AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 804 of 2013

The Oriental Insurance Co. Ltd. Through its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur (C.G.) PIN-495001.

---- Appellant

Versus

1. Shatrughan Sahu S/o Ramgahan Sahu, Aged About 46 Years
2. Smt. Sunita Sahu W/o Shatrughan Sahu, Aged About 40 Years
3. Ramgahan Sahu --------(died and deleted)
4. Panpati Sahu W/o Ramgahan Sahu, Aged About 80 Years
5. Bheem Sahu S/o Shatrughan Sahu Aged About 24 Years

   Note: All the above Respondents 1 to 5 are R/o Village Singhchaura, P.O. Gopalpur, P.S. & Tahsil Rajpur, Revenue & Civil Distt. Sarguja (C.G.).
6. Pradeep Mridha S/o Parimal Mridha, Aged About 34 Years R/o village Aragahi, P.S. & Tahsil Ramanujganj, Revenue & Civil Distt. Sarguja (Now Distt. Ramanujganj) C.G.
7. Smt. Kavita Kumar W/o Vinod Prasad Gupta, Aged About 29 Years R/o village Ward No. 14, Ramanujganj, P.S. & Tahsil Ramanujganj, Revenue & Civil Distt. Ramanujganj (C.G.).

---- Respondents

For Appellant	: Mr. R. N. Pusty, Advocate
For Respondents No.1, 2, 4, 5	: Ms. Varsha Sharma, Advocate on behalf of Mr. Sunil Tripathi, Advocate
For Respondent No. 6 & 7	: None

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

08/05/2019

1. This appeal has been filed by appellant/Insurance Company 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 26/06/2013 passed by Third Additional Motor Accident

Claims Tribunal, Ambikapur, Surguja (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.70/2012 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.5,26,000/- as compensation to the claimants.

2. Brief facts for disposal of this appeal are that on 01/07/2011 Arjun Sahu was travelling on a motorcycle bearing registration No. CG-16-D-4743 along with Roshandeep Kujur. In another motorcycle, other persons, namely, Dindayal and Kuldeep Khakha were travelling. They were returning after dropping their friend Akhatar Ansari. At about 4.00 PM., when they were crossing road after taking fuel from Petrol Pump, at that relevant time, one Tata Indica Vista CG-15-B/5013 (hereafter referred to as ‘offending vehicle’) driven by non-applicant No.1/respondent No. 6 dashed the motorcycle, due to which, Arjun Sahu and Roshandeep sustained grievous injuries on their persons. Thereafter, Arjun Sahu was taken to hospital at Rajpur, but on the way, he succumbed to those injuries. Matter was reported to concerned Police Station and offence under Sections 279, 337 and 304A of IPC were registered against non-applicant No. 1/respondent No. 6.

3. Claimants who are parents, grandparents and brother of deceased filed claim application under Section 166 of M.V. Act before competent Claims Tribunal for grant of compensation claiming Rs.49,76,000/- on all heads on the grounds mentioned therein.

4. Non-applicants No. 1 and 2/respondents No. 6 and 7 who are owner and driver of offending vehicle submitted reply to claim application and pleaded that on the date of accident, deceased Arjun Sahu, Roshandeep Kujur, Dindayal, Kuldeep Khakha and Akhatar Ansari were returning after celebrating Picnic and all of them have consumed liquor. It has been further pleaded that deceased Arjun Sahu was hit by unknown vehicle and no accident occurred from the vehicle driven by non-applicant No. 1 and owned by non-applicant No.2. It has been further pleaded that at the time of accident, Arjun Sahu was under influence of liquor and not in a position to drive motorcycle. It has been lastly pleaded that on the date of accident, offending vehicle was insured with the appellant/Insurance Company and prayed for dismissal of claim against them.

5. Appellant/non-applicant No.3-Insurance Company submitted its reply to the claim application and pleaded that on the date of accident, offending vehicle was being driven in violation of conditions of insurance policy. It was further pleaded that on the date of accident, deceased Arjun Sahu driver of motorcycle was not possessing valid and effective driving licence to drive motorcycle. It has been lastly pleaded that there was contributory negligence on the part of driver of motorcycle also.

6. Learned Claims Tribunal while appreciating pleadings and evidence available on record held that accident took place due to rash and negligent driving of driver of offending vehicle and while allowing claim application in part, awarded a total sum of Rs.5,26,000/- as compensation.

7. Learned counsel appearing for appellant submitted that learned Claims Tribunal committed an error in not considering that deceased Arjun Sahu which was driver of one of the vehicles is also contributory negligent in the accident as he had consumed liquor. He further submitted that on the date of accident, deceased was unmarried, but learned Claims Tribunal deducted 1/3rd amount of assessed income of deceased towards personal expenses which is contrary to law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[1].

8. Per contra, learned counsel appearing for respondents No. 1, 2, 4, 5/claimants supported the impugned award and submitted that deceased Arjun Sahu driver of motorcycle was not negligent in any manner, but accident took place when they were crossing the road. She further submitted that mere consumption of liquor will not prove that driver of motorcycle was in such a condition that he cannot be able to understand or drive motorcycle. She lastly submitted that merely non-possession of licence may not hold the deceased to be contributory negligent in the accident.

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

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1 **(2009) 6 SCC 121**

10. So far as first ground raised by learned counsel for appellant is that deceased himself is contributory negligent in the accident as he was not possessing valid and effective driving licence with him is concerned, absence of driving licence may be an offence for imposing penalty against driver of any of the vehicles, but that itself may not amount that driver of motorcycle is himself contributory negligent in the accident.

11. The contributory negligence is a fact which is required to be proved for the persons asserting the same. Secondly the person asserting that other driver was also contributory negligent, he has to bring material and evidence before Claims Tribunal to prove that one of the cause of accident is non-possessing of driving licence by driver of one of the vehicles. The issue with respect to contributory negligent of one of the drivers on account of non-possession of valid and effective driving licence has been considered by Hon'ble Supreme Court in the matter of **Sudhir Kumar Rana v. Surinder Singh and others**[2]**,** wherein Hon'ble Supreme Court held as under :-

> "9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was

2 **(2008) 12 SCC 436**

> driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence."

12. In the case at hand, except the fact that claimants could not be able to produce the driving licence of deceased, it cannot be held that deceased himself was contributory negligent in any manner when appellant failed to prove any rash and negligent driving on part of deceased.

13. The other ground raised by learned counsel for appellant is that deceased himself was negligent in the accident as he was driving motorcycle after consumption of liquor is concerned, only material available on record in this regard is postmortem report (Ex. P-4), wherein while examination of stomach, the doctor conducting postmortem found that food article and liquid alcohol was present. The report does not mention about the percentage of alcohol available in the stomach of deceased to assess the condition of deceased such as he was unable to drive the motorcycle or assess the right or wrong with his own senses.

14. In view of above, both grounds raised by learned counsel for appellant are not sustainable and are hereby repelled.

15. The last ground raised by learned counsel for appellant is that as deceased was bachelor on the date of accident, therefore, learned Claims Tribunal ought to have deducted 1/2 instead of 1/3rd towards personal expenses is concerned, Hon'ble Supreme Court in the matter of **Sarla Verma** (supra) settled this issue, which is reproduced herein below: -

> "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 family of the bachelor is large and dependant 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."

16. In the aforementioned judgment, Hon'ble Supreme Court specifically held that in the cases of death of bachelor is survived by parents and siblings only then deduction towards personal and living expenses would be 50% and 50% towards contribution to the family.

17. In the case at hand, though number of claimants are shown to be five, but father of deceased was there as well as one of the brother who is major has also been shown to be claimants, therefore, subsequent observation made by Hon'ble Supreme Court in Paragraph-32 will not apply to the facts of the case.

18. In view of aforesaid law laid down by Hon'ble Supreme Court and facts and circumstances of the case, learned Claims Tribunal committed an error in deducting 1/3rd towards personal and living expenses of deceased from his assessed income. The deduction towards personal and living expenses would be 1/2 of assessed income of the deceased.

19. As I have held that learned Claims Tribunal committed an error in deducting 1/3rd instead of 1/2, but whether on account of it only, impugned award requires interference is a question to be considered.

20. At this juncture, learned counsel appearing for respondent/claimants submitted that the award passed by the Claims Tribunal is just and proper. She also submitted that the award if calculated by applying the guidelines laid down by Hon'ble Supreme Court time to time for assessment of income, award passed by the Claims Tribunal cannot be said to be excessive.

21. Learned counsel appearing for appellant/Insurance Company submitted that as respondent/claimants have not preferred any appeal, they cannot be permitted to raise ground orally that for one or the other ground the amount awarded is less.

22. The Hon'ble Supreme Court in the matter of **Ranjana Prakash and others v. Divisional Manager and another[3],** has held as under :-

> 6............Therefore, in an appeal by the owner/insurer, the appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the

3 **(2011) 14 SCC 639**

compensation awarded is not reduced. The fact that the claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.

7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer.

23. In the case at hand, deceased was under 20 years of age, he was having a long life and learned Claims Tribunal has not awarded any amount towards future prospects which the claimants are entitled for in the facts and circumstances of the case and as per law laid down by Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others[4].** Amount awarded to the claimants to the tune of Rs.5,26,000/- on a death of a boy aged about 19 years, cannot be said to be an excessive amount or a bonanza. In the opinion of this Court, impugned award passed by learned Claims Tribunal even after considering the overall facts and circumstances of case cannot be said to be on the higher side. The Motor Vehicles Act is a beneficial piece of legislation. Tribunal and Courts have to consider the object of the Act while assessing the amount of compensation to be awarded.

24. In the facts and circumstances of the case and discussions made herein above, though I am not convinced with the finding recorded by learned Claims Tribunal with respect to deduction towards personal and living expenses, I decline to interfere with the impugned award passed by learned Claims Tribunal.

25. The Hon'ble Supreme Court in aforementioned judgment in categorical terms held that the respondent can defend the award by raising grounds in their support, even if they have not challenged the award. In view of the above law of Hon'ble Supreme Court, the

4 **AIR 2017 SC 5157**

arguments and grounds raised by the respondent/claimants is worth considerable and objection raised by learned counsel for appellants being not sustainable and is hereby rejected.

26. In view of above, the appeal being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh