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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 444 of 2013

- Shri Ram General Insurance Company Ltd. Thru- Regional Manager/Regional Office, R/o Plot No. 8, Sandhya Prakash Press Road, Malviya Nagar, Bhopal, Tahsil amd district- Bhopal M.P., At Present R/o Shriram Transport Finance Co.Ltd., Raipur, Tah. And Distt. Raipur, Chhattisgarh (Insurer of vehicle truck No.CG 04 J- 1962) **(Non-applicant No.3)** **---- Appellant**

Versus

1. Smt. Meena Sahu, W/o Late Khemraj Sahu Aged About 28 Years
2. Pawan Kumar Sahu S/o Late Khemraj Sahu Aged About 10 Years
3. Ku. Pooja Sahu D/o Late Khemraj Sahu Aged About 7 Years
   Respondents 2 and 3 Minors Thru- Mother Smt. Meena Sahu, w/o late Khemraj Sahu
4. Smt. Teejan Bai Sahu W/o Itwari Ram Sahu Aged About 60 Years
   All R/o Kachna, Post-Saddhu, P.S., Tah. And Distt. Raipur, Chhattisgarh
   Claimants
5. Jashvinder Singh @ Shinda S/o Jagtar Singh Aged About 35 Years R/o Qtr.No. 495, Slice-1, Tatibandh, P.S. Amanaka, Raipur, Tah. And Distt. Raipur C.G., Working And Employment Place C/o Nihal Singh S/o Mansingh, T.P. Nagar, G.E. Road, Telibandha, Tah. And Distt. Raipur, Chhattisgarh (Driver of vehicle truck No.CG 04 J- 1962)
   Non-applicant No.1
6. Nihal Singh S/o Man Singh R/o Transport Nagar, G.E. Road, Telibandha, P.S. Telibandha, Raipur, Tah. And Distt. Raipur, Chhattisgarh (Owner of vehicle truck No.CG 04 J- 1962) **Non-applicant No.2**
7. Rajjak Ali S/o Late Matlus Ali R/o Shanti Nagar, Rajatalab, Near Gopal Kirana Stores, Raipur, Tah. And Distt. Raipur, Chhattisgarh (Owner of vehicle bus No.CG 04 E- 0971) **Non-applicant No.4**

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate.
For Respondents- 1 to 4	:	Shri Shivendu Pandya, Advocate
For other Respondents	:	None appears.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

08.05.2019

1. Appellant/Insurance Company preferred this appeal challenging the impugned award dated 29.01.2013 passed by learned Second Additional Motor Accident Claims Tribunal, Raipur (for short, 'Claims Tribunal') in

Claim Case No.54 of 2012 wherein learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.10,95,136/- as compensation in a death case.

2. Brief facts for disposal of this appeal are that on 09.12.2010 Khemraj was driving Bus bearing No. CG4E-0971 and going to Raipur from Jagdalpur. When the Bus reached near village Parchanpal at about 6 am, at that relevant time, one truck bearing No.CG 04J-1962 (offending truck) driven by respondent- 5/non-applicant-1 dashed Bus driven by Khemraj, due to which he sustained injuries over his person. He was taken to Maharani Hospital at Jagdalpur, where during course of treatment, he succumbed to injuries sustained by him. Matter was reported to concerned Police Station and Crime No.556 of 2010 was registered for commission of offences punishable under Sections 279, 337 and 304A IPC.

3. Claimants/ respondents- 1 to 4 filed claim application before competent Claims Tribunal seeking compensation of Rs.22,28,000/- from driver, owner and Insurance Company on the ground that at the time of accident, age of deceased- Khemraj was 30 years and was drawing salary of Rs.8,000/- per month and Rs.200/- as daily allowance. Respondents- 1 and 2 even after service of notice, did not appear before learned Claims Tribunal and remained *ex-parte*.

4. Insurance Company submitted its reply to claim application and denied contents of claim application against Insurance Company. It was also pleaded that on the date of accident, driver of offending truck was not

possessing valid and effective driving license, further there was no fitness and permit for plying offending truck. It has also been pleaded that on the date of accident Bus driver Khemraj was not possessing a valid and effective driving license to drive that vehicle.

5. Respondent- 7, owner of Bus submitted reply to the claim application and pleaded that on the date of accident, deceased was having license for plying bus on Jagdalpur- Raipur road. He further pleaded that Bus was insured with appellant- Insurance Company and it was being plied in accordance with terms and conditions of Insurance policy therefore, liability if any, will be on the Insurance Company.

6. Learned Claims Tribunal while appreciating pleadings available on record, had held that accident took place due to rash and negligent driving of offending truck by its driver; there ws no violation of conditions of Insurance Policy; and deceased- Khemraj (driver of Bus) was possessing a valid and effective driving license on the date of accident to drive the Bus and awarded a total sum of Rs.10,95,136/- as compensation.

7. Learned counsel for appellant/Insurance Company submitted that learned Claims Tribunal committed error in holding income of deceased at Rs.8,000/- per month, only on the basis of pleading and oral evidence lead by the claimants and further that as there was head on collusion between two motor vehicles, there was contributory negligence on the part of deceased also, but it was not taken into consideration by learned Claims Tribunal.

8. Per contra, learned counsel appearing for claimants argued that learned Claims Tribunal rightly assessed income of deceased as Rs.8,000/- per month. He further argued that deceased was a driver working in a bus that too plying on a National Highway, therefore, looking to his ability and responsibility towards passengers, salary is to be given for his expertise to drive the Bus on National Highway. Learned Claims Tribunal committed no error in holding income of deceased at Rs.8,000/- per month in the facts of the case. He further argued that appellant/ Insurance Company not lead any evidence to prove the fact of contributory negligence on the part of deceased- Khemraj, driver of Bus.

9. I have heard learned counsel for the parties, perused records. So far as first ground raised by learned counsel for the appellant with respect to assessment of income of deceased at Rs.8,000/- per month is concerned, it is not in dispute that deceased was working as driver of bus involved in accident. The Bus which deceased was driving on the date of accident was a passenger bus and in its registration certificate, it was shown as 'Deluxe Bus'. Looking to the contents of registration certificate available on record, Bus being shown as Deluxe Bus is a special type/ category of passenger vehicle. Owner of Bus who ply a Deluxe Bus on National Highway and having its permit would definitely engage a driver having good experience and skill to ply it safely, so that passengers travelling in it do not face any risk and also to keep the Bus which is a commercial vehicle in a good condition. Looking to engagement of deceased- Khemraj as driver in a luxurious Deluxe Bus to ply it on a National Highway, it cannot be said that learned Claims Tribunal assessed

income of deceased at Rs. 8,000/- per month on higher side. Even otherwise, nature of work that deceased was engaged in comes within the category of skilled labour. Accident is of year 2010 wherein even the wages of labour within municipal limits cannot be less than Rs.4,000/- per month.

10. Looking to amount of compensation, as awarded by Claims Tribunal from other angle that whether compensation amount awarded by learned Claims Tribunal is just and proper or not, I have perused the computation of award made by learned Claims Tribunal. Tribunal has not awarded any amount towards future prospects, even after considering age of deceased as 30 years on the date of accident. Hence, claimants will also be entitled for an addition of 40% of the income of deceased towards future prospects as held by the Hon'ble Supreme Court in the matter of **National Insurance Company Vs Pranay Sethi** reported in 2 AIR 2017 SC 5157, wherein the persons who are self employed or working on fixed pay and below 40 years are held to be entitled for an additional sum of 40% of the income towards future prospects. The Claims Tribunal has not awarded any amount towards future prospects and only Rs.7,000/- is awarded towards other conventional heads.

11. The object of the Act is to award just and proper amount of compensation to the injured or claimants/Lr's of the deceased.

12. Taking into consideration overall facts and circumstances of case and engagement of deceased as driver which is not disputed by learned counsel for appellant/ Insurance Company, in my considered opinion,

learned Claims Tribunal awarded just and proper compensation which needs no interference by this Court.

13. So far as other ground raised by learned counsel for the appellant that deceased being driver of vehicle which involved in the accident, there is contributory negligence on the part of deceased is concerned, learned Claims Tribunal committed error in not assessing percentage of contributory negligence on the part of deceased. Perusal of records would show that appellant/ Insurance Company has not led any evidence nor produced any witness before learned Claims Tribunal in support of its contention of contributory negligence.

14. Hon'ble Supreme Court while considering the issue of contributory negligence in the matter of **Jiju Kuruvila and others Vs Kunjujamma Mohan and others** reported in **(2013) 9 SCC 166**, 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. In another judgment rendered by Hon'ble Supreme Court in the matter of **Minu Rout and another Vs Satya Pradyumna Mohapatra and others 2013** reported in **AIR SCW 5375**, 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."

16. It is a settled law that contributory negligence is a fact which requires to be proved by the parties asserting it. Mere involvement of two vehicles cannot lead to contributory negligence of 50% each of both

drivers involved in the accident. In view of this, as no evidence was produced by the appellant there is no force in argument raised by learned counsel for the appellant.

17. I do not find any substance or merit in this appeal filed by appellant/ Insurance Company, in view of aforementioned discussion.

18. Appeal is devoid of merit. Accordingly, it is liable to be and is hereby dismissed.

19. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

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