010)

R.L.Jhanwar, J

Appellants Smt. Dudhmat Bai and others are seeking enhancement of the compensation awarded by the Additional Motor Accidents Claims Tribunal Bemetara, Durg (CG) (for short 'the Tribunal') vide award dated 17.1.2003, passed in Claim Case No. 26/2002.

2. As against the compensation of Rs.8,70,000/- claimed by the appellants/claimants by filing a claim petition under Section 166 of the Motor Vehicles Act for death of Phool Singh in the motor accident on 22.6.2002, the tribunal awarded a total sum of Rs.93,800/- as compensation along with interest @ 9 % per annum from the date of filing of the claim petition till the date of actual payment.

3. The Tribunal on a close scrutiny of the entire evidence led before it held that the deceased - Phool Singh died in the motor accident 22.6.2002; the accident occurred due to rash and

(32)

negligent driving of the driver of the offending vehicle- Tata Indica Car bearing registration No.CG 12/6512. The Tribunal has exonerated the New India Insurance Company on the ground that Engine as well the chesis numbers were not one and same, which were given in the Policy and the Registration book.

4. Against this order, owner has filed a cross appeal, in which, he has stated that his Tata Indica Car was insured with the Insurance Company and the Engine and Chesis numbers were one and same; the learned Tribunal has wrongly exonerated the Insurance Company. According to him the car was also damaged in the accident and he claimed for damages from the same Insurance Company through the same policy, which has been produced by him in the present case, and the Insurance Company has paid the claimed damages to him, therefore, the Insurance Company cannot say that the Engine and Chesis numbers were differentiating and therefore, it is not liable for payment of compensation. The owner contended that the Insurance Company, who is an insurer, was responsible for payment of compensation instead of him.

5. So far as cross objection is concerned, after perusal of copy of the registration book, which has been attached with the record, shows that the registration book number is 322251 for Car No.CG 12/6512, in which, chesis No. has been written as 60014 CXZP 21025 and Engine No. as 475 IDI 01 CXZP 19554. In the policy, which is on record as Ex. P/6, Engine No. has been written as 475 IDI 01 CXZ 1955, in which, No.4 is missing and alphabet P is also missing, therefore, the learned Tribunal has held that the Engine No. and chesis No. given in the registration book are not matching to the numbers given in the Insurance policy.



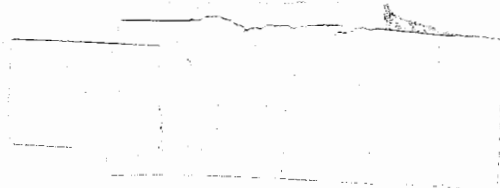
33

6. The policy, produced by the Insurance Company is also kept in the file, in which engine No. 475 ID I 01 CXZ 19554 has been written in red line, and chesis no. is written as 60014 CXZP 21025. Chesis no. given in the registration book is 600141 CXZP 21025. Chesis no. is also not matching, therefore, the Tribunal has not erred in finding that the Insurance policy, which was taken by the owner is not correct because the Engine and chesis nos. are not matching with the registration book, therefore, the cross appeal is liable to be dismissed and it is hereby dismissed.

7. So far as enhancement of the compensation is concerned, learned counsel for the appellants/claimants argued that in the matter of **Smt. Sarla Verma and Others Versus Delhi Transport Corporation and Another, 2009 (II) D.M.P. 161 (S.C.)**, a multiplier of 6 has been applied for the age group of 65-70 years, whereas, in this case, multiplier of 5 has been applied; therefore, multiplier of 6 should be applied and the compensation may be enhanced to that extent.

8. On the other hand, learned counsel for the owner supported the award and submitted that liability should be fastened on the Insurance Company.

9. A perusal of record shows that the learned Tribunal has taken the age of the deceased in between 65-70 years. It means, the Tribunal has considered the age of the deceased above 65 years, therefore, multiplier of 5 has been applied, which is according to the multiplier used in the matter of Sarla Verma (supra). Therefore, in my opinion, there is no need for enhancement of the compensation in this case. The appeal of the appellants/claimants is liable to be dismissed and it is hereby dismissed.



34

10. So far contention of learned counsel for the owner is concerned, the cross objection has already been dismissed for the reasons mentioned above.

11. Therefore, the learned Claims Tribunal has not erred in law in awarding the compensation in favour of the owner and has rightly exonerated to the Insurance Company.

12. There is no illegality or infirmity in the award passed by the Claims Tribunal. The appeal as well as the cross objection is dismissed.

13. No order as to costs.

Sd/-
R.L. Jhavar
Judge