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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1281 of 2014

- The Oriental Insurance Co. Ltd., Through its Divisional Manager Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Civil & Revenue Distt.- Bilaspur (C.G.) PIN- 495001.

---- Appellant

Versus

1. Smt. Tulsi Bai, Wd/o late Umend Ram Sahu, aged about 38 years;

2. Ku. Jaya Kumari Sahu, D/o late Umend Ram Sahu, aged about 17 years;

3. Gulshan Kumar Sahu, S/o late Umend Ram Sahu, aged about 14 years;

4. Lakki Kumar, S/o late Umend Ram Sahu, aged about 11 years;

5. Sakeela @ Savita, Wd/o Budhram Verma, aged about 47 years; (Name of appellant No. 5 is deleted as per Hon'ble Court Order dated 17.4.2015).

Note: Respondents No. 2, 3 & 4 are minor and represented through their mother and natural guardian Smt. Tulsi Bai Sahu, Wd/o Umend Ram Sahu, All the Respondents No. 1 to 5 are R/o Village Mandir Hasaud, Shriram Nagar, P.S. Mandir Hasaud Tahsil and Distt.- Raipur (C.G.)

6. Dinesh Netam @ Deepak, S/o Kunj Netam, aged about 28 years, R/o Village Biladi, P.S. Newra, Tahsil Tilda Newra, Distt.- Raiur.

7. Jitesh Vema, S/o Suresh Verma R/o Shrinagar, Khamtarai, P.S. Khamtarai, Distt.- Raipur (C.G.).

---- Respondents

For Appellant	:	Shri R. N. Pusty, Advocate.
For Respondents 1 to 4	:	Shri Vikas Shrivastava, Advocate.
For Respondent Nos. 6 &7	:	None

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

10.04.2019

1. This appeal is by the Insurance Company against the award dated 03.09.2014, passed by Chief Motor Accident Claims Tribunal,

Raipur (C.G.), in Claim Case No. 224/2011, awarding total compensation of 8,57,000/- along with interest @ 9% per annum from the date of filing of claim petition, till its actual payment, fastening liability of payment of compensation upon the non-applicants jointly and severally. The learned Tribunal further directed that if the above said compensation amount has not been paid by the non-applicants within one month from the date of award it shall carry interest @ 12% till its reliazation.

2. As per claim petition, when on 04.07.2011 at about 10.15 pm Umend Ram Sahu had gone to Amaseoni Baroda by driving Tanker bearing No. 04JB/7479 and on the way he was talking to someone after parking the said Tanker. At that time, Non-applicant No. 1 who was driving the offending vehicle (Dumper) bearing No. CG04JB/5688 rashly & negligently, dashed Umend Ram Sahu who was standing on the road. As a result of this he came under the wheels of the offending vehicle and sustained grievous injuries and succumbed to these injuries. A report of the incident was lodged at Vidhan Sabha Outpost, Raipur, District- Raipur and on lodging of such report, crime No. 299/11 was registered against the Non-applicant No. 1 (driver of the offending vehicle) for the offences punishable under Section 279, 337 and 304-A of IPC. The offending vehicle is owned by Non-applicant No. 2 and insured with Non-applicant No. 3/Insurance Company.

3. On claim petition being filed by the claimants under Section 166 of the Act for the death of deceased in the motor accident occurred on 04.07.2011, the Tribunal considering the evidence led by the parties, by the impugned award granted compensation as mentioned above, fastening liability upon the non-applicants to pay compensation to the claimants.

4. Being aggrieved and dissatisfied with the impugned award fastening the liability of payment of compensation upon Insurance Company, appellant herein, instant appeal under Section 173 of the Act, 1988 has been preferred.

5. Learned counsel for the appellant/Insurance Company submits that the Tribunal has wrongly fastened the liability upon the Insurance Company whereas the offending vehicle was being driven by Non-applicant No. 1, driver without holding a valid and effective driving licence. He submits that after the accident offence under Section 304A of IPC and Section 3/181 of the Motor Vehicle Act was registered against the non-applicant No. 1 meaning thereby the non-applicant No. 1 was not having a valid and effective driving licence to drive the offending vehicle. Non-applicants No. 1 & 2 remained *ex-parte* before the Tribunal, though they have filed written statements before the Tribunal, however there is no mention in the said written statements about the particulars of the driving licence of non-applicant No. 1. Non-applicant No. 1, driver of the offending vehicle has even denied the fact that on the date of accident, he was driving the offending vehicle. He submits that specific plea was raised by the Insurance Company in its written statement that the offending vehicle was being driven without a valid & effective driving licence, permit and fitness but no evidence in rebuttal of the same was adduced by the non-applicants before the Tribunal. In these circumstances, the Tribunal was not justified in holding the Non-applicant No. 3/Insurance Company liable for indemnifying the non-applicant No. 2/owner in respect of payment of compensation to the claimants. Reliance has been placed on the decision of Hon'ble Supreme Court in the matter of **Pappu and Others Vs. Vinod Kumar Lamba and Anr.** reported in **(2018) 3 SCC 208 and Amrit Paul Singh and another Vs. Tata AIG General Insurance Co. Ltd. And others (2018) 7 SCC 558**.

This apart learned counsel for the Insurance Company has also challenged the quantum of compensation on the ground that the Tribunal has awarded Rs. 4 lacs under the conventional heads (loss of parental consortium and loss of love & affection) which is very much on the higher side and needs to be reduced suitably.

6. On the other hand, learned counsel for the respondents/claimants supports the impugned award to the extent it

relates to fastening the liability upon the Insurance Company. However, he submits that the claimants have also filed cross-objection under order 41 Rule 22 of CPC alongwith an application (IA No. 5) for condonation of delay of 1483 days in filing the cross-objection. This apart, the claimant have also filed an application (IA No. 6) under Order 41 Rule 27 of CPC for taking document on record i.e. driving licence of the deceased.

7. Learned counsel for the claimants submits that after receiving the copy of memo of appeal filed by the Insurance Company they contacted their lower Court counsel for filing of Vakalatnama but the said counsel failed to do so. When the claimants subsequently came to know about non-filing of Vakalatnama, they engaged another counsel who filed his Vakalatnama on 19.11.2018 and on his advice the cross-objection has been filed. Therefore, the delay occurred in filing the cross-objection being bonafide and unintentional may be condoned.

8. Learned counsel for the claimants in support of his application (IA No. 6) submits that the deceased was a driver of heavy goods vehicle and had a valid driving licence but unfortunately the same could not be submitted before the Claims Tribunal and therefore, the driving licence of the deceased filed herewith as annexure R-1 may be taken on record for adjudication of the present appeal.

9. Learned counsel for the appellant/Insurance Company opposes the application for condonation of delay in filing the cross-objection as also the application IA No. 06 for taking the document (driving licence of the deceased) on record.

10. Considering the reasons assigned by the claimants in the application IA No. 05/2019 for condonation of delay in filing the cross-objection, which is duly supported by the affidavit of claimant- Smt. Tulsi Bai, the same is allowed and delay in filing the cross-objection is hereby condoned.

11. However, so far as the application under order 41 Rule 27 of CPC filed by the claimants is concerned, according to the claimants the said document was already available with them during the course of trial but the same was not produced before the Tribunal and therefore, at this stage, the same cannot be allowed to be taken on record. Accordingly, IA No. 06/2019 is rejected.

12. In support of the cross-objection, learned counsel for the claimants submits that the Tribunal has wrongly assessed the income of deceased as Rs. 3,000/- pm whereas the deceased was driver of heavy goods vehicle and therefore, as per minimum wages of skilled labour his income should have been considered as Rs. 6,000/-pm. This apart the Tribunal has also committed an error by not granting any amount towards future prospect and considering the age of the deceased i.e. 38 years and the nature of his job, in view of the decision of Hon'ble Supreme Court in the matter of ***National Insurance Company Limited*** vs. ***Pranay Setthi,*** *reported in* ***(2017) 16 SCC 680***, the claimants are entitled for 40% towards future prospects. He also submits that it is very difficult for the claimants to recover the amount of compensation from the owner of the offending vehicle therefore, it is prayed that an order may be passed to direct the Insurance company to first pay the awarded amount to the claimants and then to recover it from the owner and driver of offending vehicle in view of the judgment of the Supreme Court in the matter of ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796***.

13. Learned counsel for the appellant Insurance Company submits that the Tribunal considering the overall facts and circumstance of the case, the pleadings and evidence adduced by the respective parties has rightly assessed the income of the deceased and therefore, there is no need to enhanced the same contended by the claimants. He further submits that the Tribunal has wrongly applied multiplier of 16 whereas in the present case the applicable multiplier is 15.

14. Heard learned counsel for the parties and perused the material available on record.

15. So far as liability is concerned, from perusal of the record it is seen that after due investigation chargesheet was filed against Non-applicant No. 1 under Section 304A of IPC and 3/181 of the Motor Vehicle Act. In this case, non-applicant Nos. 1 & 2 have filed their separate written statements before the Tribunal but they remained *ex-parte* and did not adduce any evidence in support of their contention. Non-applicant No. 3/Insurance Company in its written statement has specifically pleaded that non-applicant No. 1 was driving the offending vehicle without having a valid and effective driving licence. However, no evidence was adduced by Non-applicant Nos. 1 & 2 to rebut the contention of the Insurance Company which further gets support from the fact that the offence under Section 3/181 of the Motor Vehicle Act was registered against the Non-applicant No. 1. Even no particulars of the driving licence of the non-applicant No. 1 were provided to the Insurance Company by Non-applicants No. 1 & 2. In his written statement non-applicant No. 1 has even denied the facts of being driver of the offending vehicle at the time of accident whereas non-applicant No. 2 /owner has admitted in his written statement that it is non-applicant No. 1 who was driving the offending vehicle at the time of accident. In these circumstance, in the matter of **Pappu and Others** (**Supra**) the Supreme Court while dealing identical issue held as under:

> “12. This Court in National Insurance Co. Ltd. vs. Swaran Singh, (2004) 3SCC 297 has noticed the defences available to the insurance company under Section 149(2)(a)(ii) of the Motor Vehicle Act, 1988. The insurance company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time.

16. Thus, keeping in view the facts and circumstances of the present

case, the nature and quality of evidence adduced by the respective parties, the conduct of non-applicant No. 1, the fact that no evidence whatsoever has been adduced by the non-applicants to prove that non-applicant No. 1, driver was having a valid & effective driving licence to drive the offending vehicle despite there being a specific plea of non-applicant No. 3/Insurance Company to the contrary, charge-sheet under Section 304A of IPC and 3(181) of the Motor Vehicle Act was filed. Non-applicant Nos. 1 & 2 did not even enter the witness box, having regard to the Judgment of the Hon'ble Supreme Court in the matter of **Pappu and Others** (**Supra**) this Court is of the opinion that the Tribunal was not justified in fastening the liability upon the non-applicant No. 3/Insurance Company and it is non-applicant Nos. 1 & 2 who are jointly and severally liable for paying compensation to the claimants.

17. So far as quantum of compensation is concerned, though in the claim petition the claimants have contended that the deceased/driver was earning Rs. 8,000/- pm, however, no documentary evidence in support of the same has been adduced by the claimants. Therefore, considering the fact that the accident occurred in the year 2011, the minimum wages of the skilled labour at the relevant time, this Court finds it appropriate to assess the income of the deceased as Rs. 4,000/-pm. This apart, considering the age of the deceased i.e. 38 years and the nature of his job, in view of the decision of the Hon'ble Supreme Court in the matter of ***Pranay Setthi, (supra)*** claimants are also held entitled for 40% towards future prospect, however, The Tribunal has committed an illegality in applying the multiplier of 16 whereas in view of the age of the deceased i.e. 38 years and the judgment of the Supreme Court in the matter of **Sarla Verma (Smt.) & others V. Delhi Transport Corporation and another** reported in **2009 (6) SCC 12**1 applicable multiplier is 15. As per Apex Court Judgment in the matter of ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018*** it would be appropriate to award an amount of Rs. 50,000/-each (to respondent Nos. 2 to 4) i.e. Rs. 1,50,000/- towards parental consortium and further Rs.70,000/- should

be given towards incidental heads i.e. loss of Estate and funeral expenses. Thus, the claimants are held entitled in the following manner :-

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased Rs.4000/- per month	Rs.4,000 x 12 = Rs.48,000/-p.a.
02.	40% of (1) above to be added towards future prospects.	Rs.48,000+ 19200= Rs. 67200/-
03.	After 1/4 deduction towards personal and living expenses of the deceased	Rs.67200- 16800= Rs. 50,400/-
04.	Multiplier of 15 to be applied	Rs.50,400x15= Rs. 7,56,000/-
05.	Towards loss of Estate, funeral expenses and spousal consortium	Rs. 70,000/-
06.	Toward parental consortium to respondent Nos. 2 to 4 (Rs. 50,000/-each)	Rs. 1,50,000/-
07.	Total compensation	Rs.9,76,000/-

Since the Tribunal has already awarded Rs. 8,57,000 /- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.1,19,000/- with interest as awarded by the Tribunal.

18. So far as prayer made by counsel for the respondents No. 1 to 4/claimants with regard to order of “Pay & recover” is concerned, considering the totality of the facts & circumstances of the case it is an admitted position that the offending vehicle was duly insured with non-applicant No. 3/Insurance Company at the relevant time and the deceased was the third party, this Court feels it proper to direct the

non-applicant No. 3/Insurance Company in view of the decisions of the Supreme Court in **Manuara Khatun** (supra) and **Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another**, **(2018) 5 SCC 762**, to first pay the entire amount of compensation to the claimants and then recover the same from Non-applicant Nos. 1 & 2/driver & owner of the offending vehicle in accordance with law.

19. In the result, the appeal filed by the Insurance Company is allowed *whereas,* cross-objection filed by the claimants is allowed to the extent indicated hereinabove. However, as observed above, it is the Insurance Company who shall first pay the compensation to the claimants as enhanced by this Court and then shall be at liberty to recover the same from the driver & owner of the offending vehicle. Rest of the conditions mentioned in the impugned award shall remain intact.

20. It is made clear that amount, if any, is deposited by the owner pursuant to the impugned award, the same shall be adjusted at the time of execution of award.

Sd/-

(Gautam Chourdiya)
Judge

Amita