NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 407 of 2013

1. Smt.Arti Sahu, W/o Late Mahendra Sahu Aged About 19 Years R/o Panchashil Nagar, Naya Para, Ward No. 1, Tah. And Distt. Durg C.G.,

2. Ishwari Sahu S/o Bhuruwa Sahu Aged About 53 Years R/o Panchashil Nagar, Naya Para, Ward No. 1, Tah. And Distt. Durg C.G.,

3. Smt. Laxmi Sahu W/o Ishwari Sahu Aged About 45 Years R/o Panchashil Nagar, Naya Para, Ward No. 1, Tah. And Distt. Durg C.G.,

4. Veer Sahu S/o Late Mahendra Kumar Sahu Aged About 1 Years Minor, Thru- Mother Smt. Arti Sahu, R/o Panchashil Nagar, Naya Para, Ward No. 1, Tah. And Distt. Durg C.G.,

---- Appellants/Applicants

Versus

1. Hemendra Kumar, S/o Rama Swami Srinivasan R/o Kotni, P.S. Pulgaon, Distt. Durg C.G.

2. The Oriental Insu.Co.Ltd. Thru- Branch Manager, Branch Office, The Oriental Insu.Co.Ltd., O/o 16 -R.S.S.Market, Power House Bhilai, Tah. And Distt. Durg C.G.,

---- Respondents/Non-Applicants

For Appellants	:	Shri Om P. Sahu, Advocate
For Respondent No.1	:	None, though served.
For Respondent No.2	:	Shri T.K.Tiwari, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal

Order / Award on Board

20.11.2019

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 18.01.2013 passed by the 1st Additional Motor Accident Claims Tribunal, Durg (for short, the Claims Tribunal) in Motor Accidents Claim Case No.34/2012, by which, the Claims Tribunal, while allowing the claim in part, awarded total amount of

compensation to the tune of Rs.2,95,500/- with interest @ 6% per annum from the date of filing of Claim Petition till its realisation. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on 17.02.2012 at 10.30 AM, deceased Mahendra Kumar Sahu was going to Nagpura from Panchsheel Nagar, Durg by his motorcycle bearing registration No. C.G.-07-LU-2573 and as soon as he reached near the Pankaj Badi Kotni, he was hit vehemently by the offending vehicle, i.e., TVS motorcycle bearing registration No. C.G.-07-AA-1155, which was insured with Non-Applicant No.2/the Oriental Insurance Company Limited. At the relevant time, the owner of it, namely, Hemendra Kumar was driving the same in a rash and negligent manner. Owing to which, the alleged accident occurred and the deceased sustained serious injuries and expired on the same day.

3. On account of the aforesaid accident, a claim petition enumerated under Section 166 of the Act of 1988 has been made by the Claimants being legal representatives of deceased Mahendra Kumar claiming total amount of compensation to the tune of Rs.37,60,000/- under various heads by submitting inter alia that the deceased, a 25 years old, was a driver by profession and used to earn Rs.5,000/- per month.

4. The aforesaid claim has been contested by the Non-Applicants. Non-Applicant No.1 Hemendra Kumar contested the claim on the ground that the deceased himself was responsible for the alleged accident and, while reiterating the said fact, Non-Applicant No.2, the Oriental Insurance Company Limited has contested by saying that since the driver of the alleged offending vehicle was not holding the valid and effective driving license, therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, the Claims Tribunal, while placing its reliance upon the spot map (Ex.P.3), arrived at a conclusion that the alleged accident occurred because of head on collision between the said motorcycles and both the drivers were equally responsible for the cause of accident. It held further that the driver of the offending vehicle was holding the valid and effective driving license and the insurance company has failed to prove that it was being driven in violation of the insurance policy. In consequence, while fastening the liability upon the insurer, awarded total amount of compensation to the tune of Rs.2,95,500/- with interest @ 6% per annum from the date of filing of Claim Petition till its realisation.

6. Being aggrieved, the Claimants have preferred this appeal. Shri O. P. Sahu, learned counsel for the Applicants submits that while passing the award impugned, the Claims Tribunal has committed an illegality in holding that the deceased was equally responsible for the cause of the alleged accident, occurred on 17.02.2012 at 10.30 AM, by placing its reliance upon the spot map (Ex.P.3). According to him, a bare perusal of the said map vis-a-vis the evidence of N.A.W.1 - Ram Singh, it is evident that the deceased was found to be on his own side, however, the said fact was not considered in its proper manner while arriving at such a conclusion. He submits further that while assessing the amount of compensation, the monthly income of the deceased has wrongly been taken into consideration as Rs.4,000/-. While referring to pay-certificate (Ex.P.12) and the statement of Rajesh Kumar (A.W.3) adduced in this regard, it is contended further by him that the monthly income of the deceased was Rs.5,000/-. It is contended further that while awarding the amount of compensation, future prospects of the income of the deceased and proper amount of compensation towards conventional heads ought to have been granted. The award impugned is, therefore, liable to be enhanced accordingly.

7. On the other hand, Shri T.K.Tiwari, learned counsel for Non-Applicant No.2, while supporting the award impugned, submits that the alleged spot map (Ex.P.3) was properly considered, and therefore, finding of the Claims Tribunal holding that the deceased was equally responsible for the alleged accident, does not require to be interfered. He submits further that Non-Applicant No.1 – Hemendra Kumar was driving the vehicle, which is a TVS motorcycle, i.e., a lighter vehicle than the vehicle driven by the deceased, therefore, the said finding is just and proper. He submits further that while considering the monthly income of the deceased as Rs.4,000/-, just and proper compensation has been awarded by the Claims Tribunal, and therefore, the findings of the Claims Tribunal deserve to be upheld.

