NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 900 of 2013

Reserved on 10.12.2019
Pronounced on 13.12.2019

1. Dhanesh Ram, S/o Pati Ram, Aged About 40 Years, caste Manjhi, R/o Joradole Sugapara, Post-Tildega, Tah. Patthalgaon, Distt. Jashpur, Presently R/o Mamapali, Post- Aamapali, Tah. And P.S. Lailunga, Distt. Raigarh C.G.,

2. Indravati, W/o Dhanesh Ram, Aged About 35 Years, R/o Joradole Sugapara, Post- Tildega, Tah. Patthalgaon, Distt. Jashpur, Presently R/o Mamapali, Post- Aamapali, Tah. And P.S. Lailunga, Distt. Raigarh C.G. (Applicants) **---- Appellants**

Versus

1. Bhantoo Manjhi, S/o Ratan Ram Majhi, Aged About 19 Years, R/o Joradole Sugapara, Post- Tildega, Tah. Patthalgaon, Distt. Jashpur Nagar C.G.,

2. Mantoo Mishra S/o Shailendra Mishra R/o Ward No. 46, House No. 346, New Risda Badra Para, Korba, Distt. Korba C.G.,

3. Shri Ram General Insu.Co.Ltd., E-8, E.P.I.T. Relco Industrial Area, Sitapura, Jaipur (Rajasthan), 302022 Branch Office Shri Ram Transport Finance Company, Shop Number 37/39, Krishna Shopping Mall, Jagatpur, Raigarh, Tah. And Distt. Raigarh C.G.,

---- Respondents

For Appellants	:	Shri Ajeet Kumar Yadav, Advocate
For Respondents No.1 & 2:		None, though served.
For Respondent No.3	:	Shri Sachin Singh Rajput with Shri Sangeet Kumar Kushwaha, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal

C.A.V.Order / Award

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the award dated 02.09.2013 passed by the 1st Additional Motor Accident Claims Tribunal, Raigarh (for short, the Claims Tribunal) in Claim Case No.203/2011, by which, the Claims

Tribunal, while allowing the claim in part, has awarded total amount of compensation to the tune of Rs.1,92,000/- with interest @ 6% per annum from the date of filing of Claim Petition till its realisation while exonerating the insurance company from its liability. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Shri Ajeet Kumar Yadav, learned counsel for the appellants, submits that while passing the award impugned, the Claims Tribunal has erred in awarding a meagre amount of compensation without considering the future prospects of the income of the deceased as also without applying the proper multiplier. It is contended further that while exonerating the insurance company from its liability, the principles of pay and recover ought to have been applied. In support, he placed his reliance upon the decisions rendered in the matter of ***Reshma Kumari and others*** vs. ***Madan Mohan and another, National Insurance Company Limited -v- Pranay Sethi*** and ***National Insurance Co. Ltd.*** vs. ***Swaran Singh and others*** reported respectively in **(2013) 9 SCC 65, (2017) 16 SCC 680** and **(2004) 3 SCC 297**.

3. On the other hand, Shri Sachin Singh Rajput, learned counsel for respondent No.3 has supported the award impugned.

4. I have heard learned counsel for the parties and perused the entire record carefully.

5. On account of the accident occurred on 03.05.2011, a claim enumerated under Section 166 of the Act of 1988 has been made by the Claimants claiming total amount of compensation to the tune of Rs.70,20,000/- by alleging, inter alia, that their son Niranjan, a 12 years old was hit vehemently by the offending vehicle “Tractor” bearing its registration

No. CG-12-F/1827, which was owned by Non-Applicant No.2 Mantoo Mishra and was insured with Non-Applicant No.3, Sri Ram General Insurance Company Limited, when he was going towards his house. At the relevant time, the alleged offending vehicle was being driven in a rash and negligent manner by its driver, namely, Bhantu Manjhi, Non-Applicant No.1, as a result of which, their son has expired on the spot.

6. The Non-Applicants have contested the aforesaid claim and the Claims Tribunal, upon considering the evidence led by the parties, arrived at a conclusion that the alleged accident occurred on 03.05.2011 due to rash and negligent driving by the driver of the offending vehicle resulting in the sad demise of Claimants' son Niranjan. It held further that the vehicle in question was being used in violation of the insurance policy as it was used beyond its sitting capacity by a driver, who was not holding a valid and effective driving license and that by considering the monthly income of the deceased to the tune of Rs.3,000/-, awarded total amount of compensation, as mentioned herein above while exonerating the insurance company from its liability.

