NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 741 OF 2013

The Oriental Insurance Co. Ltd. Through its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur (C.G.) PIN-495001.

---- Appellant

Versus

1. Smt. Leelawati, Wd/o late Shri Ajit Singh Thakur, aged about 45 years,

2. Ajay S/o late Shri Ajit Singh Thakur, aged about 22 years

3. Gaurav Singh S/o late Shri Ajit Singh Thakur,

Note: All are R/o behind Danteshwari Mandir, Kushalpur, Raipur, Civil & Revenue District Raipur (C.G.)

4. Santosh Kumar Maravi, S/o Sukul Maravi, aged about 21 years, R/o Transport Nagar, Tatibandh, P.S. Amanaka, Raipur, Civil & Revenue District Raipur (C.G.)

5. Gurdeep Singh Garcha, S/o Shri T.S. Garcha, Garcha Road Line, G.E. Road, Telibandha, Raipur, Civil and Revenue Distt. Raipur (C.G.)

---- Respondents

For Appellant	:	Mr. R. N. Pusty, Advocate.
For Respondents No.1 to 3	:	Ms. Arpana Singh, Advocate.
For Respondents No.4 & 5	:	Ms. Saumya Sharma, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

06/09/2018

1. By the instant appeal, the appellant/Insurance Company is challenging the legality and propriety of the impugned award dated 30/04/2013 passed by the Chief Motor Accident Claims Tribunal, Raipur (C.G.) (hereinafter refereed to as 'Claims Tribunal') in Claim Case No. 208/2011, whereby the learned Claims Tribunal partly allowed the claim application of the claimants and awarded Rs.25,41,104/- in favour of the claimants/respondents No. 1 to 3.

2. Brief facts of the case, are that, on 17/08/2011, when Ajit Singh Thakur came out from his office and crossed the road on his TVS Moped bearing registration No. CG04/FC/9177, at that relevant time, one truck bearing registration No. CG04/JA/1167, driven by respondent No. 4, dashed TVS Moped of Ajit Singh Thakur, due to which, head of Ajit Singh Thakur came under the wheels of the truck and he succumbed to the injuries on spot.

3. The claimants/respondents No. 1 to 3, who are widow and children of the deceased filed a claim application before the competent Claims Tribunal claiming Rs.55,50,000/- in total towards compensation. Respondents No. 4 and 5, who are driver and owner respectively, have submitted their reply to the claim application and denied the facts pleaded in the claim application by the claimants. They have pleaded in their reply that the accident took place due to negligence of deceased Ajit Singh Thakur and on the date of accident, the truck was insured with the appellant/Insurance Company, therefore, the liability for payment of compensation, if any, was on the appellant/Insurance Company.

4. The appellant/Insurance Company submitted its reply and denied the claim. It was pleaded that there was violation of conditions of the Insurance Policy and the dependency will be half of the income of the deceased. It was further pleaded that the claim has been made on higher side and there was contributory negligence on the pat of the deceased Ajit Singh Thakur as well.

5. Learned Claims Tribunal after considering the pleadings and evidence available on record arrived at a conclusion that the death of Ajit Singh Thakur was occurred in an accident due to rash and negligent driving of respondent No. 4. It further held that there was no contributory negligence on the part of the deceased and the appellant/Insurance Company has failed to prove violation of conditions of the Insurance Policy and awarded total compensation of

Rs.25,41,104/- in favour of the claimants/respondents No. 1 to 3 against the owner, driver and appellant/Insurance Company jointly and severally.

6. Learned counsel appearing for the appellant/Insurance Company submits that learned Claims Tribunal committed an error in deducting 1/3rd of the income toward personal expenses instead of ½ and wrongly held that the deceased was not contributory negligent in the accident. He further submits that learned Claims Tribunal has wrongly applied the multiplier ignoring the specific age mentioned in the document available on record.

7. Per contra, learned counsel appearing for the claimants/respondents No. 1 to 3 submits that they have also filed cross-objection under the provisions of Order 41 Rule 22 of the Code of Civil Procedure, 1908 for enhancement of the award as the learned Claims Tribunal has been awarded meager amount towards conventional heads and no amount has been awarded towards future prospects.

8. I have heard learned counsel appearing for the parties and perused the records carefully.

9. Learned Claims Tribunal has deducted 1/3rd amount of monthly income towards personal expenses of the deceased looking to the fact that the claimant/respondent No. 1 is widow of the deceased and other two are children. The amount towards personal expenses to be deducted from the income of the deceased has been decided by the Hon'ble Supreme Court in the matter of ***Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121*** wherein the Hon'ble Supreme Court has specifically held that in case of married person, 1/3rd amount of the income of the deceased to be deducted towards personal expenses.

10. In view of the above, the argument raised by the learned counsel for the appellant/Insurance Company with respect to the deduction towards personal expenses is without any merit and substance.

11. The other ground raised by learned counsel for the appellant/Insurance Company that the learned Claims Tribunal committed an error in holding that there was no negligence on the part of the deceased, he submits that as the deceased came out from his office on his two-wheeler and crossed the road negligently, therefore, he has also contributed to the accident.

12. From perusal of the records, it reveals that neither driver and owner nor Insurance Company entered into witness-box and produced any evidence before the learned Claims Tribunal to prove their pleadings. It was the duty of the Insurance Company or owner and driver of the vehicle to produce material and evidence before the Tribunal to prove the plea of contributory negligence, in which, they have utterly failed.

13. The Hon'ble Supreme Court while dealing with the issue of contributory negligence in the matter of ***Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors., 2013 AIR SCW 5375***, dealt with the plea of contributory negligence taken by Insurance Company where neither the driver nor any independent witness was examined to prove the allegation of contributory negligence. The Supreme Court, while setting aside the finding of contributory negligence, held as under :-

> "12.--------The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck driver for the offences punishable under Sections 279 read with Section 302 of IPC read with the provisions of the M.V. Act. The Insurance Company, though claimed permission under Section 170 (b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence

of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet- Exh. 1 in which the deceased driver was mentioned as an accused and on his death; his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of PW.2 and PW3 in their cross-examination and placed reliance on them to record the finding on issue No. 1. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No. 1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law."

14. In the matter of ***Jiju Kuruvila and others v. Kunjujamma Mohan and others, (2013) 9 SCC 166***, the Hon'ble Supreme Court has held as under:-

"20.5 The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court

> cannot give any specific finding about negligence on the part of any individual."

15. For the reasons stated above and the law laid down by the Hon'ble Supreme Court in the aforementioned cases, I am of the considered opinion that the learned Claims Tribunal has rightly decided issue with respect to the contributory negligence in favour of the claimants/respondents No. 1 to 3.

16. The other ground raised by the learned counsel for the appellant/Insurance Company with respect to the application of multiplier is concerned, the Salary Slip (Exhibit P-4) has been filed by the claimants/respondents No. 1 to 3 before the learned Claims Tribunal, in which, specific date of birth of deceased is mentioned as 04/10/1955 whereas the accident took on 17/08/2011. Considering the specific date of birth mentioned in the official record, on the date of accident, the deceased was aged about 55 years, 10 months and 13 days, meaning thereby that he was more than 55 years of age on the date of accident. The application of multiplier on the basis of age of deceased was considered and decided by Hon'ble Supreme Court in case of ***Sarla Verma (Smt.)*** (supra) where in age slab is specifically mentioned. For the purpose of this case the age of deceased is more than 55 years but less than 56 years and therefore, the age slab that will be applicable is from 51 to 55. The deceased on the date of accident was below age of 56 years and therefore, the multiplier was rightly applied by the learned Claims Tribunal. In view of above, the ground of wrong application of multiplier is also not sustainable.

17. So far as the ground raised by the claimants/respondents No. 1 to 3 in their cross-objection with respect to awarding of compensation towards future prospects is concerned, the learned Claims Tribunal has committed an error in not awarding any amount towards future prospects. The deceased was a Government servant and on the date of accident was working as Phone Mechanic in Bharat Sanchar Nigam Limited (A Government of India Enterprise),

therefore, in view of the law laid down by the Hon'ble Supreme Court in the matter of ***National Insurance Company Limited v. Pranay Sethi and others reported in AIR 2017 SC 5157***, the claimants are also entitled for the additional amount of 15% of the last drawn monthly income towards future prospects.

18. The other ground raised by the claimants/respondents No. 1 to 3 in their cross-objection with respect to awarding of meager amount towards conventional heads, it appears that learned Claims Tribunal has awarded only Rs. 17,000/- towards conventional heads. The amount towards conventional heads is also fixed by the Hon'ble Supreme Court in the matter of ***Pranay Sethi*** *(supra).* Therefore, in view of the law laid down in aforementioned case, the claimants are also entitled for the amount of Rs.70,000/- towards conventional heads in total, in addition to the amount of compensation.

19. In view of aforementioned discussions and law laid down by Hon'ble Supreme Court, in the considered opinion of this Court, the appropriate compensation is to be awarded to the claimants. For the reasons stated herein-above, the amount of compensation to be awarded to the claimants/respondents No.1 to 3 by the learned Claims Tribunal is recalculated as under:-

The learned Claims Tribunal taken the monthly income of the deceased after deduction of income tax and other deductible amount, as Rs.28,682/- and by adding 15% towards loss of further prospects, the monthly income of the deceased would be assessed as Rs. 32,984/-. After deducting 1/3rd towards his personal expenses, the monthly amount of dependency would come to Rs.21,989/- and yearly dependency comes to be Rs.2,63,868/- (21,989/- x 12). As at the time of accident, the deceased was aged about less than 56 years, therefore, multiplier of 11 would be applicable in the present case. After applying the multiplier of 11, the total dependency comes to Rs.29,02,548/- (2,63,868/- x 11). In addition to the aforesaid amount of compensation, the claimants/respondents No. 1 to 3 are also entitled for Rs.70,000/- towards conventional heads.

20. On the basis of the above calculation, award passed by the learned Claims Tribunal is modified accordingly and now the claimants/respondents No. 1 to 3 will be entitled for total compensation of Rs.29,72,548/- along with interest at the rate of 6% per annum from the date of filing claim application till the date of its realization instead of Rs. 25,41,104/- as awarded by Claims Tribunal. The conditions imposed by the learned Claims Tribunal with respect to disbursement of the amount shall remain intact.

21. In the result, the appeal is dismissed and cross-objection is allowed in part.

22. No order as to costs.

Sd/-

(Parth Prateem Sahu))
Judge

Yogesh