NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 625 of 2014

Oriental Insurance Company Ltd. Thru- Divisional Manager, Branch Office, Oriental Insu.Co, Near Rajendra Park Chowk, Durg C.G.

---- Appellant

Versus

1. Smt. Geeta Yadav W/o Late Indra Kumar Yadav Aged About 24 Years, Occupation Housewife, R/o Indira Nagar, Baghera, Tah. And Distt. Durg C.G.
2. Sanjay Kumar Yadav S/o Baldau Prasad Aged About 25 Years, Occupation Matador Driver, R/o Baijnath Para, Ward No. 39, Durg C.G.
3. Ishwar Golcha S/o Kutal Lunkaran Golcha Propriter- Mahavir Dhan Kutai Kendra, Meelpara, Durg C.G.
4. Ramesh Yadav S/o Bisambhar Yadav Aged About 50 Years.
5. Smt. Bisahin Bai Yadav W/o Ramesh Yadav Aged About 45 Years.

Respondent Nos. 4 & 5, R/o Near Sheetla Mandir, Indira Nagar, Baghera, Durg C.G.

---- Respondents

For Appellant	:	Shri Arvind Shrivastava, Advocate.
For Respondent No.1	:	Shri O.P. Sahu, Advocate.
For Respondents No.2 to 5	:	Shri Shikhar Bhaktiyar, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

15/02/2019

1. By the instant appeal, the appellant/Insurance Company is challenging the legality and validity of the impugned award dated 08.05.2014 passed by the learned Motor Accident Claims Tribunal, Durg, C.G (in short 'the Tribunal') in Claim Case No.22/2012, whereby the Tribunal has awarded a total sum of Rs.13,49,000/- in death case.

2. Brief facts necessary for disposal of this appeal are that on 10.10.2010 at about 5:30 p.m. Indra Kumar Yadav (since deceased) was returning home situated in Indra Nagar, Baghera on his bicycle. When he reached in front of Mandal Kirana Shop, situated Near Shiv Mandir Chowk, one Matador

bearing registration No. CG07/C/3984, (hereinafter shall be referred to as "the offending vehicle"), which was being driven by respondent No.2-Sanjay Kumar Yadav, dashed against his bicycle due to which he fell down and his head was crushed under the wheel of the offending vehicle resulting into his instantaneous death. Due to death of Indra Kumar Yadav in a road accident, the claimant/respondent No.1, who is unfortunate wife of the deceased, filed a claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988) seeking total compensation of Rs.19,90,000/- under various head on the ground that on the date of accident deceased was 26 years old and he was earning Rs.200/- per day from painting work, however, due to death of the deceased she has been deprived of the dependency.

3. Respondent Nos. 2 & 3, who are driver and owner of the offending vehicle, have submitted their reply to claim application and contended that the accident took place on account of negligence of the deceased himself. It has also been pleaded that the income of deceased in claim application has been shown on higher side and it could not be taken beyond Rs.15,000/- p.a.. They have also pleaded that on the date of accident offending vehicle was fully insured with the non-applicant No.3-Insurance Company and driver was also having valid & effective driving license to drive the offending vehicle and therefore the liability if any would be on insurance company.

4. The appellant/Insurance Company also submitted its reply denying all the facts with regard to accident. It has been averred by the insurance company that on the date of accident the driver of offending vehicle was not having valid and effective driving license and as such, there was breach of condition of insurance policy and therefore, the insurance company is not liable to indemnify the insured-owner of offending vehicle.

5. Non-applicants No. 4 & 5, who are parents of the deceased, have also filed written statement along with a counter claim stating that they were completely dependent on the income of the deceased, therefore, on account of accidental death of their son, they are also entitled for compensation on different heads, as claimed by them in counter claim.

6. Learned Claims Tribunal after considering the pleadings and evidence of respective parties, partly allowed the claim application vide impugned award and awarded total compensation of Rs.13,49,000/- by holding that there was no violation of any of the conditions of insurance policy.

7. Learned counsel appearing for the appellant submits that the Tribunal has assessed monthly income of the deceased as Rs.6,000/- without their being any cogent and reliable piece of evidence to this effect. He submits that since the deceased was self-employed, therefore, addition towards future prospects ought to be 40% and not of 50%. He further submits that award of Rs.1,44,000/- under other conventional heads is also on higher side and needs to be reduced suitably. He further submits that as per claim application, the deceased came under the rear wheels of the offending vehicle, which is suggestive of the fact that the deceased himself was negligent in riding the bicycle and thus also responsible for the accident and under these circumstances, the Tribunal should have held the deceased to be contributory negligent.

8. Learned counsel for respondent No.1/claimant & respondent Nos. 4 & 5/non-applicants father & mother of the deceased supported the impugned award and argued that the claimants have examined Contractor under whom the deceased was working and he has admitted that on the date of accident deceased was working under him as a Painter and getting Rs.200/- per day as

wages. He further argued that there is an eyewitness to the accident who has specifically deposed that the accident occurred due to rash and negligent driving of the offending vehicle by its driver. The eyewitness has categorically stated that the driver drove the offending vehicle on wrong side of the road i.e. extreme right of the road, and caused accident. In these circumstances, there could be no question of contributory negligence on part of the deceased in accident in question.

9. I have heard learned counsel for the parties and perused the record.

10. The Tribunal has allowed the application filed by the appellant/Insurance under Section 170 of the Act of 1988.

11. So far as, the ground raised by learned counsel for the appellant with respect to contributory negligence of the deceased himself is concerned, I have perused the evidence of AW-2 Praveen Kumar Sahu, who was examined as eye-witness before the Tribunal. Perusal of evidence of this witness goes to show that accident took place in front of his shop and at the time of accident he was siting in shop. He has made categorical statement before Tribunal that the offending vehicle which was being driven by respondent No.2 rashly and negligently in a high speed that too on the wrong side of the road i.e. extreme right of the road dashed the deceased. He further specifically stated in his statement that width of the road where accident took-place is about 20 feet only. He also stated that the deceased came under the rear wheel of the offending vehicle. He further stated that the deceased was riding his bicycle on his side of the road and it is the offending vehicle which came on wrong side. This witness had denied the suggestion that deceased was under the influence of liquor due to which he himself fell down on road.

12. Sanjay Kumar Yadav (NAW-6) is driver of the offending vehicle and he stated in his statement that the cyclist himself came under the rear wheel of offending vehicle. Except the statement of driver (NAW-6), nothing has been brought on record by the Insurance Company or the owner of offending vehicle showing that it is the deceased who himself was contributory negligent in accident in question. This apart, the Insurance Company has also failed to place on record, spot map etc. before the Tribunal showing that at the place of accident road was quite wide, two vehicles can pass comfortably and the offending vehicle was moving on its own side. Whereas, claimant/respondent No.1 had examined an independent eyewitness of the accident i.e. AW-2 whose shop was situated near place of accident. Upon assessment and evaluation of these two witnesses i.e. AW-2 & NAW-6 (driver of offending vehicle), the evidence of Praveen Kumar (AW-2), an independent eyewitness of the accident, appears to be more reliable and trustworthy and therefore his evidence has been taken into consideration to prove the manner in which the accident occurred. The Tribunal had not committed any mistake in relying upon the evidence of AW-2 Praveen Kumar. Thus, there are reliable pieces of evidence on record showing that the accident in question occurred due to rash and negligent act on the part of driver of offending vehicle only. Hence, argument advanced by learned counsel for the appellant that deceased himself was contributory negligent in accident is not sustainable and same is hereby repelled.

13. As regards the argument advanced by counsel for the appellant that the income of the deceased was assessed without any documentary evidence to support. Smt. Geeta Yadav (AW-1), wife of deceased, has specifically stated in her statement that on the date of accident her husband was aged about 26 years, he was working as 'Painter' and earing Rs.200/- per day. Version of this

witness gets corroboration from the statement of Narayan Prasad Pandey (AW-2), who is the Contractor under whom the deceased was working as Painter. According to this witness, he used to pay Rs.200/- per day to the deceased against his engagement as Painter. This apart, Anil Kumar Dewangan (NAW-3) & Kishore Kumar (NAW-4) also stated that the deceased was earning Rs. 200/- per day by working as 'Painter'. Though above witnesses have made oral statement that the deceased was working as Painter and getting Rs.200/- per day, but no documentary evidence like attendance or wage register etc. has been adduced showing total number of working days of the deceased in a month. Hence, this Court is of the opinion that determination of income of the deceased @ Rs.6,000/- per month by Tribunal is without any cogent and clinching evidence and therefore, the same cannot be sustained and is liable to be set aside.

14. In cases where the claimants failed to establish the exact monthly or yearly income of the deceased on the date of accident by leading cogent and reliable piece of documentary evidence, the Courts/Tribunal are required to asses the monthly income of the deceased by taking note of the wage rates prevailing in the district place of working of the deceased and nature of work on which he was claimed to be engaged. In present case, looking to the nature of work on which deceased was engaged at the time of accident i.e. painting work, which comes within the category of semi-skilled worker, it would be appropriate to take the monthly income of the deceased as Rs.4,500/- (Rs.150/- per day).

15. Further, addition of 50% by the Tribunal to the assessed income of the deceased towards future prospects appears to be on higher side and needs to be scaled down in view of the recent judgment of the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. vs. Pranay Sethi** reported in

(2017) 16 SCC 680 wherein the Hon'ble Supreme Court while dealing with the issue of future prospects has held thus;-

> “59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

16. In present case, claimant pleaded and proved by adducing cogent and clinching evidence that the deceased was aged about 26 years at the time of accident and he was self-employed. Therefore, in view of the guidelines laid down by the Hon'ble Supreme Court in Pranay Sethi's case (supra), addition towards 'future prospects' has to be 40% and not 50% of his established income, as the deceased was not in permanent employment.

17. Further, the amount awarded under conventional heads is very much on the higher side and therefore it is required to be reassessed in view of the decision of the Supreme Court in the matter of Pranay Sethi (supra).

18. For the foregoing discussions, this Court is of the view that the compensation awarded by the Tribunal is on higher side and it requires to be reassessed and recalculated. Therefore, this Court proposes to recalculate the amount of compensation payable to the claimant/respondent No.1 as below.

19. As on the date of accident, deceased was working as 'Painter', which comes under the category of semi-skilled worker, therefore, the monthly income of the deceased is assessed at Rs.4,500/- per month, as held above, and by adding 40% to the assessed income of the deceased towards future prospect, the

total monthly income would come to Rs.6300/- (4500+1800) and accordingly, the yearly income of the deceased comes to Rs.75,600/- (6300x12). After deducting one-third towards personal expenditure of the deceased, the annual loss of dependency comes to Rs.50,400/- (75600-25200). As the deceased was about 26 years of age on the date of accident, therefore, multiplier of 17 would be applicable. After applying the multiplier of 17, the total loss of dependency is assessed at Rs.8,56,800/- (50400x17). Besides this, the claimants are also entitled for a lump sum of Rs.70,000/- under other conventional heads. Now, the claimants are entitled for a total sum of Rs.9,26,800/- as compensation instead of Rs.13,49,000/- as has been awarded by the Tribunal. This amount of compensation would carry interest @ 7% p.a. from the date of filing an application till its realization. The other conditions imposed by the Tribunal will remain intact.

20. In the result, appeal is allowed in part and the impugned award stands modified to the extent indicated herein-above.

Sd /-

(Parth Prateem Sahu)

Judge

Jamal