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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 493 of 2013

1. Smt. Mamta Verma W/o Late Mahendra Verma (Claimants), Aged about 25 years.
2. Kumari Priya Verma, D/o Late Mahendra Verma, aged about 6 years.
3. Kumari Purvi D/o Late Mahendra Verma, Aged about 4 years.
4. Aman Verma, S/o Late Mahendra Verma, Aged about 1 years.
5. Dukhut Verma, Aged about 67 years S/o Ramnath Verma.
6. Raymati Verma, Aged about 65 years W/o Dukhut Verma.

Appellant No.2 to 4 all are minors through their natural guardian mother Smt. Mamta Verma, W/o Late Mahendra Verma.
All the appellants are the R/o Village Godhi, Thana Mandir Hasod Dist. Raipur C.G.

---- Appellants

Versus

1. Anish Masih S/o Anil Masih, Age about 65 years Present Address-Hora Transport, Mandir Hasod, Dist. Raipur C.G.
2. Hora Transport Company Pvt. Ltd. Mandir Hasod, Dist. Raipur C.G.
3. United India Insurance Company Limited, Divisional Manager, Divisional Office-Kachahari Chowk, Raipur C.G..

---- Respondents

For Appellants	: Mr. Manish Thakur, Advocate
For Respondents No.1 and 2	: None
For Respondent No.3	: Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Advocate

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Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

23/08/2019

1. This appeal has been filed by appellants/claimants under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 26/10/2012 passed by Fifth Additional Motor Accident Claims

Tribunal, Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.90/2012, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.2,77,545/- as compensation along with interest at the rate of 9% per annum from the date of filing of application in a death case.

2. Brief facts relevant for disposal of this appeal, are that, on 09/11/2011 at about 9.30 PM, Mahendra Verma was travelling on his motorcycle at Mandir Hasod, on the way, he met with an accident with a stationary Dumper bearing registration No.CG-04-JA-5344 (hereinafter referred to as 'offending vehicle'). In the aforementioned accident, Mahendra Verma suffered grievous injuries over his person and he was taken to Narayana Hrudayalaya MMI Hospital, Raipur and during the course of treatment, he scummed to the injuries. The matter was reported to concerned Police Station, based on which, Crime No.351/2011 for offence punishable under Sections 283, 337 and 304-A of IPC was registered against non-applicant No.1.

3. On account of death of Mahendra Verma, appellants/claimants who are wife, children and parents of deceased filed claim application under Section 166 of the M.V. Act before Claims Tribunal claiming Rs.12,00,000/- as compensation on the ground that on the date of accident, deceased was working as Field Supervisor with B.K. Steel Company at Raipur and thereby earning Rs. 6,000/- per month and they all were dependents on him.

4. Non-applicants No.1 and 2 submitted their reply to claim application and denied all adverse pleadings made against them. It was pleaded that insurer and owner of motorcycle has not been impleaded as one of the party, therefore, claim application is not maintainable on account of non-joinder of necessary party. It was further pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3 i.e. Insurance Company and driver of offending vehicle was possessing valid and effective driving licence, therefore, the liability, if any, would be on the Insurance Company for payment of amount of compensation.

5. Non-applicant No.3/Insurance Company submitted reply to claim application and denied all adverse pleadings made against it. It was pleaded that on the date of accident, deceased was having motorcycle without any effective driving licence with him and there was contributory negligence on the part of driver of motorcycle i.e. deceased. It was further pleaded that on the date of accident, offending vehicle was being driven in violation of conditions of insurance policy, there was no permit and fitness certificate with the offending vehicle, therefore, Insurance Company is not liable for payment of any amount of compensation.

6. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal allowed the claim application in part by holding that death of deceased took place due to rash and negligent act of non-applicant No.1 i.e. driver of offending

vehicle as on the date of accident, offending vehicle was parked on the center of the road; there was contributory negligence on the part of deceased to the extent of 50%; there was no violation of conditions of insurance policy and awarded a total sum of Rs.2,77,545/- as compensation to the claimants.

7. Learned counsel appearing for the appellants submitted that learned Claims Tribunal committed error in holding that the deceased was contributory negligent in the accident to the extent of 50%. He further submitted that learned Claims Tribunal committed error in assessing the income of deceased as Rs.3,000/- per month. He also submitted that learned Claims Tribunal has not awarded any amount towards loss of future prospects as on the date of accident, deceased was only 35 years of age.

8. Per contra, learned counsel appearing for respondent No.3/Insurance Company submitted that there was no specific evidence with respect to parking of offending vehicle on the center of the road, but looking to the fact that parking lights and back light of offending vehicle was not in 'on' condition, therefore, learned Claims Tribunal has rightly held that the deceased was liable for contributory negligence to the extent of 50% because it is the duty of deceased to drive his motorcycle carefully. He further submitted that learned Claims Tribunal has rightly assessed the income of deceased as Rs.3,000/- per month because claimants failed to prove the income of deceased by placing any document and reliable piece of evidence.

9. I have heard learned counsel appearing for respective parties and perused the record carefully.

10. The first ground raised by learned counsel appearing for the appellants that learned Claims Tribunal committed error in holding that the deceased was liable for contributory negligent to the extent of 50% is concerned, perusal of First Information Report (Exhibit P-2) would show that accident took place on 09/11/2011 at about 21.30 hours i.e. 9.30 PM. In the First Information Report, it has been mentioned that offending vehicle was standing in front of Hora Transport on NH-6 Road and due to the wrong parking of offending vehicle without any indicator or sign, it was restricting the free movement of general public. A copy of Final Report (Exhibit P-1) submitted by Police under Section 173 of Cr.P.C. also bears that offending vehicle was parked on the center of the road, which is causing trouble to general public. In support of claim application, claimants have examined Smt. Mamta Verma as AW-1 and Shri Upendra Bharti as AW-2.

11. Shri Upendra Bharti (AW-2) has been examined as one of the eyewitnesses to the accident, he stated in his evidence that offending vehicle has been parked on the center of the road and due to the dark night, offending vehicle was not visible. In his cross-examination, the question was put to him by the counsel appearing for non-applicants No.1 and 2 i.e. driver and owner of offending vehicle, but he stated in categorical terms that offending vehicle was

parked on the center of the road. Counsel appearing on behalf of non-applicant No.3/Insurance Company has also cross-examined this witness in very detail where he denied the suggestion that offending vehicle was parked on the open land in front of Hora Transport. Though, this witness stated that offending vehicle standing in front of gate of Hora Transport, but that gate of Hora Transport is by the side of the road. No specific question has been put to this witness by learned counsel appearing for the Insurance Company so as to controvert his earlier statement made by him that offending vehicle was parked on the center of the road.

12. Insurance Company and owner and driver of offending vehicle have not produced any witness in their support even the driver of offending vehicle was not examined to say that he has parked the offending vehicle on the appropriate place or on the side of the road, therefore, the statement given by Shri Upendra Bharti (AW-2) remained uncontroverted that offending vehicle was parked on the center of the road.

13. Learned Claims Tribunal held that offending vehicle was standing on the center of the road and recorded a finding that evidence of Shri Upendra Bharti (AW-2) is supported by the document of criminal case i.e. First Information Report (Ex. P-2) that offending vehicle was parked without any sign and without switching on back lights or indicators and was obstructing the free movement of general public.

This finding of learned Claims tribunal has not been challenged by any of non-applicants/respondents.

14. But, while recording the aforementioned finding on the basis of oral and documentary evidence available on record, learned Claims Tribunal has committed error in holding the deceased was liable for contributory negligent to the extent of 50% only on the basis that the deceased hit his motorcycle from the back side of offending vehicle. There could not be an automatic inference of equal negligence on the part of driver of vehicle met with an accident. It is to be assessed on the basis of fact and circumstances of the accident, time, manner of vehicle parked, and the place of parking of the vehicle.

15. The Hon'ble Supreme Court while dealing with the issue of contributory negligence in the matter of **Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors.**[1] dealt with the plea of contributory negligence taken by Insurance Company where neither the driver nor any independent witness was examined to prove the allegation of contributory negligence. The Supreme Court, 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

1 **2013 AIR SCW 5375**

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. Further, in the matter of **Jiju Kuruvila and others v. Kunjujamma Mohan and others[2],** the Hon'ble Supreme Court 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."

17. Reverting to the facts of the case, there is a specific evidence of Shri Upendra Bharti (AW-2) that offending vehicle was parked on the center of the road, which remained uncontroverted. Neither the Insurance Company nor the driver and owner of offending vehicle

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2 **(2013) 9 SCC 166**

have led any evidence to prove the pleading of the contributory negligence, therefore, in the facts and circumstances of the case and looking to the parking position of the offending vehicle without any sign and without switching on back lights or indicators. Apart from the major negligence on the part of driver of offending vehicle, it cannot be ignored that there is some contributory negligence on the part of the driver of motorcycle i.e. deceased also. In the opinion of this Court, the accident took place at about 9.30 PM; the offending vehicle was parked on the center of the road and as per uncontroverted evidence of Shri Upendra Bharti (AW-2) that there was no street light, contributory negligence of the deceased can be taken as 25% instead of 50% held by learned Claims Tribunal.

18. The next ground raised by learned counsel appearing for the appellants that the learned Claims Tribunal committed error in awarding meager amount of compensation by assessing the income on lower side is concerned, Mamta Verma (AW-1), wife of deceased has examined to prove the income of the deceased. She stated in her evidence that the deceased was working as Field Supervisor with B.K. Steel Company at Raipur and thereby earning Rs. 6,000/- per month, but she has not produced any documentary evidence or examined any of the witnesses of the employer to prove that the employer was paying Rs.6,000/- per month to the deceased.

19. The appellants failed to prove income of deceased as pleaded in the claim application, therefore, in the facts and circumstances of case,

income of the deceased is to be assessed on notional basis. The date of accident was 09/11/2011, therefore, looking to minimum wages rate prevailing in the Districts and State, it will be proper to hold engagement of deceased in labour work and his income to be assessed to Rs.4,000/- per month instead of Rs.3,000/- as assessed by learned Claims Tribunal.

20. Learned Claims Tribunal has not awarded any amount of compensation towards future prospects. On the date of accident, the deceased has been shown to be 35 years of age as per postmortem report (Exhibit P-7), therefore, in view of the law laid down by the Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**[3], the claimants are also entitled for the additional amount of 40% of the established income towards future prospects.

21. Learned Claims Tribunal has awarded very meager amount towards conventional heads. The amount towards conventional heads is also fixed by the Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra), therefore, in view of the law laid down in aforementioned case, the claimants are also entitled for the amount of Rs.70,000/- towards conventional heads.

22. In view of aforementioned discussions and law laid down by Hon'ble Supreme Court in the aforementioned cases, in the considered opinion of this Court, the just and proper compensation is to be

3 **AIR 2017 SC 5157**

awarded to the claimants. For the reasons stated herein-above, the amount of compensation to be awarded to the appellants/claimants require reconsideration and recalculation, which this Court proposed the same in following terms :-

The monthly income of the deceased is taken as Rs.4,000/- i.e. Rs.48,000/- per annum. By adding 40% towards loss of future prospects i.e. Rs.19,200/- (48,000 x 40%), the annual income of the deceased would come to Rs.67,200/- (48,000 + 19,200). After deducting 1/4th towards his personal and living expenses i.e. Rs.16,800/- (67,200 / 4), the annual dependency of claimants would come to Rs.50,400/- (67,200 – 16,800). As on the date of accident, the deceased was shown to be aged about 35 years, therefore, multiplier of 16 would be applicable in the present case. After applying the multiplier of 16, the total dependency comes to Rs.8,06,400/- (50,400 x 16). The claimants are also entitled for Rs.98,090/- towards medical expenses as awarded by learned Claims Tribunal. In addition to the aforesaid amount, the appellants/claimants are also entitled for Rs.70,000/- towards other conventional heads. Now, the total compensation comes to Rs.9,74,490/- (8,06,400 + 98,090 + 70,000).

23. As held in preceding paragraph, there is contributory negligence of 25% on the part of the deceased, therefore, 25% amount of compensation is required to be deducted towards contributory negligence i.e. Rs.2,43,622/- (9,74,490 x 25%), which makes the

amount of compensation to be awarded to the claimants as Rs.7,30,868/- (9,74,490 – 2,43,622).

24. On the basis of above recalculation, the claimants will now be entitled for total compensation of Rs.7,30,868/- instead of Rs.2,77,545/- as awarded by the learned Claims Tribunal. This amount of compensation shall carry interest @ 9% per annum from the date of filing of claim application till its realization.

25. Appellants No. 2 to 4 are minors and they have been shown as 6 years, 4 years and 1 year of age respectively on the date of filing of claim application. In view of above, Rs.1,00,000/- (Rupee one Lac) for each to be deposited in the name of appellants No.2 to 4 in a fixed deposit scheme of a nationalized bank for a period till they attain the age of majority. An amount of Rs.1,00,000/- (Rupee one Lac) to be deposited in the name of appellant No.1 in a fixed deposit scheme of a nationalized bank for a period of three years. From the amount of compensation, appellants No.5 and 6 will be entitled for Rs.87,000/- (Rupee Eighty Seven Thousand) each. Balance of amount of compensation shall be paid to appellant No.1.

26. In the result, the appeal is allowed in part and the impugned award is modified to the extent indicated here-in-above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh