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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 633 of 2013

- Universal Sompo General Insurance Co.Ltd. Main Branch, Head Office 204-208, Crystal Plaza, Behind Infinitive Mall, Link Road, Andheri West, Mumbai M.H., Maharashtra

---- Appellant

Versus

1. Kanhaiya Lal Sharma, S/o Late Badri Prasad Sharma Aged About 35 Years Physically And Mentally Retarded Thru-Next Friend Brother Pramod Sharma

2. Pramod Sharma S/o Late Badri Prasad Sharma Aged About 46 Years R/o Sharma Tent House, Rajendra Nagar Chowk, Bilaspur, Tah. And District : Bilaspur, Chhattisgarh

3. Ashish Kumar Sahu, S/o Rajkumar Sahu R/o Kaira, Thana- Seepat, Distt. Bilaspur, Chhattisgarh

4. M/s B.G.R. Energy Systmen S/o Hig- 157, Hasdeo Vihar, Housing Colony, Janjgir, District : Janjgir-Champa, Chhattisgarh

---- Respondents

For Appellant	:	Ms Pratibha Das, Advocate on behalf of Shri Amrito Das
For Respondents- 1 & 2	:	Shri Ritesh Verma, Advocate
For Respondents- 3 & 4	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

25.06.2019

1. Appellant /Insurance Company has filed this appeal under Section 173 of Motor Vehicle Act, 1988 challenging impugned award dated 08.04.2013 wherein learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.3,89,080/- as compensation along with interest @ 6% per annum from the date of filing of claim application till its realisation.

2. Brief facts relevant for disposal of this appeal are that on 04.12.2011 at about 11 pm Badri Prasad Sharma (hereafter referred to as 'deceased') was returning to his village from Bhatapara on his motorcycle. When he reached near Narayanpur square, at that relevant time, one Car bearing No.CG11 E 0334 (for short, 'offending car'), driven by its driver/non-applicant-1 rashly and negligently, dashed motorcycle from its backside. In the aforementioned accident, deceased suffered multiple injuries on his person and subsequently, succumbed to the injuries suffered by him. Non-applicant- 1, car driver ran away from the spot along with offending car but number plate of car fell on the spot of accident. Matter was reported to concerned Police Station based on which Crime No.211/11 was registered against driver of offending car for commission of offence punishable under Section 304A of IPC.

3. Claimants who are major sons of deceased filed claim application before learned Claims Tribunal mentioning therein that on the date of accident, deceased was a retired government servant and getting Rs.8,000/- monthly pension. It was also pleaded that deceased was also earning Rs.2,00,000/- per annum through his agricultural land. Therefore, they claimed compensation to the tune of Rs.15,00,000/-.

4. Driver of offending car /non-applicant-1 submitted reply to claim application and pleaded that on the date of accident, non-applicant-1 was engaged by non-applicant-2, owner of offending car as his driver, non-applicant-1 was possessing valid and effective driving license on the date of accident and accident took place due to self negligence of deceased himself. It was further pleaded that non-applicant-1 was falsely implicated in accident only to recover some amount. On the date of accident, offending car was insured with non-applicant-3/Insurance Company and therefore, liability, if any, would be on the Insurance Company for payment of amount of compensation.

5. Non-applicant-2, owner of offending car did not appear before learned Claims Tribunal despite service of notice and remained *ex-parte.*

6. Insurance Company/non-applicant-3 submitted reply to claim application and pleaded that on the date of accident, driver of offending car was not possessing valid and effective driving license to drive offending car. Claimants have not arrayed Insurance Company of motorcycle as non-applicants in claim application and therefore, claim application itself is not maintainable and there was contributory negligence on the part of deceased himself. It was also pleaded that as deceased was 77 years old on the date of accident, therefore, he was physically and mentally weak person and no document with respect to income of deceased has been placed on record by claimants. Insurance Company also disputed the fact that claimant-1 is not mentally fit and was dependent on deceased.

7. Learned Claims Tribunal on appreciation of evidence and pleadings placed on record by respective parties, held that accident took place due to rash and negligent driving of offending car by its driver, non-applicant-1; there was no contributory negligence on the part of deceased driver of motorcycle; and offending car was not being driven in violation of conditions of Insurance Policy on the date of accident and awarded a total sum of Rs.3,89,080/- as compensation to the claimants.

8. Learned counsel for the appellant submits that claimants being major sons of deceased, they are not entitled for any amount of compensation as they cannot be treated to be dependants of deceased. It was further argued that learned Claims Tribunal committed error in holding age of deceased as 70 years instead of 77 years. Further it was pleaded that deduction of ⅓ from income of deceased towards his personal and living expenses is erroneous in the facts and circumstances of the case. It should be ½ instead ⅓, where claimants are major sons.

9. Per contra, learned counsel appearing for claimants submits that claimant- 1 Kanhaiyalal Sharma is suffering from mental illness and was continuously under treatment since 2008, ie prior to accident. He also submits that as per evidence available on record, it is evident that Kanhaiyalal Sharma was ill and suffering from Cervical Spine and as he was residing with his father, late Badri Prasad Sharma, all his medical expenses were incurred by deceased. Therefore, claimant-1 Kanhailal Sharma is solely dependent on the deceased.

10. I have heard learned counsel for the parties and perused records of learned Claims Tribunal.

11. Perusal of claim application would show that in the claim application itself it has been pleaded that Kanhailal Sharma was suffering from mental illness and is a disabled person. In claim application it has also been pleaded that due to illness and infirmity of Kanhailal Sharma, deceased was looking after him and taking care of him, Kanhailal Sharma is fully dependant upon his late father/ deceased- Badri Prasad Sharma as his mother was predeceased. In support of their pleadings, claimants have filed Ex.P9, medical prescription of Dr Ajay Nagraj, Neuro surgeon, Raipur; Ex.P10, MRI of brain and Ex.P11, MRI of Cervical Spine by Sahu Diagnostics Raipur dated 30.01.2008. Claimants have also filed prescription dated 11.10.2011 by Dr Manoj Singrakhia (Ex.P12), Spine surgeon, having hospital in name of Shanta Spine Institute, Nagpur, Ex.P14, Provisional discharge summary by Dr Dinesh Kakra and reference letter of Central India Institute of Medical Sciences, Nagpur to Dr Oke.

12. Aforementioned documents would show that Kanhaiyalal/claimant-1 was facing some mental illness and cervical spine ailment for which he was under treatment since 2008. Though treating doctors have not been brought before learned Claims Tribunal as witnesses to prove medical prescriptions, but, looking to medical prescriptions submitted by claimants on record, nature of investigation of Kanhaiyalal and reports available on record, mental illness and treatment of Kanhailal cannot be ignored. From perusal of aforementioned documents, it is evident that Kanhaiyalal is on treatment for his mental illness since 2008 and he is going through some mental illness due to some neuron and Cervical Spine problem. Evidence of AW-1, Pramod Kumar Sharma, who is also a major son of deceased would show that he was residing separately from his father. He in his evidence specifically admitted that he is residing separately from his father for the last 18-20 years from the date of his examination before Tribunal. The aforementioned evidence of AW-1 would show that he is not maintaining or taking care of his mentally retarded brother, Kanhaiyalal earlier to accident.

13. In view of aforementioned documentary and oral evidence available on record, in the opinion of this Court, claimant-1/Kanhaiyalal who is mentally retarded and unable to work and earn his livelihood can be very well treated to be dependent of his father/deceased though father being retired and old aged person and was only getting his pension.

14. In view of above discussion, first ground raised by learned counsel for the appellant that claimant-1/ Kanhaiyalal is not dependant on the deceased is not sustainable and it is hereby repelled.

15. Learned counsel for the appellant relied upon judgment of Hon'ble Supreme Court in the matter of **Manjuri Bera (Smt) Vs Oriental Insurance Company Limited and another** reported in 2007 (10) SCC 643 dealt with above issue with respect to legal representatives whether can be treated as dependants or not and it has been held that compensation under the no fault/ loss of estate can be granted. In the aforementioned judgment, it is held that:

> "12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique [1989]2SCR810 the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr. [1987]3SCR404 a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.
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> 13. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the

nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

14. Section 165 of the Act also throws some light on the controversy. The explanation includes the liability under Sections 140 and 163A.

15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned Amicus Curiae."

Hon'ble Justice SH Kapadia concurred thus :

"19. In the impugned judgment the High Court has correctly drawn a distinction between "right to apply for compensation" and "entitlement to compensation". The High Court has rightly held that even a married daughter is a legal representative and she is certainly entitled to claim compensation. It was further held, on the facts of the present case, that the married daughter was not dependent on her father. She was living with her husband in her husband's house. Therefore, she was not entitled to claim statutory compensation. According to the High Court, the claimant was not dependent on her father's income. Hence, she was not entitled to claim compensation based on "No Fault Liability".

20. In my opinion, "No Fault Liability", envisaged in Section 140 of the said Act, is distinguishable from the rule of "Strict Liability". In the former, the compensation amount is fixed. It is Rs. 50,000/- in cases of death [Section 140(2)]. It is a statutory liability. It is an amount which can be deducted from the final amount awarded by the Tribunal. Since, the amount is a fixed amount/crystallized amount, the same has to be considered as part of the estate of the deceased. In the present case, the deceased was an earning member. The statutory compensation could constitute part of his estate. His legal representative, namely, his daughter has inherited his estate. She was entitled to inherit his estate. In the circumstances, she was entitled to receive compensation under "No fault Liability" in terms of Section 140 of the said Act. My opinion is confined only to the "No Fault Liability" under Section 140 of the said Act. That section is a Code by itself within the Motor Vehicles Act, 1988."

16. In the case at hand, from the facts and evidence available on record it cannot be disputed that claimant-1/Kanhaiyalal who is suffering from mental illness to be dependant on the deceased and therefore, case cited by learned counsel for appellant is distinguishable on facts.

17. Next ground raised by learned counsel for the appellant is that learned Claims Tribunal committed error in applying deduction as ⅓ instead of ½ .

18. Above issue with respect to deduction towards personal and living expenses has been considered by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt) and others Vs Delhi Transport Corporation and another** reported in 2009 (6) SCC 121 which was further considered in the matter of **National Insurance Company Limited Vs Pranay Sethi and others** reported in 2017 (16) SCC 680.

19. In the matter of **Sarla Verma** (supra) Hon'ble Apex Court has held that:

> "32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

20. The object of Act is to award just and proper amount of compensation to the person who was dependant on deceased on the date of accident.

21. In the matter of **Sarla Verma** (supra) it was categorically held that in cases of married and bachelor persons deduction towards personal and living expenses of deceased is made looking to the liability of deceased towards his family members or dependants.

22. In case at hand, liability of deceased towards his mentally ill dependant son, suffering from several problems and under treatment was much more on deceased father, as other member of family, his brother (AW1) has left him alone. Claimant-2, brother of claimant-1 only being care taker of Kanhaiyalal, and therefore, in the considered opinion of this Court, deduction of ⅓ for personal and living expenses made by learned Claims Tribunal cannot be held to be erroneous.

23. In view of above discussion, in considered opinion of this Court, impugned award passed by learned Claims Tribunal cannot be said to be erroneous calling interference by this Court in the facts and circumstances of the case,

24. Appeal being devoid of merit, is liable to be and it is hereby dismissed.

25. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

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