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

9. In order to establish the factum of accident, the Claimants have examined one Deepa Sahu (A.W.2), the eye witness. According to her testimony, the alleged accident occurred due to rash and negligent driving by Hemendra Kumar (Non-Applicant No.1) alone and she was stuck in this regard on her cross-examination. Ex.P.2 was the first information report, which was lodged by deceased's brother immediately upon the occurrence of the alleged accident on 17.02.2012 itself and based upon it an offence punishable under Section 304-A IPC has been registered against said Hemendra Kumar in connection with Crime No.110/2012. After investigating the matter, the final report (Ex.P.1) was submitted before the concerned Court. Although the first information report (Ex.D.1) was lodged by Hemendra Kumar against the deceased, however, it appears that the said report was lodged 9 – 10 days after the occurrence of the incident, i.e., on 25.02.2012

and reasons for its delay were mentioned to the effect that he was undergoing treatment. However, on the basis of his own evidence, it is evident that he did not receive any injury and in fact, his father was injured but, for the reasons best known to him, he did not enter the witness box. He (father of Hemendra Kumar), however, could have thrown some light regarding the manner in which the alleged accident occurred. Non-examination of father of Non-Applicant No.1 would, therefore, lead to an irresistible conclusion that the alleged accident occurred due to rash and negligent driving of Non-Applicant No.1 - Hemendra Kumar and he alone was responsible for it.

10. From perusal of the record, it appears that the finding of the Claims Tribunal holding that the deceased (Mahendra Sahu) was equally responsible for the alleged accident was based upon the spot map (Ex.P.3). It, however, appears that the said map was misinterpreted by the Claims Tribunal in arriving at such a conclusion as a bare perusal of it, vis-a-vis, the statement of Ram Singh (N.A.W.1), Head Constable, who prepared the said map would reveal the fact that the deceased was on his own side when he was hit by the offending vehicle.

11. Considering the aforesaid evidence placed on record, it is evident that the driver of the offending vehicle Hemendra Kumar alone was responsible for the alleged accident. The finding of the Claims Tribunal in this regard, therefore, deserves to be and is hereby set aside and it is held that the alleged accident occurred because of rash and negligent driving by Non-Applicant No.1 (Hemendra Kumar).

12. Now, in so far as the amount of compensation, as determined by the Claims Tribunal by considering the monthly income of the deceased as Rs.4,000/- also appears to be unjustified. From a bare perusal of the evidence of A.W.3 Rajesh Kumar Alwa, under whom, the deceased was

working as his driver, it is clear that pay-certificate (Ex.P.12) issued by him was duly established by him and, based upon his unrebutted evidence, it can safely be inferred that the deceased used to earn Rs.5,000/- per month while working as a driver. It appears further that while assessing the amount of compensation, future prospects of his income as well as the amount of compensation under conventional heads have not been considered properly. However, while determining his income, an addition of 40% of it towards further prospects of his income should be made as he was 25 years old at the relevant time, in order to provide just and proper compensation payable to the Claimants in the light of the decision rendered in the matter of ***"National Insurance Company Limited -v- Pranay Sethi"*** reported in **(2017) 16 SCC 680.** As he was 25 years old, the multiplier applicable would be 18, as rightly applied by the Claims Tribunal

13. Considering the aforesaid facts and circumstances and in view of the principles laid down in the aforesaid decision, I deem it proper to assess the monthly income of the deceased as Rs.5,000/-, yearly Rs.60,000/- and that by adding 40% of it, i.e., Rs.24,000/- (Rs.60,000/- x 40%) towards future prospects of his income, it would then be worked out to Rs.84,000/- (Rs.60,000/- + Rs.24,000/-). After deducting 1/3rd of it, i.e., Rs.28,000/- (Rs.84,000/- x 1/3), the yearly dependency would be worked out to Rs.56,000/- (Rs.84,000/- – Rs.28,000/-). By applying the multiplier of 18, the total dependency would thus be Rs.10,08,000/- (Rs.56,000/- x 18). In addition to this, the Claimants would be entitled to a sum of Rs.2,00,000/- towards conventional heads in the light of the decision rendered in the matter of ***Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and others*** reported in **(2018) 18 SCC 130,** as under:

	Head of Compensation		Amount
(i)	Loss of consortium to the wife	:	Rs. 40,000.00
(ii)	Loss of filial consortium at the rate of Rs.40,000/- each to the parents.	:	Rs. 80,000.00
(iii)	Loss of love and affection to minor child	:	Rs. 50,000.00
(iv)	Funeral expenses	:	Rs. 15,000.00
(v)	Loss of Estate	:	Rs. 15,000.00
	Total	:	Rs.2,00,000.00

14. The Claimants would, thus, be entitled to a total sum of Rs.12,08,000/-, instead of Rs.2,95,500/- as awarded by the Claims Tribunal, along with 6% interest per annum from the date of filing of the Claim Petition till its realisation. Rest of the observations made by the Claims Tribunal shall remain intact.

15. The appeal is accordingly allowed in part to the extent indicated herein above. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
Judge

Anjani