AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 863 of 2013

The Oriental Insurance Co. Ltd. Thru- The Branch Manager, Branch Office Madina Building, Kachahari Chowk, Raipur C.G.

---- Appellant

Versus

1. Ishwari Bai Wd/o Late Arjun Sahu Aged About 32 Years.
2. Rudranath Sahu S/o Late Arjun Sahu Aged About 10 Years.
3. Mansi Sahu D/o Late Arjun Sahu Aged About 12 Years.
4. Jyoti D/o Late Arjun Sahu Aged About 14 Years.
5. Rakeshwari Sahu D/o Late Arjun Sahu Aged About 17 Years.

All from Sl No.2 to 5 Minor, Thru- Mother Smt. Ishwari Bai.

6. Raja Ram Sahu S/o Jagat Ram Aged About 65 Years.
7. Smt. Mutana Bai W/o Raja Ram Sahu Aged About 62 Years.

All R/o. Village And Post- Chicholi, Thana- Kharora, Distt. Raipur C.G.

8. Manharan Chouhan S/o Ramsai Chouhan Aged About 38 Years R/o Lebour Colony, Jamul, Thana- Jamul, Distt. Durg C.G., Another Address- Serve Under Surendra Singh S/o Gurucharan Singh, Age- 55 Yrs, R/o Santra Bari, Thana- Mohan Nagar, Durg, Distt. Durg C.G.
9. Surendra Singh S/o Gurucharan Singh Aged About 55 Years R/o Santra Bari, Thana- Mohan Nagar, Durg, Distt. Durg C.G.

---- Respondents

For Appellant	:	Shri N.K. Malaviya, Advocate
For Respondent No.1 -7/claimants	:	Shri Amiyakant Tiwari, Advocate.
For Respondent Nos.8 & 9	:	None.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

15/05/2019

1 Appellant Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the award dated 24.6.2013 passed by learned 7th Additional Motor Accident Claims Tribunal, Raipur (for short 'the Claims Tribunal") in Claim Case No.3/13 whereby the Claims Tribunal partly allowed claim application of claimants, awarded total compensation of Rs.16,72,200/- along with interest @ 6% p.a. and fastened liability upon appellant herein to pay the amount of compensation.

2 Claimants/respondent No.1 to 7 have also filed a cross-objection seeking enhancement of compensation awarded by the Claims Tribunal on the grounds that on the date accident deceased Arjun Sahu was working as "fitter" with M/s Jai Ma Amba Construction Company and getting salary of Rs.11,300/- per month, the Claims Tribunal not awarded any amount towards future prospects and the amount awarded under other conventional heads are on lower side.

3 Brief facts necessary for disposal of this appeal are that on 05.11.2015 at about 3:30 pm Arjun Lal (deceased) alongwtih one Tiharu Ram Sahu (pillion rider) was returning his home from Simga on his motorcycle bearing registration No.CG04/CJ/3923, (for short 'the motorcycle') when he reached near National Highway Bilaspur to Raipur at village- Bemta Gadriya Nala, one Truck bearing registration No.CG07-CA-4671, (hereinafter shall be referred to as "the offending vehicle"), driven by its

driver i.e. respondent No.8-Manharan Chouhan, dashed against his motorcycle, on account of which they fell down and sustained grievous injuries. Arjun Sahu (driver) succumbed to those injuries on spot. Matter was reported to Police Station – Simga based on which Crime No.324/2012 under Sections 279, 337, 338 & 304-A of the Indian Penal Code was registered against driver of offending vehicle ie. respondent No.8-Manharan Chouhan.

4 Respondent Nos. 8 & 9/ Non-applicants No.1 & 2 driver and owner of offending vehicle, submitted their reply to claim application and denied all adverse averments made in claim application. They further pleaded that their vehicle was not involved in accident in question and as on the date of accident it was insured with appellant/Insurance Company, therefore, liability, if any would be of insurance company.

5 Appellant/Insurance Company also submitted reply to claim application and denied all adverse pleadings made in claim application. It was pleaded that on the date of accident, motorcycle was driven by deceased (Arjun Sahu) without having valid and effective driving license. Driver of offending vehicle was also not having valid and effective driving license. As the offending vehicle was plied in breach of condition of insurance policy, therefore, the insurance company is not liable to indemnify insured.

6 Learned Claims Tribunal while appreciating pleadings and evidence available on record, allowed claim application in part, awarded a total sum of Rs.16,72,000/- as compensation to claimants by taking income of

deceased as Rs.11,300/- per month and fastened liability on insurance company on the ground that there was no violation of any of the conditions of insurance policy.

7 Appellant Insurance Company has challenged impugned award mainly on the ground that the Claims Tribunal erred in relying upon evidence of Tiharuram (AW-2) and treating him as eyewitness to the accident for involvement of alleged offending vehicle/truck in question. Appellant Insurance Company also took a ground along with other grounds that claimants failed to prove rash and negligent driving of offending vehicle by its driver and also involvement of the vehicle in accident by cogent evidence.

8 Learned counsel for respondent No.1 to 7/claimants submits that though the Claims Tribunal assessed income of deceased in proper manner, but failed to award any amount towards future prospects. The Claims Tribunal has also not awarded adequate amount under other conventional heads. He further submits that the Claims Tribunal committed error in deducting one-fourth instead of one-fifth of assessed income of deceased towards his personal and living expenses ignoring number of claimants, who are seven.

9 Learned counsel for the appellant argued that cross-objection filed by respondent claimants under Order 41 Rule 22 of CPC is not maintainable. He submitted that the Act of 1988 specifically provides that all the provisions of CPC are not applicable and further by referring Rule 240 of CG Motor Vehicles Rules, 1994 it is submitted that in Rule

240 of Rules, 1994 applicability of Order 41 of CPC has not been provided. He further argued that under the Act of 1988 there is no provision for filing of cross-objection and therefore cross-objection filed by respondent claimants is liable to be dismissed. He further argued that the Claims Tribunal has held involvement of offending vehicle in question only on the basis of evidence of AW-2, who in his evidence had stated that after accident, he became unconscious. Therefore, AW-2, who lodged FIR, failed to prove contents of FIR. On the strength of aforesaid argument, it is submitted that accident did not take place with the offending vehicle insured by it. Hence, he prays for dismissal of claim application itself. He refers to judgment passed by Hon'ble Supreme Court in **Lata v. United India Insurance Company Ltd. & ors** reported in **2005 (2) TAC 902.**

10 So far as first argument raised by learned counsel for the appellant insurance company that cross-objection filed by respondent claimants is not maintainable as provision of Order 41 of CPC has not been made applicable under Rule 240 of the Rules, 1994 is concerned, perusal of Rule 240 of the Rules, 1994 would reveal that a procedure has been prescribed therein to be followed by Claims Tribunal in holding inquiries. Rule 240 does not in any manner affect procedure and proceedings before High Court which is an appellate Court. Rule 242 provides for a format of appeal and contents of memorandum of appeal. Sub-rule (3) of Rule 242 specifically provides that provision of Order 41 of First Schedule of CPC shall apply *mutatis mutandis* to appeals preferred to the High Court under Section 173 of the Act of 1988. The Rules of 1994

specifically provides that provisions of Order 41 of CPC will apply to appeals preferred before High Court under Section 173 of the Act of 1988 and there is no exclusion of Rule 22 of Order 41 of CPC and therefore the ground raised by learned counsel for the appellant that cross-objection filed by claimants under Order 41 Rule 22 of CPC is not maintainable is not sustainable. Judgment relied upon by learned counsel for appellant insurance company **Lata** (supra) in this regard is of no help because it being distinguishable on facts. In the said case, as there was no provision under the Himachal Pradesh Motor Vehicles Rules, 1999 with respect to applicability of Order 41 of CPC to appeals filed under the Act of 1988, therefore, cross-objection filed by claimants under Order 41 of CPC seeking enhancement of compensation, has been held to be not maintainable. In the case at hand, the Rules of 1994 specifically provides for applicability of Order 41 of CPC in appeals under Section 173 of the Act of 1988 to High Court, therefore, aforementioned judgment relied upon by learned counsel for the appellant is misplaced.

11 Impugned award is also assailed on the ground that the Claims Tribunal erred in relying upon evidence of AW-2 Tiharuram, who is only witness of accident and stated about involvement of offending vehicle bearing No.CG07-CA-4671 (truck). I have perused contents of FIR (Ex.P-1) in which it has been very specifically mentioned that when Tiharuram was traveling as pillion rider along with deceased on motorcycle, one truck came from opposite direction and dashed motorcycle. It is also mentioned that after the accident, truck driver fled from the spot leaving truck. Perusal of Ex.P-1 further shows that FIR was lodged within one &

half hour of accident. It is not a hit & run case, but it is a case where after accident the driver of truck left the truck on spot and ran away from there. The contents of FIR was not denied by appellant nor they have brought any evidence contrary to it. From the facts emerging from the contents of FIR (Ex.P-1), this ground raised by learned counsel for appellant that as Tiharuram (AW-2) became unconscious due to accident, therefore, he cannot tell registration number of truck and as such, the vehicle in question has been falsely involved in the accident, is not sustainable. In the facts and circumstances of case, which are clear from FIR (Ex.P-1) lodged immediately after accident mentioning that driver left truck on spot and ran away. Meaning thereby, the truck was found standing at the spot and therefore statement of AW-2 Tiharuram disclosing number of truck causing accident does not appear to be suspicious or afterthought. Even seizure memo (Ex.P-4) shows that truck bearing No.CG07/CA/4671 has been seized from the place of accident.

12 In view of above documentary evidence available on record i.e. Ex.P-1 & P-4, showing seizure of offending truck from the spot itself, the ground raised by learned counsel for the appellant that accident was not caused by offending vehicle is not sustainable and is hereby repelled.

13 As regards the oral objection raised by learned counsel for appellant that cross-objection is liable to be dismissed on account of delay and laches. Since this Court vide order dated 22.4.2014 has already condoned the delay in preferring cross-objection, this ground has become infructous.

14 In view of above, I am of the considered view that Claims Tribunal has not committed any error in holding that accident took place due to rash and negligent driving of driver of offending vehicle bearing registration No.CG07-CA-4671. The finding recorded by Claims Tribunal is based on proper appreciation of facts and evidence available on record and the same does not call for any interference. Hence, the appeal filed by appellant insurance company is liable to be and is hereby dismissed.

15 Since the appeal filed by appellant-Insurance company is dismissed, therefore, now this Court will consider the cross-objections filed by the claimants in the above mentioned appeal.

16 In the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **2009 (6) SCC 121** and relied upon in **National Insurance Co. Ltd. v. Pranay Sethi reported in (2017) 16 SCC 680** the Hon'ble Supreme Court has held that personal and living expenses is to be deducted on the basis of number of claimants dependent upon the deceased. In case at hand, dependents of deceased are seven in number i.e. widow, four children and age old parents of deceased. Thus, keeping in view number of dependents, in the considered opinion of this Court, appropriate deduction towards personal & living expenses would be one-fifth and not one-fourth, as done by the Claims Tribunal.

17 Next ground raised by learned counsel for claimants/cross-objector is that Tribunal committed error in not awarding any amount towards future prospects. Issue with respect of award of future prospects has been

dealt with and decided in the matter of **Pranay Setthi (Supra)** wherein Hon'ble Supreme Court has held that in case the deceased, victim of motor accident, was self-employed or on a fixed salary and below the age of 40 years, an addition of 40% of actual income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus;-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

18 Indisputably, in case at hand, deceased was aged about 35 years and employed with a Contractor and getting fixed salary of Rs.11,300/- per month and therefore, this Court is of the considered opinion that claimants are entitled for an addition of 40% of assessed income i.e. Rs.11,300/-. By adding 40% to establish income which comes to Rs.4,520/- (11,300x40/100) and thereby total monthly income of deceased will be Rs.15,820/- (11300+4520), yearly income of deceased would come to Rs.1,89,840/- (15820x12) and after deducting 1/5th towards personal and living expenses of deceased, yearly dependency would come to Rs.1,51,872/-.

19 On the date of accident deceased was aged about 35 years, as mentioned in postmortem report vide Ex.P-5, therefore, appropriate multiplier applicable would be 16. By applying multiplier of 16, total loss

of dependency/ Income comes to Rs.24,29,952/- (151872X16). Claimants/cross-objector are also entitled for a lump sump amount towards Rs,70,000/- under other conventional heads.

20 In view of the above, now the claimants will be entitled for additional sum of Rs.24,99,952/-, instead of Rs.16,72,000/- as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rests of the conditions of impugned award shall remain intact.

21 In the result;

- Appeal filed by appellant insurance company is dismissed.
- cross-objection filed by claimant/respondent No.1 to 7 is allowed in part and the impugned award stands modified to the extent a indicated above.

Sd /-

(Parth Prateem Sahu)
Judge

Jamal