NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 375 of 2010

- Bhagwan Das Ghritlahre, aged 48years, son of Late Tulsi Ghritlahre, R/o village Akoli, Post Khudmuda, PS Berla, Tahsil Bemetara, District Durg (CG)

---- Appellant
Claimant

Versus

1. Rajesh Das Manikpuri, aged 22 years, S/o Vishveshwar Manikpuri, Occupation-Driver, R/o Village-Muraithi, PS-Dharsinwa, Tahsil & District Raipur (CG)

2. Mayaram Yadu, aged 38 years, S/o Vishveshwar Yadu, R/o Village-Muraithi,PS-Dharsinwa, Tahsil & District Raipur (CG)

3. The Oriental Insurance Co. Ltd. Through Divisional Manager, Divisional Office No.1, Kachhahari Chowk, Jail Road, Raipur (CG) Police No.9581 Policy Year 2008 Development Officer Code 34.

---- Respondents
Non-applicants

For Appellant	:	Shri Akhilesh Mishra, Advocate
For Respondents	:	None.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

02/11/2018

1. The claimant/appellant has preferred this appeal assailing the impugned award dated 27.3.2009 passed by the learned 9th Additional Motor Accident Claims Tribunal, Raipur (for short 'the Claims Tribunal') in Claim Case No.107/08 whereby the Claims Tribunal has partly allowed the claim for compensation of the claimant/appellant herein.

2. Facts of the case, in brief, are that on 30.5.2008 deceased Smt. Shanti Bai, wife of appellant, was travelling on Tata Pick-up DI bearing registration number CG04-J-9750 and going to her work place at Baldev Sponge Iron, Siltara from village Akoli. At about 7.45 a.m. when the said vehicle reached near Paper Mill Pond, Village Akoli, the offending vehicle

Tata pick-up turned turtle due to rash and negligent driving of the driver. Deceased Shanti Bai received grievous injuries and later succumbed to those injuries. The appellant, husband of deceased Shanti Bai, filed claim application seeking compensation to the tune of Rs.10,25,000/- under various heads on the ground that at the time of accident the deceased was earning Rs.128/- per day, however, on account of untimely demise of the deceased a loss of income has occasioned to him and therefore, he is entitled to the compensation as claimed by him.

3. Respondent No.1, driver of offending vehicle, filed his reply to the claim application and stated that at the time of accident, he was not driving the offending vehicle. Respondent No.2, owner of offending vehicle, has pleaded that at the time of accident the offending vehicle was insured with respondent No.3-Insurance Company. Rajesh Das, driver of offending vehicle, was having valid and effective driving license on the date of accident.

4. Respondent No.3 Insurance Company filed its separate reply and denied the claim of claimant/appellant. It has been pleaded that on the date of accident 25-30 passengers were travelling in the offending vehicle, whereas the offending vehicle was registered as a 'goods vehicle'. The driver at the time of accident had a license to drive only motorcycle with gear & light motor vehicles, whereas the offending vehicle was a 'goods vehicle'. Further, the vehicle has been plied without there being any valid permit. Thus, there was breach of conditions of insurance policy and therefore the insurance company is not liable for making payment of compensation, if any, to the claimant.

5. The Claims Tribunal after considering the pleadings and evidence placed on record (oral and documentary both) by the respective parties has partly

allowed the claim of the appellant and awarded compensation of Rs.3,12,000/- with interest @ 6% per annum to the claimant/appellant. However, the Claims Tribunal deducted 50% of amount of compensation on the ground that the appellant himself is an earning member and awarded him only Rs.1,58,000/- in total including funeral expenses.

6. While partly allowing the claim petition, learned Claims Tribunal made respondents No.1 & 2 liable to pay compensation to the claimant, jointly & severally, and exonerated the insurance company of its liability to satisfy the award on the grounds that on the date of incident the offending vehicle was carrying about 35 labourers; the vehicle was a commercial goods carriage vehicle but it was being driven without a valid permit and that the license issued to the driver of offending vehicle authorizes him only to drive motorcycle with gear & light motor vehicle and he was not authorized to drive the offending vehicle.

