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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 578 of 2014

Bhag Bai D/o Late Dharamadas Aged About 50 Years R/o Village Pandotara, Chowki Setganga, Polce Station Mungeli, Tahsil Mungeli, District Bilaspur, C.G. ,

---- Appellant

Versus

1. Ram Kumar Gabel @ Birbal And Anr. S/o Jeevrakhan Gabel, Aged About 32 Years Pandotara Chowki Setganga Police Station Mungeli, Tahsil Mungeli, District Bilaspur, C.G. (Driver And Owner Of Offending Vehicel Tractor Bearing Registration No. C.G. 10d 3739 Trolly And C.G. 10D 3740, Chhattisgarh
2. Ifco Tokiyo General Insurance Co. Raipur, District Raipur, C.G.

---- Respondents

MAC No. 1294 of 2014

- IFFCO Tokio General Insu. Co. Ltd., 3rd Floor, Shop No. 345-347, Ganga Shopping, G.E. Road, Raipur, Tah. And Distt. Raipur C.G.,

---- Appellant

Versus

1. Smt. Bhaag Bai And Anr. W/o Late Dharamdas Aged About 50 Years R/o Pandotara Chowki, Sethganga Thana, Mungeli, Tah. Mungeli, Distt. Mungeli Then Bilaspur C.G., (Claimant)
2. Ram Kumar Gabel @ Birbal S/o Jeevrakhan Gabel Aged About 32 Years R/o Pandotara Chowki, Sethganga Thana, Mungeli, Tah. Mungeli, Distt. Mungeli Then Bilaspur C.G. (Driver & Owner)

---- Respondents

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in MAC No.578/2014

For Appellant:	Shri C.K.Sahu, Advocate.
For Respondent No.1:	Shri Anand Shukla, Advocate.
For Respondent No.2:	Shri Amrito Das, Advocate.

In MAC No.1294/2014

For Appellant:	Shri Amrito Das, Advocate
For Respondent No.1	Shri C.K.Sahu, Advocate.
For Respondent No.2	Shri Anand Shukla, Advocate

Single Bench:Hon'ble Shri Sanjay Agrawal, J

Award On Board

09.07.2019

1. Both these appeals arise out of the common award passed on 30.04.2014 by the Additional Motor Accident Claims Tribunal Mungeli (for short, The Claims Tribunal) in Claim Case no. 75 of 2011, by which, the learned Claims Tribunal while allowing the claim in part, awarded total amount of compensation to the tune of Rs. 2,35,000/- (Rupees two lacs thirty five thousand only) with 6 % interest per annum from the date of filing of Claim Petition till its realisation.
2. Briefly stated the facts of the case are that on 30.05.2009, deceased Pramod Kumar was cultivating in his field, at that particular time, the offending vehicle “Tractor” attached with its trolley bearing its registration No.CG-10-D-3739 and C.G.-10-D-3740 respectively insured with the Non-applicant No.2, was being driven rashly and negligently by its owner. On account of which, he lost his control over the offending vehicle, as a result of which, it turned turtle and the deceased came under it and expired.
3. Based upon the aforesaid incident, a claim enumerated under Section 166 of the Act, 1988 has been made by the deceased's mother by submitting, *inter alia,* that her son, a 19 year old, was a milk vendor and used to earn Rs.9,000-10,000/- per month and has, thus, claimed a total amount of compensation to the tune of Rs. 29,50,000/- (Rupees twenty nine lakhs fifty thousand only).
4. The aforesaid claim has been contested by Non-applicant No.1 by submitting, inter-alia, that the alleged accident has not occurred due to rashness and negligent driving by him and pleaded further that since the vehicle in question was insured with non-applicant No. 2/Insurance

Company, therefore, in case any liability being fastened, the same could be indemnified by the said Insurance Company. While non-applicant No. 2/the Insuance Company has contested the claim mainly on the ground that Non-applicant No.1 was not holding the effective and valid driving license, and the vehicle in question insured exclusively for the agricultural purposes was being used by carrying 5-6 labourers including the deceased in violation of the policy. As such, the Insurance Company cannot be held liable in relation to the accident occurred on 30.05.2009.

5. After considering the evidence led by the parties, the Claims Tribunal by its award impugned, arrived at a conclusion that the alleged accident has occurred on 30.05.2009 due to rashness and negligent driving by the driver of the offending vehicle, resulting the sad demise of Pramod Kumar, a 17 years old, who used to earn Rs. 2500/- per month and that by applying the multiplier of 15, awarded total amount of compensation to the tune of Rs. 2,35,000/- by including other heads, like funeral expenses as well as loss of love and affection.

6. Being aggrieved, these appeals have been preferred by the insurer as well as by the claimant. Shri Amrito Das learned counsel for the Appellant in MAC No. 1294/2014 submits that the award under appeal as passed by the learned Claims Tribunal while fastening the liability upon the Insurance Company is apparently contrary to law. According to him, the vehicle in question was being used by its owner, who was not holding the effective and valid driving license to drive the said commercial vehicle. However, without considering the said facts in its proper manner, the Claims Tribunal has committed an illegality in

fastening the liability upon the Non-applicant No. 2/Insurance Company. It is contended further by him that the deceased was in fact travelling while sitting in the trolley of the alleged tractor, and therefore, no liability as such could be fastened upon the company. While Shri Sahu, learned counsel for the Appellant in MAC 578 of 2014 submits that just and proper compensation payable to the claimant has not been awarded as neither the monthly income of the deceased has been assessed properly nor proper multiplier has been used. He submits further that while awarding the compensation, the Claims Tribunal ought to have considered the future prospect of the income of the deceased. Having failed so, the Claims Tribunal has committed an illegality in awarding meagre amount of compensation. In support, he placed his reliance upon the decisions rendered in the matter of "***National Insurance Company Limited Vs. Pranay Sethi and others"*** reported in **AIR 2017 SC 5157.**

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

8. In MAC No. 1294 of 2014, preferred by the Insurance Company, wherein, it has been contended that the driver was not holding the effective and valid driving license. However, from perusal of the record and in view of the particulars (Ex. NA-4) furnished by the concerned Regional Transport Authority, it is evident that the driver was holding the effective and valid driving license at the relevant time. The further contention of the learned counsel for the appellant/insurance company that the deceased was in fact travelling in the alleged vehicle is, however, noted to be rejected as the insurance company has failed to

produce the cogent and reliable evidence in order to establish the said fact. As such, it cannot be held that the deceased was travelling in the alleged offending vehicle. In such circumstances, the Claims Tribunal has not committed any illegality in fastening the liability upon the Insurance Company. The said finding therefore, deserves to be and is hereby affirmed.

9. As far as the appeal (M.A.(C) No. 578/2014) preferred by the claimant is concerned, it appears that the amount of compensation as awarded by the Claims Tribunal while assessing the monthly income of the deceased to the tune of Rs. 2500/- and, the multiplier of 15 as applied even without considering the future prospects of the income of the deceased deserves to be modified/enhanced. It appears from perusal of the record that the deceased Pramod Kumar was the milk vendor and as such, his monthly income cannot be less than Rs. 3,000/- at the time of the accident, which occured on 30.05.2009. Besides, future prospects of the income of the deceased to the extent of 40% of his monthly income should have been taken into consideration in order to provide just and proper compensation to the claimant in the light of the decision rendered in the matter of ***National Insurance Company Limited Vs. Pranay Sethi and others*** (Supra). Since the deceased was found to be 17 years old at the time of accident, therefore, the proper multiplier should have been 18, instead of 15.

10. Considering the aforsaid facts and circumstances of the case and in view of the principles laid down in the aforesaid decision, I deem it proper to assess the monthly income of the deceased at Rs. 3,000/-, yearly Rs. 36,000/- and that by adding 40% of it, i.e. Rs. 14,400/-

towards future prospects of his income then it would work out at Rs. 50,400/- (Rs. 36,000 + 14,400). Since the deceased was unmarried, therefore, after deducting half of it, the yearly dependency would be Rs. 25,200/- and that by applying the multifplier of 18, it would be at Rs. 4,53,600/-. In addition to this, the claimant is also entiled to a sum of Rs. 70,000/- towards conventional heads. The claimant is, thus, entitled to total sum of Rs. 5,23,600/- (Five Lacs twenty three thousand six hundred only) instead of Rs. 2,35,000/- as awarded by the Claims Tribunal and the enhanced amount of compensation, i.e. Rs. 2,88,600/- (5,23,600 – 2,35,000) shall carry interest at the rate of 6% per annum from the date of filing of claim petition till its realisation. As far as other conditions, as observed by the Claims Tribunal, shall remain intact.

11. Consequently, MAC No.1294 of 2014 preferred by the Appellant-Insurance Company is hereby dismissed, while MAC No.578/2014 preferred by the claimant is allowed in part to the extent indicated herein above. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

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