NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 558 OF 2012

1. Arjun Bisai, S/o Laxman Bisai, 37 Yrs. R/o Semra, P.S. Nagarnar, Distt. Bastar (C.G.)

2. Rajendra Kumar S/o Mahendra Singh Bisai, 22 Yrs. R/o Burandawada, Semra, P.S. Nagarnar, Distt. Bastar (C.G.).

---- Appellants

Versus

1. Balram S/o Harishchand Patel, 50 Years,

2. Smt. Amrit Bai, W/o Shri Balram Patel, 45 Yrs. Res. No. 1 & 2 R/o Vill. Puswada, P.S. Kanker, Distt. Kanker (C.G.).

3. United India Ins. Co. Ltd., Through Branch Manager, Near Anupama Talkies, Jagdalpur, Distt. Bastar (C.G.).

---- Respondents

For Appellants	:	Mr. Prafull N. Bharat with Mr. Keshav Dewangan, Advocate
For Respondents No. 1 & 2	:	Mr. Praveen Tulsyan, Advocate
For Respondent No. 3	:	Ms. Chitra Shrivastava, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

28/06/2018

1. By this instant appeal, the appellants, who are owner and driver of the motorcycle bearing registration No.CG17/E/4129 (offending vehicle) have challenged the legality and validity of the impugned award dated 24/02/2012 passed by the Motor Accident Claims Tribunal, Bastar at Jagdalpur, Chhattisgarh (hereinafter referred to as the 'Claims Tribunal') in Claim Case No.207/2010 wherein the learned Claims Tribunal has passed an award of Rs.3,28,000/- as compensation and fastened the liability on the appellants by exonerating the Insurance Company. During the pendency of the appeal, the claimants/

respondents No.1 and 2 have filed cross-appeal for enhancement of compensation from Rs.3,28,000/- to Rs.38,66,000/-.

2. The cross appeal is admitted with the consent of parties. It is within time.

3. Brief facts of the case, are that, on 06/08/2010, one Keshu Patel was travelling on a motorcycle as pillion rider with Rajendra Bisai and their other friends were travelling on the different motorcycles. All they were going to see flood of Joranala due to heavy rain. On the way, when they reached near Kasturi triangle road at about 11.00 AM, at that relevant time, respondent No.1 driving a motorcycle bearing registration No.CG17/E/4129 rashly and negligently, due to which, the said offending vehicle met with an accident by skidding on the road. In an aforementioned accident, one Keshu Patel sustained grievous injuries over head, chest and become unconscious and respondent No.1 also sustained injuries. During the course of treatment at Maharani Hospital, Jagdalpur, Keshu Patel succumbed to the injuries. A criminal case was registered against the respondent No.1 being Crime No.179/2010 for offence under Sections 279 & 304A of the IPC.

4. On account of untimely death of Keshu Patel, the claimants/respondents No.1 and 2 have filed a claim application under Section 166 of the Motor Vehicles Act, 1988 before the competent Claims Tribunal claiming total compensation of Rs.41,94,000/- from the appellants and respondent No.3.

5. The appellants have submitted their joint reply to the claim application and denied all the adverse claim made against them in the claim application by the claimants. They have pleaded that the deceased Keshu Patel was not sitting on the motorcycle driven by respondent No.1, but he was sitting as pillion rider on the motorcycle of Hiraram. They have further pleaded that the offending vehicle on the date of accident was insured with the respondent No.3/Insurance Company, therefore, the liability, if any, for payment of compensation was on the Insurance Company.

6. Respondent No.3/Insurance Company also submitted its reply and has taken a plea that on the date of accident, driver of the offending vehicle was not having a valid and effective driving licence to drive the vehicle and thereby there was violation of conditions of the insurance policy.

7. Learned Claims Tribunal on the basis of pleadings, evidence and material on record, has arrived at a conclusion that on the date of accident, the offending vehicle was insured with the respondent No.3 and after considering the insurance policy (Exhibit NA-1) has held that the owner of the motorcycle has not paid any premium for covering the risks of pillion rider, therefore, exonerated the Insurance Company from liability of payment of compensation.

8. Learned counsel appearing for the appellants submitted that on the date of accident, the offending vehicle was insured with the Insurance Company and they have also paid premium of Rs.50/- towards Compulsory PA to Owner-Driver, which covers the claim to the extent of Rs.1,00,000/- in case of accident. Therefore, the Insurance Company is liable for payment of compensation to the extent of Rs.1,00,000/-.

9. Per contra, learned counsel appearing for the respondent No.3/Insurance Company submitted that from perusal of insurance policy (Exhibit NA-1), it is evident that the policy was issued for the offending motorcycle with "Motorcycle/Scooter Liability only Policy". He further submitted that Rs.300/- towards basic premium and Rs.50/- towards premium for Compulsory PA to Owner-Driver was paid, but no amount has been paid towards premium for the pillion rider, therefore, the Insurance Company is not liable for payment of compensation, if any.

10. Similar issue arose before the Hon'ble Supreme Court in the matters of ***Oriental Insurance Co. Ltd. v. Sudhakaran K.V. and Others*** reported in ***II (2008) ACC 849 (SC)*** and ***General Manager, United India Insurance Co. Ltd. v. M. Laxmi and Others*** reported in ***2009 ACJ 104***, in which, their Lordships of the Supreme

Court have held that in case of vehicle insured with act only policy, which is a statutory policy, then the Insurance Company will have no liability to compensate the injured or deceased travelling as pillion rider on two wheeler unless the requisite amount of premium is paid for covering his/her risk.

11. Considering the facts of the case in hand in view of aforementioned judgments passed by Hon'ble Supreme Court in the matters of ***Sudhakaran K.V.*** and ***M. Laxmi***, (supra) that the policy is liability only policy, no premium for pillion rider was paid and deceased was occupant of vehicle, I do not find any force in the arguments of the learned counsel for the appellants. The findings arrived at by the learned Claims Tribunal with regard to fastening liability upon the appellants for payment of compensation and exonerating Insurance Company from its liability to pay compensation cannot be said to be erroneous and illegal. In the facts and circumstances of the case, the learned Claims Tribunal has rightly decided the issue with regard to fastening of the liability for payment of compensation upon the appellants.

12. Now, considering the cross-objection filed by the claimants/respondents No. 1 and 2. If the impugned award is considered, it would reveal that the learned Claims Tribunal disbelieving the income of the deceased as pleaded and stated in evidence, has assessed the income of the deceased as Rs.3,000/- per month and by deducting 1/3rd towards personal expenses held the annual loss of dependency of the claimant assessed as Rs.24,000/-. The learned Claims Tribunal applied the multiplier of 13 considering the age of the claimants and further awarded Rs.60,000/- towards other conventional heads and thereby the total compensation was awarded to the claimants as Rs.3,28,000/-.

13. Learned counsel for the respondents No. 1 & 2 submitted that the learned Claims Tribunal committed an error in assessing the income of the deceased as the deceased was engaged in the business of Grocery Shop and his income ought to have been taken as Rs.4,000/- per month. He further submitted that the

learned Claims Tribunal committed error in applying the multiplier of 13 instead of 18 and awarded meager amounts towards other conventional heads. He lastly submitted that the Claims Tribunal committed error in not awarding any amount towards future prospects and it needs to be enhanced suitably.

14. Per contra, learned counsel for the appellants submitted that the Claims Tribunal has rightly assessed the income of the deceased and the amount awarded towards compensation was just and proper.

15. Considering the facts of the case and by applying the law laid down 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***, the learned Claims Tribunal has erroneously deducted 1/3rd towards personal expenses, because the Hon'ble Supreme Court in the aforementioned judgment, has held that deduction towards personal expenses in case of bachelor would be 50% of the income.

16. In the matter of ***National Insurance Company Limited v. Pranay Sethi and others*** reported in ***AIR 2017 SC 5157***, the Hon'ble Supreme Court has held that the persons who are in self employment are also entitled for future prospects and the persons, who are below the age of 40 years are entitled for additional 40% of the proved monthly income towards loss of future prospects, which was not awarded by the learned Claims Tribunal and also fixed the compensation towards conventional heads as Rs. 70,000/- (including Rs. 30,000/- towards loss of consortium).

17. In another judgment passed by Hon'ble Supreme Court in the matter of ***Amrit Bhanu Shali and Others v. National Insurance Company Limited and Others*** reported in ***(2012) 11 SCC 738***, while dealing the issue of application of multiplier in case of death of a bachelor, the Supreme Court has held that multiplier is to be applied only on the basis of the age of deceased.

18. Recently, in the matter of ***Sube Singh and Others v. Shyam Singh (dead) and Others*** reported in ***2018 (3) SCJ 269***, this ratio has been applied by the Hon'ble Supreme Court for applying the multiplier in an identical situation, which reads as follows:-

> "4. On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of ***Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Anr., (2015) 2 SCC 180*** held that multiplier 14 will be applicable in the present case, keeping in mind the age of the arents of the deceased. The legal position, however, is no more *res integra*. In the case of ***Munna Lal Jain and Anr. v. Vipin Kumar Sharma and Ors., (2015) 6 SCC 347*** decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants. We may usefully refer to the exposition in paragraph Nos. 11 and 12 of the reported decision, which read thus:
>
> > *"11. The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependents or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three Judge Bench decision in Reshma Kumar (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependents is concerned, there will always be room for dispute as to whether the age of the eldest or*

youngest or even the average etc. is to be taken.
To quote …..............................”

19. In view of the law laid down by the Hon’ble Supreme Court in aforementioned cases, if the award passed by the learned Claims Tribunal is tested, then it would reveal that the Claims Tribunal has committed error in calculating the compensation and awarded less compensation to the claimants/respondents No. 1 & 2. Though, the learned Claims Tribunal looking to the place of business has correctly assessed the monthly income of the deceased on the date of accident, which is of the year 2010. In view of the discussions made hereinabove, the amount of compensation awarded requires modification and is recalculated as under:-

The learned Claims Tribunal taken the income of the deceased as Rs.3,000/- per month and by adding 40% towards loss of future prospects, the total monthly income of the deceased would be assessed as Rs.4,200/- per month and yearly income would be Rs.50,400/-. After deducting 50% amount towards his personal expenses, the annual loss of dependency comes to Rs.25,200/-. At the time of accident, the deceased was aged about 22 years, multiplier of 18 would be applicable in the present case. After applying the multiplier of 18, the total loss of income comes to Rs.4,53,600/-. In addition to the aforesaid amount of compensation, the claimants are also entitled for further amount towards conventional heads i.e. Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, the claimants are entitled for total compensation of Rs.4,83,600/-.

20. In view of the aforementioned recalculation, the claimants/respondents No.1 and 2 are entitled for total compensation of Rs.4,83,600/- on account of death of Keshu Patel instead of Rs.3,82,000/- as awarded by the learned Claims Tribunal. This amount of compensation shall carry interest @ 6% per annum as awarded

by the learned Claims Tribunal from the date of filing of the claim application till its realization.

21. Learned counsel for the claimants/respondents No. 1 & 2 submitted that on the date of filing of claim application, the claimants were aged about 50 and 45 years respectively and looking to their present age, the condition imposed by the learned Claims tribunal for depositing 80% of the amount of compensation for 7 years in Nationalized Bank may be modified.

22. Considering the entire facts and circumstances of the case, particularly, considering the fact that the old age persons are required more amount for their survival apart from their bread and butter, with usual requirement of life, they have to bear additional expenses towards medical treatment and other services. Therefore, it is directed that 50% of the awarded amount be deposited in the Nationalized Bank for a period of 5 years and remaining 50% of the awarded amount should be disbursed to the claimants. The other conditions imposed by the learned Claims Tribunal shall remain intact.

23. In the result, the appeal filed by the appellants/owner and driver is dismissed being devoid of merit and the cross-objection filed by the claimants/respondents No.1 and 2 is allowed in part and the award impugned stands modified to the extent indicated herein-above.

24. No order as to costs.

Sd/-

(Parth Prateem Sahu))
Judge

Yogesh