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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1381 of 2014

- Shriram General Insurance Company Limited Thru- Auth. Officer, Shri Ram General Insu.Co.Ltd., E/8, RIICO, Industrial Area, Sitapura, Jaipur Rajasthan, 302022, Present Address- 4th Floor, Maruti Heights, G.E. Road, Beside Sky Maruti Dealer, Raipur C.G (Insurer).

---- Appellant

Versus

1. Smt.Geeta Yadav W/o Late Kishun Bihari Aged About 36 Years
2. Ku. Rinku D/o Late Kishun Bihari Aged About 20 Years
3. Ku. Anita D/o Late Kishun Bihari Aged About 18 Years
4. Ku. Alpana D/o Late Kishun Bihari Aged About 16 Years
5. Ku. Radhika D/o Late Kishun Bihari Aged About 14 Years
6. Ku. Suman D/o Late Kishun Bihari Aged About 12 Years
7. Rohit S/o Late Kishun Bihari Aged About 10 Years
8. Ku. Rajni D/o Late Kishun Bihari Aged About 8 Years
9. Ku. Karishma S/o Late Kishun Bihari Aged About 5
10. Ku. Rani D/o Late Kishun Bihari Aged About 3
11. Udasi W/o Mohan Yadav Aged About 65 Years.
12. Mohan, S/o Tapeshwar, aged about 70 years- deleted

    Respondents- 4 to 10 are minors represented through natural guardian mother- Smt Geeta Yadav

    All are R/o Village- Labhri, Post- Bairwan, Thana- Pipri, Distt. Sonbhadra U.P. District : Sonbhadra, Uttar Pradesh

13. Pappu Agrawal S/o Devi Prasad Agrawal R/o Shakti Para, Ambikapur, Distt. Surguja C.G (Owner).

---- Respondents

For Appellant	:	Shri Sachin Singh Rajput, Advocate
For Respondents- 1 to 12	:	Shri DN Prajapati, Advocate
For Respondent-13	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

29.03.2019

1. The appellant-Insurance Company by this instant appeal has challenged the impugned award dated 24.03.2014 passed by learned Additional Motor Accident Claims Tribunal, Pratappur, district- Surguja (for

short, 'Claims Tribunal') in Claim Case No.13 of 2013 whereby learned Claims Tribunal partly allowed the claim application filed by the claimants and awarded a total sum of Rs.10,30,000/- as compensation.

2. Brief facts for disposal of this appeal are that on 17.12.2010 at about 4.30am one Pickup bearing No.UP-64H-3863 driven by one Ganesh, dashed truck bearing No.UP-64A- 5838 (for short, 'offending vehicle'), which was driven by one Kishun Bihari. In the aforementioned accident, Kishun Bihari succumbed to the injuries during course of his treatment.

3. Learned Claims Tribunal on a claim application filed under Section 166 of the Motor Vehicle Act, 1988 filed by respondents- 1 to 11, who are legal representatives of late Kishun Bihari, while appreciating the pleadings and evidence, held the income of deceased at Rs.20,000/- per month and awarded a total sum of Rs.10,30,000/-.

4. Learned counsel for the appellant argued that learned Claims Tribunal erroneously held the income of deceased as Rs.20,000/- per month without there being any documentary proof in this regard. The accident was between two vehicles and the deceased himself was also contributory negligent in the accident being driver of one of the vehicles but learned Claims Tribunal did not consider this aspect of the case.

5. Learned counsel for respondents- 1 to 11/claimants supported the award passed by learned Claims Tribunal and argued that deceased was owner of offending vehicle and it was purchased on finance from Shriram Transport Finance Company Limited. It has also been argued that the deceased was regularly paying instalments to the financier and the

relevant documents showing payment of instalments are part of record as Ex.P/26 to P/35 and therefore, learned Claims Tribunal rightly held the income of deceased as Rs.20,000/- per month, which is not on higher side. He further argued that appellant/Insurance Company failed to produce any material and evidence on record before learned Claims Tribunal to prove that the deceased himself was contributory negligent in the accident in any manner.

6. I have heard learned counsel for the parties and perused the records. It is not in dispute that the deceased on the date of accident was owner of one of the vehicles involved in accident as the claimants have filed its registration certificate issued from the Transport Department of Uttar Pradesh, which is marked as Ex.P/22, wherein name of owner of the vehicle was shown as- Kishun Bihari Yadav, the deceased. The said vehicle was insured with the appellant- Insurance Company for a period from 05.05.2010 to 04.05.2011 vide Ex.P/21. The claimants also filed documents relating to payment of instalments of offending vehicle marked as Ex.P/26 to P/35 which show the regular monthly instalments paid to the financier.

7. Though there is no evidence with respect to the income of deceased as pleaded by the claimants, but now it is to be considered in the facts and circumstances of the case whether learned Claims Tribunal awarded the amount of compensation on higher side.

8. Perusal of records would show that deceased was owner of offending vehicle and he was continuously paying the instalments to its

financier as per Ex.P/26 to P/35, prior to the date of accident. It appears that the instalments are fixed at Rs.12,000/- per month by the financier for re-payment of loan amount and definitely the deceased might be earning more in a truck, than what he was paying towards the loan instalments. The other aspect of the case would also not lost sight as learned Claims Tribunal applied multiplier of 5 looking to the age of parent of deceased.

9. In the considered opinion of this Court, the multiplier applied by learned Claims Tribunal is erroneous as the multiplier to be applied was on the basis of age of the deceased on the date of accident, when the claimants are wife and children along with parents.

10. The above issue of application of multiplier has been considered and decided by Hon'ble Supreme Court in the matter of **Sarla Verma Vs DTC** reported in 2009 (6) SCC 121.

11. In the case at hand, in the postmortem report available in record, age of deceased was mentioned as 40 years. In the claim application also, the claimants have pleaded that at the time of accident, age of the deceased was 40 years and in support thereof, they have filed birth certificate of the deceased. Thus, proper multiplier applicable in the present case would be 15 and not 5 as has been applied by learned Claims Tribunal by taking average age of the parents of the deceased, but there is no appeal on behalf of claimants.

12. Though the claimants have failed to prove the income of deceased as Rs.20,000/- per month by any documentary evidence but looking to the overall facts and circumstances of the case, this Court is not going into

whether income pleaded is proved or not but only considering whether the amount awarded is more than what claimants are entitled for. The amount of compensation awarded by learned Claims Tribunal cannot be said to be on higher side or as a bonanza.

13. Undisputedly deceased was owner of a truck and was driving himself. Multiplier was wrongly applied, not added future prospects in monthly income while awarding compensation.

14. In view of above discussion and in totality of facts and circumstances of case, I do not find that Claims Tribunal passed an award on higher side. There is no substance in the argument of learned counsel for the appellant calling interference in the calculation of amount of dependency or total compensation.

15. The next question raised by learned counsel for the appellant is that the deceased himself was also involved in accident and there was head on collusion, therefore, the deceased was also contributory negligent for the accident. I do not find any material and evidence placed on record before learned Claims Tribunal by the appellants in this aspect. Contributory negligence is a fact to be proved by the party asserting it. Mere head on collusion between two vehicles cannot lead to the assumption that both drivers of vehicles are contributory negligent.

16. The Hon'ble Supreme Court while dealing with the issue of contributory negligence in the decision of ***Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors., 2013 AIR SCW 5375***, 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 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."

17. In case of ***Jiju Kuruvila and others v. Kunjujamma Mohan and others, (2013) 9 SCC 166***, the Hon'ble Supreme Court has 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."

18. As in the instant case, the appellants have not produced any material and evidence before learned Claims Tribunal to prove the fact of contributory negligence, therefore, the argument raised by learned counsel for the appellant to this aspect is also repelled.

19. In view of above discussions, I do not find any good ground for interfering with the award passed by learned Claims Tribunal.

20. The appeal being devoid of any substance, is liable to be and is hereby dismissed.

21. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma