NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 846 of 2014

1. Smt. Mithala Bai Verma W/o Late Tikeshwer Verma Aged About 29 Years R/o Villaged Alesure, Thana- Kharora, Distt. Raipur C.G.
2. Devendra Verma S/o Late Tikeshwer Verma Aged About 11 Years Minor represented through his natural guardian mother Smt. Mithala Bai Verma, R/o Village Alesure, Thana- Kharora, Distt. Raipur C.G.
3. Krishna Verma S/o Late Tikeshwer Verma Aged About 9 Years Minor represented through his natural guardian mother Smt. Mithala Bai Verma, R/o Village Alesure, Thana- Kharora, Distt. Raipur C.G.
4. Baldau Verma S/o Late Tikeshwer Verma Aged About 7 Years, Minor represented through his natural guardian mother Smt. Mithala Bai Verma, R/o Village Alesure, Thana- Kharora, Distt. Raipur C.G.
5. Shyam Ratan Verma S/o Udayram Verma Aged About 60 Years R/o Village Alesure, Thana- Kharora, Distt. Raipur C.G.
6. Jago Bai Verma W/o Shyam Ratan Verma Aged About 58 Years R/o Village Alesure, Thana- Kharora, Distt. Raipur C.G.

---- Appellants

Versus

1. Deelip Pal S/o Dujram Pal Aged About 27 Years R/o Village Mushwadih, Thana- Suhel, Distt. Baloda Bazar C.G.(offending vehicle tractor No. CG 04 DB/7252 may trolley no. 7253 of driver)
2. Chintaram Pal S/o Aajuram Pal Aged About 38 Years R/o Village Mushwadih, Thana- Suhel, Distt. Baloda Bazar C.G.(offending vehicle tractor No. CG 04 DB/7252 may trolley no. 7253 of owner)
3. Sriram General Insurance Company Limited through Branch, Address Plat No. 1 4th Manjil Maruti Hight Near Maruti Dealershp G.E. Road Raipur(C.G.) (offending vehicle tractor No. CG 04 DB/7252 may trolley no. 7253 of Insurer)

---- Respondents

For Appellants:	: Shri A.L. Singroul, Advocate.
For Respondents No. 1 and 2:	: Shri Goutam Khetrapal, Advocate
For Respondent No. 3:	: Shri Deepak Gupta, Advocate.

Single Bench:Hon'ble Shri Sanjay Agrawal, J

Award On Board

03.09.2019

1. This Misc. 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 07.07.2014 passed by the Second Additional Motor Accident Claims Tribunal Raipur in Claim Case No. 141 of 2012 by which, the Claims Tribunal while awarded the amount of compensation to the tune of Rs. 7,65,160/- with 6 % interest per annum from the date of filing of claim petition till its realisation while exonerating the Insurance Company from its liability. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 05.04.2012, deceased Tikeshwar, was travelling in the offending vehicle "Tractor" attached with its trolley bearing its Registration Numbers respectively as CG-04-DB 7252 and CG-04-DB-7253 which was owned by Non-Applicant No. 2 Chintaram and insured with Non-Applicant No. 3-Shri Ram General Insurance Company Limited. At the relevant time, it was being driven rashly and negligently and owing to which, he lost his control, as a result of which it turned turtle resulting into the sad demise of Tikeshwar.

3. On account of the aforesaid accident the Claimants being legal representatives, instituted a claim petition enumerated under Section 166 of the Act, 1988 alleging *inter alia* that the deceased was a Rajmistri by profession and used to earn Rs.200/- (Two Hundred Only) per day and thus, total amount of compensation to the tune of Rs.16,50,000/- (Sixteen Lakhs Fifty Thousand Only) has been claimed under various heads.

4. Non-Applicants No. 1 and 2, the driver and owner of the vehicle in question contested the claim on the ground that the alleged offending

vehicle was not involved in the said accident and pleaded further that the vehicle in question was insured with Non-Applicant No. 3, the Insurance Company, therefore, in case of any liability being fastened, the same could be indemnified by the said Insurance Company. While, Non-Applicant No. 3, the insurer of the vehicle in question contested the claim mainly on the ground that it was not insured at the relevant time as the policy was in fact issued on 22.04.2012 much after the occurrence of the alleged accident, therefore, no liability could be fastened upon it. It is contested further on the ground that the driver of the offending vehicle was not possessing the effective and valid driving license and the deceased was travelling in the said tractor which was attached with its trolley, however, it was not meant for carrying passengers and pleaded further that it was being used without any permit and was thus being used in utter violation of the Insurance policy. The Insurance Company, therefore, cannot be held liable in relation to the alleged accident occurred on 05.04.2012.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred due to rashness and negligent driving of the driver of the offending vehicle resulting into the sad demise of Tikeshwar. It held further that the vehicle in question was insured at the relevant time but it was being used in violation of the Insurance Policy and, therefore, while exonerating the Insurance Policy from its liability and that by considering the income of the deceased to the tune of Rs.3000/- (Three Thousand Only) per month and that by deducting 1/10th of it towards his personal expenses and by applying the multiplier of 18 awarded total amount of compensation to the tune of

Rs.7,65,160/- (Seven Lakhs Sixty Five Thousand One Hundred and Sixty Only) with 6 % interest per annum from the date of filing of claim petition till its realisation while awarding the conventional heads to the tune of Rs.7,000/-

6. Being aggrieved, the Claimants have preferred this appeal, Shri Singroul, learned counsel for the Applicants/Claimants, submits that while awarding the amount of compensation, the Claims Tribunal has committed an illegality in assessing the monthly income of the deceased to the tune of Rs.3,000/- (Three Thousand Only) per month though the unrebutted statements of the Claimants would show that he was a Rajmistri, therefore, his monthly income was improperly assessed. He submits further that the burden was heavily upon the Insurance Company to prove that the vehicle in question was being used in violation of the Insurance Policy, however, the said facts could not have been established by the insurer and only by considering the arguments of insurer, it was held that the vehicle in question was being used in violation of the Insurance Policy. According to further submission of Shri Singroul, the Claims Tribunal while awarding the amount of compensation ought to have considered the future prospects of the income of the deceased in its proper manner apart from awarding the proper compensation towards conventional heads. The award impugned is, therefore, deserves to be enhanced and/or modified.

7. On the other hand, learned counsels for the Respondents/Non-Applicants while supporting the award impugned submits that just and fair compensation has been awarded to the claimants, therefore, it does not call for any interference.

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

9. From perusal of the record, it appears that the alleged accident occurred on 05.04.2012 when deceased Tikeshwar was travelling in the alleged offending vehicle “Tractor” which was attached with its trolley. It appears further as reflected from paragraph 40 of the award impugned that merely by considering the argument of the counsel for the insurer, it has been held that the vehicle in question was being used in violation of the Insurance Policy (Ex. D-5). However, a bare perusal of the entire statement of Ritesh Dubey examined by the insurer would show that he deposed mainly regarding the fact that the vehicle in question was not insured at the relevant time and the alleged cover note was a forged document. He, however, has not stated anywhere that it was being used in violation of any of the terms and condition of the Insurance Policy (Ex. D-5). In absence thereof, the finding of the Claims Tribunal exonerating the Insurance Company cannot be held to be sustainable.

10. At this juncture, the principles laid down by the Coordinate Bench of this Court in the matter of “Oriental Insurance Company Vs. Swatantra Kumar Verma and others” passed in MAC No. 216 of 2006 on 20.09.2016, are to be seen, wherein it has been observed that in order to get exoneration from its liability, the burden was upon the Insurance Company to prove the fact that the vehicle in question was being used in violation of the Insurance Policy. Paragraph 11 of the said judgment is relevant for the purpose is reproduced herein as under:-

> 11. As far as the second ground raised by the insurance company is concerned, I am not in agreement with the submission. If the insurance company, in any case, wants to

> prove that it is not liable or that its liability is limited, but admits that the vehicle was insured with it, it is bound to prove the terms of the insurance policy. In this case, though the policy has been filed on record, no attempt has been made to prove the policy or conditions thereof. It is urged by Learned Counsel for the insurance company that relying upon this very insurance policy, the insurance company has made liable. The insurance company has not denied the fact that it has issued the insurance policy. The defence raised by the Company is that as per the terms of policy, it is not liable to cover liability in respect of passengers travelling in motor vehicles. This has to be proved by the insurance company. An insurance policy can even be tendered if it is not objected by the other side. To get itself excluded or to limit its liability the insurance company will have to prove the policy of insurance.

11. By applying the aforesaid principles to the case in hand, vis-a-vis, the statement of said Ritesh Dubey examined by the Insurance Company, it is difficult to hold that the vehicle in question was being used in violation of the Insurance Policy. As a consequence, the finding recorded by the Claims Tribunal exonerating the Insurance Company from its liability is, therefore, liable to be and is hereby set aside, It is accordingly held that the vehicle in question was not being used in violation of the Insurance Policy and the Insurance Company is held liable to indemnify the insured.

12. In so far as the amount of compensation as assessed by the Claims Tribunal by assessing the income of the deceased to the tune of Rs. 3,000/- per month appears to be unreasonable and unjustified. According to the Claim Petition, the deceased was a Rajmistri by profession and this fact was established by the Claimants as the

unrebutted statement of widow of the deceased would show that her husband was a Rajmistri. In such circumstances, it is apparent that the deceased was a Rajmistri and his monthly income as assessed by the Claims Tribunal to the tune of Rs. 3,000/- per month, deserves to be and is hereby set aside. Since the alleged accident occurred in the month of April, 2012, therefore, his monthly income, though no documentary evidence has been placed on record, but looking to the job of the deceased, it cannot be less than Rs.4,000/- (Four Thousand Only) per month. I accordingly held that deceased Tikeshwar used to earn Rs.4,000/- (Four Thousand Only) per month while working as Rajmistri.

13. While determining the income, an addition of 40% of the income of the deceased should have been taken into consideration instead of 30% in view of the principles laid down in the matter of ***National Insurance Company Limited Vs. Pranay Sethi*** reported in **(2017) 16 SCC 680**. Besides, deduction of 1/10th of the income of the deceased towards his personal expenses as held by the Claims Tribunal is not proper. Therefore, the proper deduction should have been $1/4^{th}$ instead of $1/10^{th}$ towards personal expenses of the deceased. Consequently, this finding also deserves to be and is hereby set aside and it is held that deduction of 1/4th towards personal expenses of the deceased would be just and reasonable as total number of dependants upon him are six in number. That apart, a sum of Rs.7,000/- (Seven Thousand Only) has been awarded under conventional heads, however, this amount appears to be extremely on lower side in the light of the decision passed in ***National Insurance Company Limited Vs.***

Pranay Sethi and others (supra) and also in view of the principles laid down in the matter of ***Magma General Insurance Company*** **Versus** ***Nanu Ram ALIAS Chuhru Ram and Others*** reported in **(2018) 18 SCC 130**.

14. Considering the facts and circumstances of the case and in view of the principles laid down in the aforesaid decisions, I deem it proper to assess the monthly income of the deceased at Rs.4,000/-, yearly Rs.48,000/- and that by deducting 1/4th of it, i.e., Rs.12,000/- towards his personal expenses, the yearly dependency would work out at Rs.36,000/- and by addition of 40% of it, i.e., Rs. 14,400/- towards future prospects of deceased's income, then yearly dependency would be at Rs.50,400/- (Rs.36,000/- + Rs.14,400/-) and by applying the multiplier of 17, the total dependency would be at Rs.8,56,800/-. In addition to this, the Claimants are also entitled to a sum of Rs.3,00,000/- in following heads:-

(i) loss of consortium to wife-	Rs.40,000/-
(ii) loss of filial consortium to mother and father of the deceased at Rs.40,000/- each,	Rs.80,000/-
(iii) loss of love and affection to 3 minor children at Rs.50,000/- each,	Rs.1,50,000/-
(iv) loss of funeral expenses	Rs.15,000/-
(v) loss of estate	Rs.15,000/-
Total-	Rs.3,00,000/-

15. The claimants are thus, entitled to a total sum of Rs. 11,56,800/- instead of Rs. 7,65,160/- as assessed by the Claims Tribunal and the enhanced amount of compensation, i.e., Rs.3,91,640/- (Rs.11,56,800/-

– Rs.7,65,160/-) shall carry interest at the rate of 6% per annum from the date of filing of claim petition till its realisation.

16. In view of the forgoing discussion, the appeal is allowed in part to the extent indicated herein above and the Non-Applicants (Owner, Driver and Insurance Company), the Respondents herein, are held jointly and severally liable to pay the aforesaid amount of compensation and the Insurance Company (Respondent No.3) shall indemnify the insured. As far as other conditions as observed by the Claims Tribunal are concerned, they shall remain intact. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

vivek