7. I have heard learned counsel for the claimant/appellant and perused the record.

8. Learned counsel for the appellant vehemently argued that the Claims Tribunal has assessed the monthly income of the deceased on lower side. The deceased was not merely an earning member of family working in one of the industries at Raipur, she also being a housewife was doing all the household works for keeping everything in house in order. The Claims Tribunal while assessing the compensation has not taken into consideration the overall facts. He further argued that the learned Claims Tribunal has illegally deducted 50% amount from the compensation calculated by it on the ground that the appellant himself was working as labourer, which is not permissible under the law. Lastly, it has been argued that learned Claims Tribunal has not awarded any amount towards future

prospects and under other conventional heads.

9. Perusal of FIR (Ex.P-2) would show that at the time of accident along with deceased several other persons were travelling on the offending vehicle and they have also sustained injuries. RC Book of the offending vehicle, fitness certificate (having validity upto 22.12.2008) and one driving license have been seized vide seizure memo (Ex.P-4). Permit was not produced by the respondent No.2. A glance of RC book would show that it is a "light goods vehicle" having seating capacity of three persons. The document Ex.D-2C is the verification issued by the Regional Transport Officer, Raipur with respect to driving license of respondent No.1 specifying that the license issued to respondent No.1 is for motorcycle with gear & light motor vehicle (pvt.) only. Thus, from the aforesaid material on record it is clear that the offending vehicle was being plied in breach of the conditions of the insurance policy and being so, the findings of the Claims Tribunal in this regard cannot be faulted with. As the offending vehicle was registered as 'goods carriage' and carrying passengers, this Court is not discussing the issue with respect to the authenticity of valid and effective driving license.

10. So far as the assessment of monthly income of the deceased is concerned, it is uncontroverted that the deceased was working as labour in Baldev Sponge Iron, Siltara and on the date of accident she was going to her place of work. The accident is of 30.5.2008 and therefore the wages, as pleaded by the appellant, cannot be said to be on higher side in view of the wage structure prevailing on the date of incident in the city of Raipur, which is not only a capital of Chhattisgarh but also an industrial city. This apart, the Claims Tribunal has not taken note of the fact that the deceased was not only an earning member but also a housewife who was

required to do various household works for keeping the house in order including cleaning of house, clothes & utensils, cooking etc. The value of service rendered by a housewife to her family members is very difficult to assess. Thus, the Claims Tribunal erred in assessing the monthly income of the deceased as Rs.3000/-, which needs to be enhanced.

11. Further, the Claims Tribunal has committed an error in deducting 50% from the total compensation assessed by it on the ground that the claimant/appellant was also earning as labourer. Said finding of the Claims Tribunal is not sustainable in the eyes of law because the income, if any, by each of the family members is to be enjoyed by all the family members except the cost of personal expenditure which are to be incurred on himself/herself. Therefore, the aforesaid finding of the learned Claims Tribunal is set aside.

12. In view of above discussions, this Court propose to recalculate compensation amount payable to the claimant/appellant.

13. On the date of accident, the deceased was 50 years old, which is also evident from her post mortem report. Apart from a earning member, she was also a housewife and required to do household works to keep the house in order. Thus, considering the aforesaid fact and keeping in mind the wage rate prevailing in the industrial city Raipur on the date of accident, the income of the deceased is assessed at Rs.4,000/- p.m. and by adding 25% towards future prospects, as held by the Hon'ble Supreme Court in the matter of National Insurance Company vs. Pranay Sethi & others reported in AIR 2017 SC 5157, the monthly income of the deceased is assessed at Rs.5,000/-. After deducting one-third towards the personal expenditure of the deceased, the loss of dependency would come to Rs.3,333/- (5000-1667) per month. Annual loss of dependency is

calculated at Rs.39,996/- (3333x12) and after applying multiplier of 13 to it, the total loss of dependency is calculated at Rs.5,19,948/- (39996x13). Besides this, an amount of Rs.70,000/- is also awarded towards conventional heads. The claimant/appellant, thus, become entitled to receive a total sum of Rs.5,89,948/- (519948+70000) as compensation for the death of deceased Smt. Shanti Bai in the motor accident. Now the appellant is entitled for a total sum of Rs.5,89,948/- as compensation instead of Rs.1,58,000/-. Any amount paid by respondents towards compensation shall be adjusted from the total amount of compensation as calculated above. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact.

14. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-