HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 133 of 2011

Bajaj Alliance General Insurance Com. Ltd. Through Branch Office Shiv Mohan Bawan, Vidhan Sabha Road, Pandari, Raipur, District Raipur, Chhattisgarh

---- Appellant

Versus

1. Smt. Kumari Bai wife of Late Shri Jhankuram aged about 40 years
2. Kumari Yashoda, D/o Late Shri Jhankuram, aged about 17 years
3. Sohandas S/o Late Shri Jhankuram Sahu, aged about 12 years

Respondents No.2 & 3 minor child, mother Kumari Bai, wife of Late Jhankuam Sahu, R/o Village Salikjhitiya, Thana Dongargaon, District Rajnandagaon, Chhattisgarh

4. Satish Kumar, S/o Shri Yadavram @ Yogesh Sahu, aged about 22 years, R/o Sitakasa, Gendatola, Thana Gendatola, District Rajnandgaon Chhattisgarh
5. Yadavram, S/o Shri Ramgopal Sahu, R/o Village Sitakasa, Thana Gendatola, District Rajnandgaon Chhattisgarh

---- Respondents

For Appellant – Shri S.S. Rajput, Advocate.
For Respondents No.1 to 3 – Shri Anand Shukla, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

13/07/2015

1. This is an appeal against the award dated 26/08/2010 passed in Claim Case No.40/2008 by the Motor Accident Claims Tribunal, Rajnandgaon.

2. Briefly stated facts are that the claim petition was filed by mother, sister and brother of the deceased Vinay Kumar Sahu. It was

pleaded that on the date of accident on 5/05/2008 while deceased was standing in a bank of river Shivnath and the tractor was climbing over a part of bank which was being driven by original non-applicant No.1 Satish Kumar while in process of reversing the tractor the deceased was dashed by the tractor and he sustained severe injuries, but he was taken to the hospital at Rajnandgaon. However, he succumbed to the injuries. It was further stated that at the time of accident age of the deceased was 22 years and was a mason. It was pleaded that deceased was earning Rs.5000/- per month and the claimants were dependents on the deceased. Therefore, amount of Rs.20,80,000/- was claimed.

3. The non-applicants No.1 and 2 driver and owner of the vehicle denied the rash and negligent act of the driver and it was stated that at the relevant time when the tractor was being reversed, deceased dashed at back of the mudguard of the tractor and sustained injuries. There was no negligence on the part of the driver and part of the tractor. The insurance company contended that original facts have been concealed by the claimants and at the relevant time driver of the vehicle was not having valid licence therefore it led to breach of policy and therefore the insurance company is not liable to make good the payment.

4. The tribunal after evaluating the facts had passed an award of Rs.3,11,000/- in favour of the claimants.

5. Learned counsel appearing on behalf of the insurance company would submit that at the relevant time tractor was being used along with trolley, therefore it would be even otherwise a transport vehicle and any accident with such use of vehicle i.e. tractor and trolley it would amount to breach of terms of the policy. He further submits that tractor was insured for agriculture purpose and therefore if the vehicle was being used for other than agriculture purpose it will lead to breach of condition of the insurance. Consequently, insurance company cannot be held liable to make payment of compensation. He further submits that tractor was attached with the trolley and because of use of trolley accident had occurred and trolley was not insured, therefore in any case insurance company cannot be held liable and prays to exonerate the insurance company from payment of compensation.

6. Per contra, learned counsel appearing on behalf of the claimants contended that cross appeal has been filed since tribunal has failed to award just compensation. He submits that tribunal has wrongly applied multiplier of 12 as against the age of the deceased was 22 years. With respect to the liability over the insurance company it is stated that no evidence is on record to substantiate the fact which has been argued on behalf of the insurance company and therefore he submits that compensation should be enhanced and the liability which is fastened over the insurance company may not be

disturbed.

7. I have heard learned counsel for the parties at length, perused the documents.

8. Perusal of the case file would show that statement of the claimants have been placed on record. Claimants have proved document of criminal case which are marked as Ex.P-1 to P-5. PW-2 Virendra Kumar have stated at para 6 that he was present at the time of the accident and at the time when the tractor was climbing upwards, at that time it was not attached with the trolley. Thereafter, it is stated that while climbing up the tractor all of a sudden lost control and slipped back and whereby dashed the Vinay Kumar thereby he sustained the injuries. He further submits that at the time of accident he was talking to the deceased, therefore could not notice the tractor while it came back. In the cross examination further he reaffirmed that at the time of accident tractor was not attached with the trolley and the engine was also not shut down. He further stated that tractor was being used to bring the soil. Happening of the accident is also corroborated by FIR which affirmed the fact that the deceased was injured by the tractor and because of the negligent act of the driver Satish Kumar the accident had caused. Therefore, after perusal of the evidence on record it is proved that finding arrived by the learned tribunal that at the relevant time tractor bearing No.C.G.08/C/8391 was being driven in a rash and negligent manner

which caused the accident is affirmed.

9. So far breach of the policy is concerned, insurance though had examined one witness namely Ashutosh Singh who is Law Officer but he stated that he got accident investigated by one Rishikant Tiwari and filed report. The said investigator is not examined in court. The report was marked as Ex.D-3. According to Ex.D-3 at the time of accident the driver of the tractor was having LMV, licence has been marked as Ex.D-6. According to the witness though he has stated that at the time accident many persons were travelling in the tractor but neither he was not eye witness of the incident not the investigator Rishikant Tiwari was the eye witness. Eye witness who was examined by claimant has stated otherwise. Therefore, in view of the statement of the eye witness the secondary evidence of the investigator which is proved by the officer of the insurance company does not have any force except contention made therein. In any case even if Ex.D-6 is admitted it would be relevant that at the relevant time driver of the offending vehicle ie. Tractor was having valid licence. Therefore, contention of the insurance company cannot be appreciated. Consequently, finding arrived by the tribunal is affirmed. Further more, evidence has come that at the relevant time tractor was used for bringing soil therefore it can be presumed that at the relevant time tractor having been used for bringing soil it cannot be said that at the relevant time tractor was used other than for

agriculture purpose.

10. Now considering the cross appeal made by the claimant claiming the tribunal has not granted proper compensation, the compensation granted is examined whether the same can be termed as just compensation. The tribunal has assessed the income of deceased to Rs.3000/- per month. The accident was of 5/05/2008. The learned tribunal has assessed income of the deceased to Rs.36,000/- per year i.e. Rs.3000/- per month. Taking into notional income in the opinion of this court said amount of Rs.3000/- appears to be just and proper. However, the tribunal has failed to grant any future prospect to the claimants, therefore as per law laid in case of **Rajesh and others Vs. Rajbir Singh and others, (2013) 9 SCC 54** taking into consideration age of the deceased that he was said to be 22 years at the time of accident and was a self employed, another addition of 50% of the wages of notional income towards future prospect is made which comes to Rs.18,000/-. Evidence has come on record that deceased was bachelor and therefore 50% is deducted as personal expenses thereby the annual dependency comes to Rs.27,000/-.Further taking into age of the deceased that he was 22 years of age multiplier of 18 would be applicable which comes to Rs.4,86,000/-. Over the conventional head tribunal has awarded Rs.10,000/- to the mother for loss of love and affection of the son which is enhanced to Rs.25,000/- and further amount of

Rs.10,000/- has been granted to the brother and sister which is being enhanced to consolidated sum of Rs.25,000/- Further for funeral expenses Rs.3000/- is enhanced to Rs.15,000/-. Therefore, the compensation is reassessed as under:-

S.No.	Heads	Calculation
1.	Annual dependency	Rs.27,000/- per annum
2.	Compensation after applying multiplier of 18	Rs.4,86,000/-
3.	For loss of love and affection of the son to the mother	Rs.25,000/-
4.	For loss of love and affection to the brother and sister	Rs.25,000/-
5.	For funeral expenses	Rs.15,000/-
	Total compensation	Rs.5,51,000/-

11. Thus, the total compensation will be Rs.5,51,000/-. After deducting Rs. 3,11,000/- awarded by the tribunal, the enhancement would be Rs.2,40,000/-.

12. The claimants will be entitled to the said sum of Rs.2,40,000/- in addition to what is already awarded with interest at the rate of 9% per annum from the date of enhancement of the award. No order as to costs.

13. In a result, appeal filed by the insurance company is dismissed and the cross appeal filed by the claimants are allowed to the extent indicated in foregoing paras.

14. 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

Gouri