7. From perusal of the record, it appears that while filing the charge sheet in connection with Crime No.89/11, the concerned Investigating Officer has registered an offence against the driver of the offending vehicle punishable under Section 3/181 and 5/180 of the Act of 1988, apart from Section 304-A of IPC. It appears further that the driving license of the driver was neither seized from him nor the same was submitted before the Claims Tribunal as both the driver and owner were proceeded ex parte and thus have failed to produce the same. As such, the duty cast upon them, as per the provisions prescribed under Section 134 of the Act of 1988 has not been complied with by them. The Claims Tribunal has, therefore, not committed any illegality in exonerating the insurance company from its liability on finding that the alleged

offending vehicle was being used in violation of the insurance policy. The finding of the Claims Tribunal thus deserves to be and is hereby affirmed.

8. In so far as the amount of compensation assessed by the Claims Tribunal is concerned, it appears that a meagre amount of compensation has been awarded. However, in order to provide just and proper amount of compensation, the Claims Tribunal should have applied the proper multiplier of 15 instead of 10, in the light of decision rendered in the matter of **Reshma Kumari and others** v. **Madan Mohan and another** (supra) and should have considered further the future prospects of the income of the deceased as well.

9. Considering the monthly income of the deceased to the tune of Rs.3,000/-, yearly Rs.36,000/-, as assessed by the Tribunal, and that by deducting half of it as the deceased was unmarried, the annual dependency would be Rs.18,000/-. By adding 40% of it, i.e., Rs.7,200/- towards future prospects of his income, in the light of **National Insurance Company Limited** v. **Pranay Sethi** (supra), the yearly dependency would thus be arrived at Rs.25,200/- (Rs.18,000/- + Rs.7,200/-). As the age of the deceased at the time of incident was 12 years, the multiplier applicable would be 15, in the light of decision rendered in the matter of **Reshma Kumari and others** v. **Madan Mohan and another** (supra). Thus, by applying multiplier of 15, the total dependency of the Claimants would thus be arrived at Rs.3,78,000/- (Rs.25,200/- x 15). In addition to this, the Claimants would be entitled to a sum of Rs.1,10,000/- under conventional heads, in view of the decision rendered in the matter of ***Magma General Insurance Company Limited*** vs. ***Nanu Ram @ Chuhru Ram and others*** reported in **(2018) 18 SCC 130**, as under:

	Head of Compensation		Amount
(i)	Loss of filial consortium to the parents @ Rs.40,000/- each.	:	Rs. 80,000.00
(ii)	Funeral expenses	:	Rs. 15,000.00
(iii)	Loss of Estate	:	Rs. 15,000.00
	Total	:	Rs.1,10,000.00

10. The Claimants would thus be entitled to a total amount of compensation of Rs.4,88,000/- instead of Rs.1,92,000/-, as held by the Claims Tribunal, with 6% interest per annum from the date of filing of Claim Petition till its realisation.

11. Now, whether under the facts and circumstances of the case, Respondent No.3 – insurance company can be directed to pay the claim amount with liberty to recover the same from the owner of the vehicle in question? This issue is, however, no more res integra in view of the principles laid down in the matter of ***National Insurance Co. Ltd.*** vs. ***Swaran Singh and others*** reported in **(2004) 3 SCC 297**. In the said matter, it was contended by the Insurance Company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, it was held that even if the insurer succeeds in establishing its defence, the Tribunal can direct the Insurance Company to pay the award amount to the Claimants and, in turn, recover the same from the owner of the vehicle. At paragraph 107, it was observed as under:-

> **"107.** We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach

> of contract of insurance as envisaged under sub-clause (*ii*) of clause (*a*) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage."

12. In the present case, the vehicle in question, i.e., "Tractor" bearing its registration No.CG-12-F/1827 is undisputedly insured with Respondent No.3/insurance company. Applying the dictum of **National Insurance Co. Ltd.** vs. **Swaran Singh and others** (supra), in order to subserve the ends of justice, respondent No.3 is hereby directed to pay the claim amount awarded by this Court to the Claimants in the first instance, with liberty to recover the same from the owner of the vehicle in question, i.e., Non-Applicant No.2-Mantoo Mishra and its driver Bhantu Manjhi, Non-Applicant No.1, in accordance with law.

13. Consequently, the appeal is allowed in part to the extent indicated herein above with the aforesaid observation. Rest of the observations made by the Claims Tribunal shall remain intact. No order as to costs.

Sd/-

(**Sanjay S. Agrawal)**
Judge

Anjani