AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 342 of 2013

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

---Appellant

Versus

1. Birendra Kumar Sahu S/o Dashrath, Aged About 42 Years, Caste Teli,

2. Smt. Sona Bai W/o Birendra Kumar Sahu, Aged About 37 Years

3. Shri Dashrath Sahu S/o Late Sukhram Aged About 67 Years

4. Smt. Fagni Bai W/o Dashrath Aged About 60 Years

   All are R/o Present Add. Village- Parsoda, P.O. Danganiya, Tah. Gundardehi, P.S. Anda, Distt. Durg C.G.

5. Rajendra Kumar @ Ekhttar S/o Abhiman Aged About 48 Years, Occupation Driver, At- Opp. Gurudwara, Tabler Sed, Ward No. 4, Dallirajahara, Distt. Durg C.G.

6. Manish Travels, Main Road, Pulgaon, Durg, Distt. Durg C.G.

---- Respondents

For Appellant	Shri R.N. Pusty, Advocate.
For Respondent Nos. 1 & 2	Shri C.P. Soni, Advocate.
For Respondent Nos. 3 to 6	None.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

10/04/2019

1. This appeal is by the Insurance Company/non-applicant no.3 against the award dated 02.01.2013 passed by the 6th Additional Motor Accident Claims Tribunal, Durg, District

Durg, C.G. in Claim Case No.89/2011 awarding total compensation of Rs.5,69,600/- with interest @ 6% per annum from the date of application till realization, fastening liability on the Insurance Company i.e. appellant/non-applicant no.3 along with non-applicants no. 1 & 2 jointly and severally.

2. As per claim petition, on 09.06.2011 deceased Jiteshwar @ Jeetu Sahu, aged about 16 years, earning Rs.5,000/- per month as conductor was travelling in the offending vehicle bus bearing registration no.CG07-E-9997. However, due to rash and negligent driving of the said vehicle by non-applicant no.1, the deceased fell down from the vehicle, suffered grievous injuries and died on the spot itself. At the time of accident, vehicle was owned by non-applicant no.2 and insured with non-applicant no.3/appellant herein.

3. On claim petition being filed by the claimants i.e. parents and grand parents of the deceased under Section 166 of the Motor Vehicles Act to the tune of Rs.35,20,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

4. Learned counsel for the appellant submits that at the time of accident deceased was a minor child and, therefore, he cannot be engaged as conductor as per law and was not eligible to work as a conductor. He further submits that

learned Tribunal ought to have held that the insured vehicle was plying in contravention of permit, inasmuch as no special permit was issued for carrying of Barati. As such there was breach of policy conditions. He also submits that deceased who was said to be working as conductor had contributed to the accident. As such, the learned Tribunal ought to have held that deceased himself was thrown off the vehicle because of his own negligence and there was contributory negligence on the part of the deceased. Further, learned Tribunal has wrongly considered 50% future prospect whereas it should have been 40% as per the judgment of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.*** The income of the deceased considered and the multiplier applied by the Tribunal are also on the higher side which need to be reduced suitably.

5. Learned counsel for the respondent nos. 1 & 2 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

6. Heard learned counsel for the parties and perused the material available on record.

7. As regards the issue of permit, as per Ex.D-4(C) the offending vehicle was having a permit which was valid from

25.10.2006 to 24.10.2011 for the route from Durg to Narayanpur via Balod, Dallirajhara, Dondi, Bhanupratappur, Antagarh and back. The said permit has been duly proved by NAW-3 Ramchandra Kunjum, AG-3 in the office of Regional Transport, Raipur on behalf of Insurance Company. In this case, the accident occurred on 09.06.2011 which was within the validity of the permit. It is not in dispute that the accident occurred at village Sakharitola, Nalapuliya, while the vehicle carrying passengers was returning from Rajhara to Rajnandagon. NAW-3 Ramchandra Kunjam in his evidence has nowhere stated that the place of occurrence does not fall within the route granted for plying the vehicle under the permit Ex.D-4(C). As per Ex.P-2 i.e. police inquiry report, the place of occurrence falls within the jurisdiction of police Rajhara, District Durg (now district Balod) and according to the permit Ex.D-4(C) the offending vehicle was allowed to be plied from Durg to Narayanpur via Balod, Dallirajhara, Dondi, Bhanupratappur, Antagarh and back. In these circumstances, it cannot be said that the offending vehicle was being plied in violation of the terms and conditions of the permit on the date of accident. Therefore, the contention raised by the appellant/Insurance Company in this regard being without any substance is hereby rejected.

8. So far as contributory negligence on the part of the

deceased is concerned, as per Ex.P-4 merg intimation in respect of death of the deceased was lodged and after inquiry FIR Ex.P-3 was registered against non-applicant no.1 under Section 304A of IPC. After investigation, the police filed final report under Section 304A of IPC against non-applicant no.1 for rash and negligent driving which resulted in death of the deceased. AW-1 Birendra Kumar Sahu, father of the deceased has proved the documents from Ex.P-1 to Ex.P-11 and these documents remain unchallenged in cross-examination. Though, the Insurance Company has taken the plea that the deceased was negligent and contributed to the accident but no evidence in this regard has been adduced by the Insurance Company to substantiate its pleading. It is a well settled principle of law that while deciding claim cases which are civil in nature, strict rule of evidence is not to be insisted upon and it has to be decided on the preponderance of probabilities. Therefore, considering the facts and circumstances of the case, the manner in which the accident occurred, the oral and documentary evidence available on record, there being no evidence adduced by the Insurance Company with regard to contributory negligence on the part of the deceased, this Court is of the opinion that the Tribunal was justified in not holding contributory negligence on the part of the deceased.

9. So far as the contention of the appellant that the deceased

being a minor child cannot be engaged as conductor is concerned, though the age of the deceased on the date of accident was 16-17 years, however, no such objection was raised by the non-applicants in the written statement. Therefore, the said contention being without any substance is hereby rejected.

10. So far as quantum of compensation is concerned, the Tribunal considering the fact that there is no evidence regarding the income of the deceased on notional basis assessed his income as Rs.100/- per day as per minimum wages and considering the working days 26 computed his income as Rs.2,600/- per month i.e. 31,200/- per annum. True it is that the claimants have pleaded that the deceased was earning Rs.5,000/- per month as conductor but no documentary evidence in support thereof has been adduced by them and, therefore, the Tribunal was justified in assessing his income on notional basis @ of Rs.100/- per day. However, the Tribunal has committed an error in assessing per month income of the deceased as Rs.2,600/- per month after excluding 4 days as non-working days, therefore, the income of the deceased is considered as Rs.3,000/- per month. The Tribunal has also committed an error in granting 50% future prospect to the claimants whereas considering the age of the deceased i.e. 16 and the law laid down in Pranay Sethi (supra), it should have been 40%. Thus, keeping in view the

decisions of Hon'ble Supreme Court in the matter of ***Smt. Sarla Verma and other vs. Delhi Transport Corporation and another, (2009) 6 SCC 121*** and Pranay Sethi (supra), the claimants are held entitled for compensation in the following manner:

S.I. No.	**Heads**	**Calculation (in rupees)**
1.	Income of the deceased @ Rs.3,000/- for 30 days.	Rs.36,000/- per annum
2.	40% of (i) above to be added towards future prospects.	Rs.14,400/- Rs.36,000 + Rs.14,400 = Rs.50,400/-
3.	½ deduction towards personal and living expenses of the deceased	Rs.25,200/-
4.	Multiplier of 18 to be applied	Rs.4,53,600/-
5.	Towards loss of estate and funeral expenses	Rs.30,000/-
	Total compensation	**Rs.4,83,600/-**

9. On the basis of aforesaid discussion, it is held that claimants are held entitled for a sum of Rs.4,83,600/-whereas the Tribunal has awarded Rs.5,69,600/-.

10. In the result, the appeal is allowed in part with modification in the impugned award to the extent that claimants are entitled for a sum of Rs.4,83,600/- instead of Rs.5,69,600/- as awarded by the Tribunal. The said amount of **Rs.4,83,600/-** shall carry interest as

awarded by the Tribunal.

11. If the Insurance Company has deposited any amount in excess of above liability, it shall be entitled to recover the same from the claimants in accordance with law.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh