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HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 383 of 2013

Reliance General Insurance Company Limited Through Manager, Sho No. 412-413, 4th Floor, Ravi Bhawan, Jaistambh Chowk, Raipur, P.S. Golbazar, Raipur Chhattisgarh.

---- Appellant

Versus

1. Mrs. Jyoti Agrawal W/o Late Sunil Kumar Agrawal Aged About 30 Years

2. Ku. Khushi Agrawal D/o Late Sunil Kumar Agrawal Aged About 8 Years (Minor)

3. Ku. Astha Agrawal D/o Late Sunil Kumar Agrawal Aged About 3 Years (Minor)

4. Rajkumar Agrawal S/o Late Lachchhi Agrawal Aged About 56 Years

5. Smt. Sushma Agrawal W/o Rajkumar Agrawal Aged About 53 Years

   (Respondents No.2 and 3 minor through their mother Smt. Jyoti Agrawal). All R/o 399, Gate No. 2, Near Radheshyam Mandir, Samta Colony, P.S. Saraswati Nagar, (P.S. Not mentioned in claim application) Tahsil and District Raipur Chhattisgarh

6. Mohammed Shafiur Rahman S/o Mohammed Ajiur Rahman Aged About 50 Years Profession Truck Driver R/o Ramdas Hati, P.S. Matiya Burj, Kolkatta, West Bengal.

---- Respondents

MAC No. 500 of 2013

1. Smt. Jyoti Agrawal W/o Late Sunil Kumar Agrawal Aged About 30 Years

2. Ku. Khushi Agrawal D/o Late Sunil Kumar Agrawal Aged About 8 Years

3. Ku. Astha Agrawal D/o Late Sunil Kumar Agrawal Aged About 3 Years

4. Raj Kumar Agrawal S/o Late Lachhi Agrawal Aged About 56 Years

5. Smt. Sushma Agrawal Aged About 53 years W/o Raj Kumar Agrawal

(Minor Applicant No.2 and 3 through guardian mother applicant No.1 Smt. Jyoti Agrawal W/o Late Sunil Kumar Agrawal)

All R/o 339, Get No. 2, Near Radhe Krishna Mandir, Samta Colony, Raipur, Police Station City Kotwali, Tahsil and District Raipur, Chhattisgarh.

---- Appellants

Versus

1. Mohammad Shafiur Rahman S/o Mohammad Ajiur Rahman Aged About 50 Years Occupation Truck Driver R/o Village Ramdas Hathi, Police Station Matiya Burj, Calcutta (Paschim Bangal)

2. The Reliance General Insurance Company Ltd. Through Divisional Manager, Divisional Office, Shop No. 412-413, Fourth Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur, Police Station City Kotwali, Tahsil and District Raipur, Chhattisgarh.

---- Respondents

<u>MAC No. 383 of 2013</u>

For Appellant	: Mr. Rohitashva Singh, Advocate on behalf of Mr. Bhaskar Payashi, Advocate
For Respondents 1 to 5	: Mr. Pawan Kesharwani, Advocate
For Respondent No.6	: None

<u>MAC No. 500 of 2013</u>

For Appellants	: Mr. Pawan Kesharwani, Advocate
For Respondent No.1	: None
For Respondent No.2	: Mr. Rohitashva Singh, Advocate on behalf of Mr. Bhaskar Payashi, Advocate

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<u>Hon'ble Shri Justice Parth Prateem Sahu</u>
<u>Judgment On Board</u>

<u>13/05/2019</u>

1. Since the above miscellaneous appeals arise out of the same award dated 15/01/2013 passed by Fifth Additional Motor Accident Claims Tribunal, Raipur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.58/2012, they are being disposed of by this common judgment.

2. MAC No.383/2013 has been filed on behalf of the Insurance Company challenging amount of compensation awarded by learned Claims Tribunal on the ground that Truck bearing registration No.WB23/B/3747 (hereinafter referred to as 'offending vehicle') was not involved in accident, whereas MAC No.500/2013 has been filed by claimants seeking enhancement of compensation as awarded by learned Claims Tribunal.

3. Learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.27,13,800/- as compensation along with interest @ 6% per annum from the date of application in a death case.

4. Brief facts relevant for disposal of these appeals are that on 26/11/2010, Sunil Kumar Agrawal was travelling on his Car bearing registration No.CG04/HB/3869 and coming to Raipur from Nagpur. The aforementioned Car was being driven by Suryamani Shukla. When they reached near Raja Fuse Point, Bag River at National Highway No.6, at that relevant time, offending vehicle driven by non-applicant No.1 dashed the Car from its front, due to which, Sunil Kumar Agrawal, occupant of Car, suffered grievous injuries on his person. He was taken to Devri Hospital, but on the way, he succumbed to those injuries. Matter was reported to concerned Police Station, based upon which, crime No.120/2010 for commission of offence under Sections 279, 337, 338 and 304A of

Indian Penal Code was registered against non-applicant No.1/driver of offending vehicle.

5. Claimants who are wife, children and parents of deceased Sunil Kumar Agrawal filed claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before learned Claims Tribunal claiming Rs.54,00,000/- as total compensation on account of death of Sunil Kumar Agrawal on the grounds mentioned therein.

6. Non-applicant No. 1/driver of offending vehicle, even after service of notice, did not choose to appear before learned Claims Tribunal and was proceeded *ex parte*.

7. Non-applicant No.2/Insurance Company submitted reply to claim application and denied the fact of accident and all other adverse pleadings made in claim application. It was pleaded that accident took place due to rash and negligent driving of Car by its driver, non-applicant No.1 was not possessing valid and effective driving licence to drive offending vehicle on the date of accident, therefore, there was violation of conditions of insurance policy. It was denied the fact of occupation and income of deceased.

8. Learned Claims Tribunal on appreciation of pleadings and evidence available on record arrived at a finding that accident took place due to rash and negligent driving of offending vehicle by its driver i.e. non-applicant No.1 and awarded a total sum of Rs.27,13,800/- by assessing annual income of deceased as Rs.2,24,067/-.

9. Learned counsel appearing for Insurance Company submitted that learned Claims Tribunal committed error in holding that offending vehicle was involved in the accident. He further submitted that learned Claims Tribunal failed to consider that wife of deceased Sunil Kumar Agrawal took over the business of deceased and therefore, there is no loss of income. He further submitted that amount awarded to the claimants is on higher side by taking income of deceased as Rs.2,24,067/-. He lastly submitted that learned Claims Tribunal committed an error in not deducting the amount of compensation taken by claimants from Insurance Company of its Car for accidental death of deceased Sunil Kumar Agrawal under P.A. cover to owner/driver of Rs.2,00,000/-.

10. Learned counsel appearing for claimants submitted that learned Claims Tribunal committed an error in not awarding any amount towards future prospects even after holding the age of deceased as 34 years on the date of accident. He further submitted that learned Claims Tribunal committed error in awarding meager amount of compensation towards other conventional heads.

11. For convenience, the grounds raised by learned counsel for Insurance Company is considered and decided first.

12. So far as ground raised by learned counsel for Insurance Company that offending vehicle was not involved in the accident is concerned, they have failed to produce any witness in their behalf, even driver of offending vehicle did not choose to appear before learned Claims

Tribunal and to enter into witness box to prove that accident of Car bearing registration No.CG04/HB/3869 did not take place with offending vehicle.

13. Apart from aforementioned fact, perusal of property seizure memo (Ex. P-4) would show that it is a seizure memo of offending vehicle bearing registration No.WB23/B/3747. The offending vehicle was shown to be seized from the incident spot and it mentions that offending vehicle was loaded with iron manganese stones, both front wheels were broken and there was dent on the driver side of offending vehicle.

14. In view of aforementioned condition of offending vehicle seized from the spot vide Ex. P-4, the pleadings made by Insurance Company that offending vehicle was not involved in accident is not sustainable. The condition of offending vehicle itself shows that it might have run over the divider, due to which, its both front wheels got damaged.

15. There was one eyewitness examined on behalf of claimants, namely, Roopchand Agrawal as AW-2, who in his evidence specifically mentioned that offending vehicle came on wrong side and dashed the Car. This evidence of witness remained uncontroverted.

16. More particularly, looking to the condition of offending vehicle, driver of offending vehicle would be the best witness to state that how the offending vehicle got damaged. Even Insurance Company has not made any effort to prove their pleadings that offending vehicle was running on its side by producing spot map of the place of incident, which is a public document and may be available with criminal record of the case.

17. In view of aforementioned fact, condition of offending vehicle and evidence available on record, learned Claims Tribunal rightly held that offending vehicle was involved in accident, in which, Sunil Kumar Agrawal died.

18. So far as next ground raised by learned counsel for Insurance Company that learned Claims Tribunal committed error in holding the income of deceased as Rs.2,24,067/- per annum is concerned, claimants have filed Exs. P-7, P-8, P-9 and P-10 along with covering letter issued by Office of Income Tax Officer-1 (2), Raipur dated 24/09/2012. Ex. P-7 is balance sheet of profit and loss of account of Late Sunil Kumar Agrawal. Ex. P-8 is acknowledgement of income tax return for the assessment year 2010-2011 showing gross total income of deceased Sunil Kumar Agrawal as Rs.2,24,067/- and Ex. P-9 is acknowledgement of income tax for the assessment year 2011-2012 showing gross total income of deceased Sunil Kumar Agrawal as Rs.4,16,698/-.

19. Learned Claims Tribunal has taken gross total income for the assessment year 2010-2011 wherein gross total income of Late Sunil Kumar Agrawal as mentioned is Rs.2,24,067/-. The accident took place on 26/11/2010, whereas acknowledgement of income tax return bears the date of submission as 15/10/2010, which shows that income tax return was submitted prior to the date of accident.

20. Looking to the fact that income tax return for the assessment year 2010-11 was submitted by deceased Sunil Kumar Agrawal prior to date of accident, therefore, learned Claims Tribunal rightly held the income of deceased as mentioned in Ex. P-8 as Rs.2,24,067/-.

21. In view of above, the ground raised by learned counsel for Insurance Company that income of deceased assessed by learned Claims Tribunal is on higher side is not sustainable and is hereby rejected.

22. So far as other ground raised by learned counsel for Insurance Company that learned Claims Tribunal has not deducted an amount of Rs.2,00,000/-, which claimants have received from Insurance Company of Car towards P.A. to owner/driver from the total amount of compensation is concerned, I have perused the evidence of Smt. Jyoti Agrawal, wife of deceased (AW-1), who in her evidence at paragraph-12 admitted that she received an amount of Rs.2,00,000/- towards P.A. claim from Reliance General Insurance Company Limited.

23. It is a trite law that claimants can get compensation on account of accidental death of deceased, but they cannot claim for one incident of death from different Institutions/Authorities separately more than once. Both the amount is of risk covered by insurance policy of the vehicles and was for accidental death. In fact, they will be entitled for a total amount of compensation for loss suffered by them due to untimely death of whom, they were dependent. If any amount is received from some other Institution/Authority on the basis of some other motor insurance policy, then it is to be adjusted from the amount of compensation granted by any other Institution/Authority on the basis of other grounds because both the claims have been made on the same ground i.e. on account of death in motor accident.

24. In view of above, learned Claims Tribunal committed error in not considering specific evidence of Smt. Jyoti Agrawal (AW-1) that she has received an amount of Rs.2,00,000/- from Insurance Company towards P.A. claim on account of death of Sunil Kumar Agrawal in motor accident.

25. The amount which was received by claimants towards P.A. claim on accidental death of Sunil Kumar Agrawal is liable to be deducted from total amount of compensation because amount of Rs.2,00,000/- granted under the P.A. claim is also in the nature of compensation on account of death on motor accident only.

26. So far as last ground raised by learned Counsel for Insurance Company that claimants did not suffer any loss of income because wife of deceased was running business and submitting income tax return is concerned, I have perused the evidence of Smt. Jyoti Agrawal, wife of deceased (AW-1) and Sanjeet Jain, Chartered Accountant (AW-5) of Late Sunil Kumar Agrawal.

27. Sanjeet Jain (AW-5) in his evidence specifically stated that he has brought income tax return for the assessment years 2009-10 and 2010-11 which was in the name of M/s Balajee Traders showing Late Sunil Kumar Agrawal as Proprietor. He admitted that after death of

Sunil Kumar Agrawal, no account has been placed before him for submission of income tax return. He further admitted that though income tax return is being submitted by Smt. Jyoti Agrawal, wife of deceased, but the business is closed. Even if it is considered that Smt. Jyoti Agrawal, wife of deceased Sunil Kumar Agrawal, has in any manner taken over the business, then also, it cannot be said that claimants have not suffered any loss of income. Only under the name of business, no income is generated, but it is the efficiency and work of particular person managing affairs of business, which generates the income. Therefore, when Sunil Kumar Agrawal died while doing the business and earning income from it as mentioned in income tax return, then claimants have definitely suffered loss of income as mentioned in income tax return.

28. In view of above, this ground also is not sustainable and is rejected.

29. Now this takes me to the ground raised by learned counsel for claimants in MAC No.500/2013 whereby they have claimed that learned Claims Tribunal committed error in awarding meager amount of compensation.

30. Perusal of award would show that learned Claims Tribunal has held the annual income of deceased as Rs.2,24,067/- and after deducting 1/4th towards personal and living expenses, has applied multiplier of 16 for assessing loss of dependency and further added Rs.25,000/- towards other conventional heads.

31. Learned Claims Tribunal has assessed the age of deceased as 34 years, therefore, in view of law laid down by Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and Ors.**[1], income of deceased is to be increased by 40% of the assessed income towards future prospects, which was not added by learned Claims Tribunal.

32. For the foregoing reasons and the argument of the learned counsel appearing for respective parties in both the appeals, amount of compensation awarded by learned Claims Tribunal requires recalculation, which this Court calculates as under:-

Considering the facts and circumstances of case, learned Claims Tribunal assessed the annual income of deceased on the basis of documents as Rs.2,24,067/-. By adding 40% of the aforesaid income towards future prospects (2,24,067 x 40% = 89,627), yearly income of deceased comes to Rs.3,13,694/- (2,24,067 + 89,627). After deducting 1/4th towards his personal and living expenses from the income of deceased i.e. Rs.78,423/- (3,13,694 / 4), annual dependency of claimants comes to Rs.2,35,271/- (3,13,694 – 78,423). At the time of accident, deceased was aged about 34 years as held by learned Claims Tribunal, therefore, in view of ratio laid down in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[2], multiplier of 16 would be applicable in the present case. After applying multiplier of 16, total

1 **AIR 2017 SC 5157**
2 **(2009) 6 SCC 121**

loss of dependency of claimants comes to Rs.37,64,336/- (2,35,271 x 16). In addition, claimants are also entitled for a sum of Rs.70,000/- towards other conventional heads.

33. On the basis of above calculation, award passed by learned Claims Tribunal is modified accordingly and now claimants are held entitled for a total compensation of Rs.38,34,336/- (37,64,336 + 70,000).

34. As held in preceding paragraphs that claimants have already received Rs.2,00,000/- from Insurance Company under P.A. claim on account of motor accidental death, therefore, an amount of Rs.2,00,000/- is to be deducted from the total amount of compensation, which makes the amount of compensation as Rs.36,34,336/- (38,34,336 – 2,00,000/-) instead of Rs.27,13,800/-.

35. Now, claimants will be entitled for total sum of Rs.36,34,336/- along with interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

36. In the result, both the appeals (MAC Nos.383/2013 and 500/2013) are allowed in part and impugned award passed by learned Claims Tribunal is modified to the extent indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh