NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 782 of 2011

1. Mamta, Wd/o. Late Shayamlal Kenwat, Aged About 27 Years
2. Varshabh, S/o. Late Shayamlal Kenwat, Aged About 5 Years
3. Riya, D/o. Late Shayamlal Kenwat, Aged About 3 Years,
4. Ritu, D/o. Late Shayamlal Kenwat, Aged About 8 months

   No.2 to 4 Minor, Through Natural Guardian, Mother Mamta, All R/o Dumarpara, Thana Baradwar, Dist, Janjgir (Chhattisgarh)

----Appellants

Versus

1. Shri Gurukripa Construction, Kotra Road, Raigarh, Tahsil and District-Raigarh (Chhattisgarh)
2. Branch Manager, The Oriental Insurance Company Ltd., Through Branch Office, Rajiv Plaza, Near Bus Stand, Bilaspur (Chhattisgarh)

---- Respondents

For Appellant	:	Mr. Samir Singh, Advocate
For Respondent No.2.	:	Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

29/09/2015

1. Challenge in this appeal is to the award dated 22.02.2011, passed in Claim Case No.107/2010, by the 3rd Additional Motor Accident Claims Tribunal, Bilaspur, District Bilaspur, whereby as against the claim made for Rs.7,44,000/-, an award of Rs.25,000/- was passed in favour of the claimants.

2. The appeal is by the claimants.

3. Briefly stated facts of the case are that a claim petition was filed by the widow alongwith three minor children of the deceased, Shyamlal Kewat under Section 163-A of the Motor Vehicle Act. It was pleaded that on 26.06.2009, the deceased who was the driver of vehicle bearing No.C.G.-13-A-8721, owned by the original non-applicant No.1, Shree Gurukripa Construction, while carrying the boulder near a place called Baradwar Basti, due to mechanical failure of the brake, the vehicle dashed into a temple at the side of the road, wherein, Shyamlal Kewat severely injured and eventually after long treatment he died on 01.09.2009. The matter was reported to the police station and initially the offence under Section 279 of I.P.C. was registered. It was contended that the accident happened during the course of the employment and at the time of the accident, the vehicle was registered in the name of non-applicant No.1. It was further contended that respondent No.1 was the owner of the vehicle, wherein the deceased Shyamlal was working as a driver at a monthly salary of Rs.3,000/- per month. Therefore, on different heads, an amount of Rs.7,44,000/- was claimed.

4. The non-applicant No.1, the owner of the vehicle contended that the Claims Tribunal do not have any jurisdiction to hear the claim petition filed by the claimants. It was further contended that inflated claim has been made and the compensation, if any, is liable to be paid by the non-applicant No.2, the insurer of the vehicle.

5. The non-applicant No.2, the insurance company contended that at the time of the accident, the driver did not have valid driving license to

drive the vehicle, consequently it leads to breach of terms of policy. It was further stated that information was also not supplied to the insurance company, which also resulted into breach of the terms of the policy of the insurance. Consequently, the insurance company can not be held liable to make good the compensation.

6. The learned Claims Tribunal after assessment of the entire case and evidence, passed an award of Rs.25,000/- in favour of the claimants.

7. Mr. Samir Singh, counsel appearing on behalf of the appellants would submit that the Tribunal has failed to assess the evidence on record both oral and the documentary evidence, which remains unrebutted during the cross-examination. He would further submit that reading the evidence together would establish the fact that after the accident on 26.06.2009, the claimant was continuously treated at different hospitals and eventually when the doctors had expressed no hope of survival, the deceased was taken to the house, wherein he died on 01.09.2009. He therefore, submits that sufficient material is on record to connect the fact that because of the injury caused, the deceased succumbed to it. He would further submit that the petition being under Section 163-A of the Motor Vehicle Act, the negligence on the part of the driver becomes redundant and would further submit that the evidence is on record that the mechanical failure caused the accident, therefore, it was stated that the amount of award should be accordingly enhanced.

8. Per contra, Mr. Pankaj Agrawal, counsel appearing on behalf of the insurance company vehemently opposes the argument. It is submitted that the award is well merited which do not call for any interference. He

further submits that doctor has not been examined in this case and the prescriptions have also not been filed, therefore, the appeal being devoid of merit, the same may be dismissed.

9. I have heard the learned counsel for the parties, perused the documents and the evidence on record.

10. Indisputably, the date of the accident in this case is 26.06.2009 and the date of death is 01.09.2009. Now the question falls for consideration as to whether in continuity during the treatment, the deceased, Shyamlal Kewat died.

11. Perusal of the documents filed contains of voluminous medical documents with respect to medical bills. The document, Ex.P/65 is the discharge ticket of the Apollo Hospital. Perusal of it would show that the deceased was admitted to the hospital on 28.06.2009 and were discharged on 24.07.2009, which establishes the fact that the deceased was admitted and was hospitalized during such period. The statement of the wife would show that her husband meet with the accident on 26.06.2009 and thereafter, the deceased, Shyam Lal Kewat was initially admitted to the Apollo Hospital, thereafter at CIMS and subsequently hospital at Champa. Perusal of the documents, Ex.P/65, which is the discharge certificate establishes such fact. Further documents from Ex.P/57 to Ex.P/83, are the documents of the Apollo Hospital containing the different treatment given to the deceased. The statement and the documents has not been questioned or rebutted during the cross-examination by the respondent, therefore, authenticity of the same do not call for any doubt. Further more according to the statement of the wife, the deceased died on

01.09.2009. Subsequent documents, which are marked as Ex.P/6 to Ex.P/55 would reveal that the deceased was admitted in the Christian Hospital, Champa. The document Ex.P/6 is the medical bill of Christian Hospital, Champa of dated 01.08.2009. Likewise all the medical bills have been placed which are of Champa Christian hospital and Ex.P/53 is a bill dated 29.08.2009 i.e. also of Champa hospital. Reading of this documents alongwith the statement of the wife of the deceased would show that the deceased was admitted in the hospital till 29.08.2009 and was under treatment.

12. The wife has stated that during the treatment at Champa hospital, the Doctor had advised that there would be no chance of recovery and her husband may likely to die and therefore, husband was taken back to the house, and death occurred on 01.09.2009. Reading the statement of the wife which is unrebutted in the cross-examination alongwith Ex.P/53, which shows that till 29.08.2009, the deceased was admitted in the hospital. Further evidence adduced on behalf of the claimants is that of Mohan Pandey, (A.W.-2). This witness has also repeated the same narration that after the accident, the deceased was admitted in the hospital on 26.06.2009 and subsequently, he was admitted in the hospital at Champa and before two days of his death, he was taken back to his house, since the doctor had told them that there was no chance of survival of deceased, so the deceased was taken back to his home, wherein he died on 01.09.2009. This witness, AW-2, Mohan Pandey has also stated that when he went to meet the injured, Shyamlal Kewat at hospital, he told him that because of the failure of the brakes, he met with an accident. The entire survey of oral and documentary evidence i.e. medical bills shows that the deceased was

admitted up till 29.08.2009 at hospital at Champa. According to the wife of the deceased and Mohan Pandey, AW-2, on the advise of the doctor, when there was no chance of survival remained, the deceased was taken back to home, wherein he died on 01.09.2009. The death certificate is marked as Ex.P/4-C affirming the date of death on 01.09.2009.

13. The witness, Purushottam Kewat (A.W.-3) had also stated that after the death of Shyamlal Kewat, the information was given to the police station, Baradwar, but no one from the police station came, therefore, postmortem could not be conducted and cremation was performed. In the cross-examination, he was confronted with such statement made in the examination in chief but he maintained the statement that after the death though information was given to police but no one from the police station turned up, therefore, the postmortem could not be done. The statement made by this witness appears to be plausible and natural explanation. It can be gathered from the fact that after the accident, the deceased being treated continuously and on 29.08.2009, he was taken back to the house, thereafter, he died at his house on 01.09.2009. This statement remains unrebutted that despite the information given to the police station, the police did not turned up for postmortem. Consequently, the postmortem could not be performed. The Court can not ignore the situation exists in the rural area and the death in the like nature when the death has occurred at the house the sufferers are at the pity of local police. If the police have failed to perform the postmortem then for such non-performance of duty, fault can not be attributed to the claimants in the given facts of the case.

14. Examination of the documents, medical bills makes the statement of the witnesses goes to establish that after the accident till 29.08.2009, the deceased was being treated in the different hospital and after two days, when he was taken back from hospital at the advise of the doctor, he died, which is affirmed by the documents of death certificate, Ex.P/4C and the medical bill (Ex.P/53) dated 29.08.2009. Consequently chain of continuity of the treatment after the accident is established, thereby it is held that cause of death was certainly for the accident occurred on 26.06.2009.

15. Now turning to the quantum of compensation, the Claims Tribunal has awarded an amount of Rs.25,000/- as lump sum. Perusal of the record would show that the claim petition was preferred under Section 163-A of the Motor Vehicle Act. The wife has stated that the deceased was working as driver and was getting an amount of Rs.3,000/- per month.

16. In order to consider whether liability was correctly arrived at by the learned Tribunal, it would be relevant quote section 163-A of the Motor Vehicle Act, which reads as under:

> ***"Section 163A.- Special provisions as to payment of compensation on structured formula basis.-*** *(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be."*
>
> *Explanation.- For the purposes of this sub-section, "permanent disability" shall have the same meaning*

and extent as in the Workmen's Compensation Act,1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or d0efault of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

17. There can be no doubt that Section 163A of the Motor Vehicle Act creates a new, different distinct and absolute statutory liability. In adjudication under Section 163A, the following question will have to be considered by the Tribunal:-

(i) Was there an accident arising out of the use of a motor vehicle?

(ii) Did that accident result in death or permanent disablement?

(iii) Who was the authorised insurer of the motor vehicle involved or its owner?

(iv) Are the claimants the legal heirs of the victim or the victim?

(v) What is the amount of compensation payable under the Second Schedule?

(vi) If there are plurality of claimants/legal heirs, how is the amount to be distributed among them justly and reasonably?

18. Therefore, it would be necessary to quote the scheme under Section 163A, and the proof of negligence is irrelevant. Consequently

contributory negligence is also irrelevant. In order to ascertain the liability under Section 163A, the scheme of Section 163A is to be followed which creates different absolute statutory liability. Extent of dependency is also irrelevant to ascertain the quantum of compensation. To put it strait, it may be any compensation under Section 163A of the Act, the legislature has made the motor vehicle as also the authorised insurer as statutory liable. The significance of including the authorised insurer as the one on whose shoulders the principal liability exits can not be ignored. Meaning thereby the authorised insurer has been advisedly made principally liable under Section 163A to pay the amounts due under Section 163A. Non-obstanate clause makes it clear that the liability has to be understood ignoring the provisions of all other laws including the provisions of the Motor Vehicle Act. Policy of insurance may be relevant only to ascertain the status of the authorised insurer as such authorised insurer in respect of the vehicle. It would be myopic not to perceive the significance of the legislature making the authorised insurer principally liable to unlike in a claim under Section 166 or even Section 140 where the authorised insurer has no principal liability and such insurer becomes liable only by the play of Section 147 and Section 149 of the Act. Similarly Section 163A which declares the right and liability does not in any way limit the applicability of the section to third parties. Plain language of the section appears to take in all victims of motor accidents whether they are inside or outside the vehicle. The section, by the wide sweep of the semantics, appears to take within its width all victims of accidents, therefore, the liability and the claim which has been decided by the learned Tribunal below are tested to be on the aforesaid provisions of Section 163A of the Act which has to be read along-with schedule.

19. Now coming back to the instant case, the wife of the deceased has stated that the income of the deceased was Rs.3,000/- per month. The second schedule prescribes the amounts payable. The amounts payable are described to be compensation. The expression “compensation” can not be read and understood to be anything more than amount shown in this schedule, therefore, the compensation was to be calculated as per schedule 163-A. In a claim under Section 163-A, the burden of the Tribunal is only to ascertain the correct horizontal column and the correct vertical column. At the point where the horizontal column and vertical column meet, we get a figure and that figure is stated to be “rupees in thousands' specifying compensation payable in case of death. From such figure given in thousands, one-third is to be reduced for the personal expenses of the deceased as stipulated in the note under the Table/chart. The rupees contained the word rupees in thousand was interpreted and clarified by the Supreme Court in the case law ***National Insurance Company Ltd. Vs. Gurumallamma*** (***2009) 16 SCC 43.*** The interpretation has been made to remove all ambiguity that words figure shown for the compensation is in thousands gets clarity.

20. It is easy to identify the horizontal entry in Second Schedule on the basis of age of the deceased. In this case the evidence in respect of age of deceased multiple documents shows to be of 36 years.

21. Similarly, there are 13 vertical columns dealing with different annual incomes of the deceased/victims ranging from Rs.3000 to Rs.40,000/- . In this case, the wife of the deceased, Shymalal Kewat

has stated that the income of the deceased is Rs.3,000/- per month as he was working as a driver in the vehicle. Taking into the fact that the accident had occurred in the year 2009, the amount of salary which has been stated by the wife do not appear to be exorbitant or inflated, therefore, such submission made by the wife about the income of the deceased to Rs.3,000/- per month is reasonable to accept. Taking into the income of Rs.3,000/- per month annual income comes to Rs.36,000/- per month, which appears to be just and reasonable. The 12th vertical column relates to income of Rs.36,000/-. Taking into account the age of deceased which is said to be 36 years at the time of death as also the income of deceased i.e., Rs.36,000/- per annum, both the horizontal column and vertical column of the second schedule meet at a point where the figure comes to 540 which is stated to be rupees in thousands. Thus the total income is worked out to Rs.5,40,000/-. Subsequently, there would be a deduction of 1/3rd amount of Rs.5,40,000/- which comes to Rs.1,80,000/- towards personal expenses. Thus, by deduction of Rs.1,80,000/-, the compensation comes to Rs.3,60,000/-.

22. In addition, under general damages as provided in Second Schedule, the claimants would be further entitled to Rs.9,500/- i.e., Rs.2000/- for funeral expenses; Rs. 5000/- for loss of consortium to the wife; Rs.2500/- for loss of estate. Thus the total compensation will be Rs.3,69,500/-. The said compensation shall further carry interest @ 9% per annum from the date of filing of the claim petition till the date of realization. After deducting Rs.25,000/- awarded by the tribunal, the enhancement would be Rs. 3,44,500/-.

23. Perusal of the record shows that cross appeal has also been preferred under Order 41 Rule 22 of the C.P.C. In view of the forgoing discussion, since the cross appeal has no merit and the petition is preferred under Section 163A of the Motor Vehicle Act and the factum of the contributory negligence has been answered in the preceding paras, therefore, the cross appeal is dismissed.

24. 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.

Sd/-
(GOUTAM BHADURI)
JUDGE

Balram