

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 975 of 2012

1. Bodhram Patel, S/o Harishankar Patel Aged About 50 Years
2. Smt. Saguna Bai W/o Bodhram Patel Aged About 45 Years
Both R/o village- Pacheda, Post-Tarapur, Tehsil- Pusaur, district- Raigarh (CG)
3. Smt. Lata @ Shraddha Patel wd/o Late Damodar Patel Aged About 25 Years
4. Minor Ku. Muskan Patel D/o Late Damodar Patel Aged About 3 Years Thru- Her Mother Smt. Lata @ Shraddha Patel, wd/o Damodar Patel Presently R/o Sultannar, Tah. Balauda, Distt. Janjgir-Champa C.G.

---- Appellants

Versus

1. Chhotelal Nishad, S/o Mehattar Nishad Aged About 35 Years Village And Post-Tarapur, P.S. Kotra Road, Raigarh, Tah. And Distt. Raigarh C.G
2. Kanhaiya Lal Patel S/o Gajanand Patel Aged About 55 Years Village And Post- Tarapur, P.S. Kotra Road, Raigarh, Tah. And Distt. Raigarh C.G
3. The Oriental Insu. Com.Ltd. S/o Branch Office Itwari Bazar, Raigarh, Distt. Raigarh C.G

---- Respondents

For Appellants	: Shri Roop Naik, Advocate
For Respondents- 1 and 2	: Shri Dhaniram Patel, Advocate
For Respondent- 3/Insurance Company	: Shri Nilkanth Malviya, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

15.03.2019

1. Appellants/claimants have assailed the impugned award dated 16.08.2012 passed by learned Motor Accident Claim Tribunal, Raigarh (for short, 'the Tribunal'), in Claim Case No.5 of 2010, whereby learned Tribunal dismissed the claim application of the appellants holding that the claimants/appellants failed to prove rash and negligent act of the driver of Marshal Jeep bearing No.CG 13C-0221 (for short, 'offending vehicle').
2. Brief facts for disposal of this appeal are that on 16.06.2009 appellant-1 along with Damodar Patel (son of Bodhram Patel) Amol

Prasad and Padumlal Patel were returning to their house after attending the marriage ceremony. On the way at about 4.45 am, the offending vehicle on which deceased was travelling was hit by one unknown truck (dumper). In the aforementioned accident, Bodhram Patel, Amol Prasad and Padumlal Patel as well as driver Chotelal Nishad sustained injuries on their person and Damodar Patel succumbed to those injuries.

3. The claim application was filed before competent Claims Tribunal by the appellants/claimants, who are parents, wife and minor daughter of deceased, claiming Rs.41,10,000/- in total on all heads on the grounds that on the date of accident deceased was earning Rs.1,00,000/- per annum from his agriculture fields and all of them were dependant on him.

4. Respondents- 1 and 2 who are owner and driver of offending vehicle respectively have denied all the adverse pleadings made in claim application and have further stated that on the date of accident, driver of offending vehicle was driving the vehicle with caution and care but one unknown truck (dumper) came on wrong side, driven by its driver rashly and negligently and dashed the Jeep due to which accident took place. It was also pleaded that the matter was reported to Police and during the course of investigation, Police also opined that there was no negligence on the part of driver of offending vehicle. Final report was submitted against the driver of unknown truck (dumper), income of deceased was pleaded on higher side.

5. Respondent- 3 Insurance Company also submitted its reply and denied all adverse pleadings and pleaded that there is violation of

conditions of Insurance Policy as on the date of accident, driver of offending vehicle was not possessing valid and effective driving license to drive the ill fated vehicle. It was further pleaded that deceased and other persons were travelling in the offending vehicle as passengers. They have also pleaded that the ill fated Jeep was not insured for the period 18.02.2009 to 17.02.2010.

6. Learned Claims Tribunal on the basis of pleadings and evidence available on record held that death of deceased Damodar Patel took place when Marshal Jeep met with an accident in which the deceased was travelling. Learned Claims Tribunal also arrived at a finding that the objection raised by learned counsel for the Insurance Company with respect to the violation of conditions of Insurance Policy has not been proved, therefore, it answered the issue in negative.

7. Learned Claims Tribunal after recording a finding that as the claimants have failed to prove negligence on the part of driver of Marshal Jeep, against which claim has been made, held that claimants are not entitled to get any compensation from the non-applicants under the provisions of Section 166 of the Act, it is necessary for the claimants to prove negligence and rashness on the part of the driver of offending vehicle.

8. Learned counsel for the appellants argued that the deceased was an occupant of the offending vehicle which met with an accident with another motor vehicle. The deceased was not a driver of the offending vehicle, but he was one of the occupants and therefore, the claimants can

file claim application against any one of the vehicles involved in the accident. He placed his reliance in the case of **TO Anthony Vs Karvarnan and others** reported in 2008(3) SCC 748.

9. Learned counsel for the respondents supported the impugned award passed by learned Claims Tribunal and argued that the claimants themselves have not pleaded that there is any rash and negligent act on the part of driver of vehicle in question and therefore, the claim cannot be maintainable with respect to the said vehicle ie Marshal Jeep.

10. I have heard learned counsel for the parties and perused the records. It is undisputed fact that Marshal Jeep, on which the deceased was travelling met with an accident due to its collision with another unknown motor vehicle (truck). It is also undisputed that deceased Damodar Patel was not the driver of the vehicle but he was only an occupant of said vehicle, accident took place due to use of Motor Vehicle.

11. Hon'ble Supreme Court in the matter of **TO Anthony** (*supra*), decided the issue with respect to composite and contributory negligence. Hon'ble Supreme Court also considered in the said judgment with respect to the status of occupant of one of the vehicle within the two which involved in the accident and held as under:

“6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding

against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.”

12. In light of aforementioned judgment rendered by Hon'ble Supreme Court and in view of facts of the case in hand, where the accident is not in dispute nor the involvement of other motor vehicle also is in dispute, the accident took place due to use of motor vehicle. Learned Claims Tribunal committed grave illegality in dismissing the claim application only on the ground that the claimants have failed to prove the negligent act of the driver of the vehicle against which claim has been preferred. The finding recorded by learned Claims Tribunal to this effect is not sustainable. In the considered opinion of this Court when the deceased was one of the occupants out of two vehicles involved in accident, he is not supposed to prove the negligence or part of negligence over driver of either of the vehicles, but he can file his claim application against any of the two vehicles involved in accident.

13. In view of above discussion and in the light of judgment in **TO Anthony** (*supra*), finding recorded by learned Claims Tribunal that the

claimants failed to prove the negligence of driver of offending vehicle is hereby set aside.

14. At this stage, learned counsel for respondent- 3/Insurance Company submits that as learned Claims Tribunal not assessed the income of deceased for the reason that the claim application is not maintainable and therefore, this matter may be remitted to learned Claims Tribunal. Learned counsel for the appellant submits that the income can be assessed on the basis of material and evidence available on record.

15. I gave deep consideration on the submissions made by learned counsel for the parties and looking to the date of accident, ie June 2009, suffering of appellants/claimants for a such long period, and evidence of parties had already been recorded by learned Claims Tribunal. I deem fit and proper to assess the income of the deceased and the entitlement of compensation of appellants herein in this appeal itself.

16. So far as the income of the deceased is concerned, it is mainly pleaded that the deceased was doing agricultural work on his own agricultural field and documents to that effect have also been filed before learned Claims Tribunal at Ex.6A but no other clinching and reliable piece of evidence has been filed to arrive at a conclusion with respect to the income pleaded by them.

17. Perusal of records would show that appellants failed to prove income of deceased by placing cogent evidence before Tribunal. In the present facts of the case, when income was not proved, then income of deceased is to be assessed on notional basis. In these circumstances,

treating the deceased to be labour, notional income of the deceased is to be assessed as the labour. Looking to the date of accident ie 16.06.2009, in considered opinion of this Court, income of the deceased can very well be assessed at Rs.3,500/ per month. The deceased on the date of accident, was aged about 30 years as per records.

18. Apart from the above monthly income, future prospects is to be added @ 40% of the income in monthly income as held by the Hon'ble Supreme Court in the matter of **National Insurance Company Vs Pranay Sethi** reported in **AIR 2017 SC 5157**, wherein the deceased persons aged below 40 years and not engaged in permanent job are held to be entitled for additional sum of 40% of the income towards future prospects. In case in hand, deceased was aged about 30 years, therefore, an amount of Rs.1,400/- ($3,500 \times 40/100 = 1,400$) i.e., 40% of income towards future prospects is to be added to the monthly income of Rs.3,500/-, which brings the income of deceased as Rs.4,900/- per month and Rs.58,800/- ($4900 \times 12 = 58,800$) per annum. The number of claimants are 4 therefore, there will be deduction of one fourth of the earning towards personal expenses, which comes to Rs.14,700/- ($58800 \times 1/4 = 14,700$). After deduction of Rs.14,700/- from the yearly income, dependency of the claimants comes to Rs.44,100/-. Deceased was aged about 30 years on the date of accident, therefore, multiplier of 17 is to be applied. On application of multiplier of 17 to amount of yearly dependency brings the total dependency to Rs.7,49,700/- ($44100 \times 17 = 749700$).

19. In the aforementioned amount of dependency, a sum of Rs.70,000/- towards other conventional heads is required to be added, which makes the total compensation as Rs.8,19,700/- ($749700 + 70000 = 819700$).

20. In view of above, the claimants are entitled for a total sum of Rs.8,19,700/- (Rupees eight lakh nineteen thousand seven hundred only) as compensation. Out of this amount, Rs.2,00,000/- should be kept in fixed deposit in a nationalised bank till appellant- 4 attains majority. Out of balance amount, Rs.2,00,000/- be kept in fixed deposit in a nationalised bank for a period of five years in the name of appellant- 4 namely, Ku.Muskan Patel. The balance amount will be shared by all the three appellants equally. The aforementioned amount of award will carry interest @ 7% per annum from the date of filing of the claim petition till its realisation.

21. The respondents are jointly and severally liable to pay the amount of compensation as awarded above.

22. Appeal is partly allowed.

23. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE