NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 1208 of 2012

1. Indira Bai W/o Gulabchand Devangan aged about 35 years
2. Gulabchand Devangan S/o Kalaram Devangan aged about 40 years
3. Meena Bai D/o Gulabchand Devangan aged about 14 years
4. Anita D/o Gulabchand Devangan aged about 12 years

No.3 & 4 are minor through his guardian mother Indira Bai

All are R/o village Agri Khurd Thana Than Khamhriya Tahsil Saja District Bemetara Chhattisgarh.

---- Appellants

Versus

1. Balram Gupta S/o Bharat Gupta aged about 31 years R/o village Pandatarai Thana Pandatarai District Kabirdham Chhattisgarh
2. Ganesh Gupta S/o Shobharam Gupta aged about 37 years R/o village Pondi Thana Bodla District Kabirdham Chhattisgarh
3. Manager Bharti Axa General Insurance Co. Ltd. First Floor Chawla Complex Devendra Nagar Road Sai Nagar District Raipur Chhattisgarh

---- Respondents

For Appellants	: Mr. Samir Singh Advocate
For Respondents No. 1 & 2	: Mr. V.G. Tamaskar, Advocate
For Respondent No. 3	: None

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

05/04/2019

1. By this instant appeal, appellants/claimants assailed the legality, validity and propriety of impugned award dated 28/09/2012 passed by learned Additional Motor Accident Claims Tribunal, Bemetara, District Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.06/2012, whereby learned Claims

Tribunal partly allowed claim application filed by appellants/claimants holding that driver of motorcycle bearing registration No.CG 07/M/0565 (hereinafter refereed to as 'motorcycle') was contributory negligent to the extent of 50% and awarded total compensation of Rs.1,61,000/- in a death case and fastened liability of payment of compensation on owner and driver of truck bearing registration No.CG09/B/0175 (hereinafter referred to as 'offending vehicle').

2. Appellants/claimants filed this appeal seeking enhancement of amount under award as well as challenging the finding of contributory negligence.

3. Brief facts for disposal of this appeal are that on 25/12/2011, at about 11.30 pm, when deceased Shivnath Devangan was travelling on a motorcycle along with his other three friends, namely, Manohar, Ramkumar and Suraj Nirmalkar, at that relevant time, motorcycle met with an accident with stationary offending vehicle, which was parked on road without there being indicator or parking light. Motorcycle is said to be driven by deceased Shivnath Devangan, son of appellants No.1 and 2 and brother of appellants No.3 and 4.

4. Matter was reported to concerned Police Station and Crime No.174/2011 was registered against driver of offending vehicle i.e. respondent No.1. Claimants filed claim application under Section 166 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the competent Claims Tribunal claiming Rs.11,30,000/- as compensation against non-applicants mentioning therein that on the

date of accident, deceased was doing work of marketing and earning Rs.300/- per day.

5. Respondents No.1 and 2 submitted their reply to claim application and denied the fact of negligence on part of respondent No.1 (driver of offending vehicle) and further pleaded that accident took place due to negligence on the part of driver of motorcycle and other occupants of vehicle. It has also been pleaded that driver of motorcycle was found to have consumed liquor and was driving motorcycle in an excessive speed, therefore, they are not liable for payment of any amount of compensation. Further, it has been pleaded that on the date of accident, offending vehicle was insured with respondent No.3/Insurance Company.

6. Respondent No. 3/Insurance Company submitted reply to claim application and pleaded that there is violation of conditions of insurance policy as on the date of accident, there was no valid permit and fitness of offending vehicle as per requirement of M.V. Act. It has further been pleaded that on the date of accident, driver of offending vehicle was not possessing valid and effective driving license to drive the vehicle and accident took place due to negligence on the part of driver of motorcycle himself.

7. Claims Tribunal after appreciation of evidence available on record, partly allowed claim application by holding that driver of motorcycle was contributory negligent to the extent of 50% and by impugned award granted a total amount of compensation of Rs.1,61,000/- in

favour of appellants/claimants along with interest at the rate of 6% per annum from the date of application till its realization on following heads. Calculation made by learned Claims Tribunal is given below:-

1.	Towards loss of dependency	:	Rs.2,70,000/-
2.	Towards funeral expenses	:	Rs.2000/-
3.	Towards loss of love and affection from brother and son	:	Rs.40,000/-
4.	Towards loss of estate	:	Rs.10,000/-
	Total	**:**	**Rs.3,22,000/-**
5.	After deducting 50% towards contributory negligence	:	**Rs.1,61,000/-**

8. Learned counsel appearing for appellants submitted that learned Claims Tribunal committed illegality in holding deceased Shivnath Devangan to be contributory negligent to the extent of 50% in the accident, assessing income of deceased on lower side i.e. Rs.3,000/- per month, by applying multiplier on the basis of age of parents and not of deceased, not awarding any amount towards future prospects. He further submitted that the amount awarded on other conventional heads are on lower side. He lastly submitted that respondent No.3/Insurance Company may be directed to pay awarded sum to the claimants first and then recover the same from owner of offending vehicle/respondent No.2 herein.

9. Per contra, learned counsel appearing for respondents No. 1 and 2 opposed the arguments raised by learned counsel for appellants and submitted that he has challenged imposition of liability on respondents No. 1 and 2 by learned Claims Tribunal in a separate appeal, it is sole negligence of deceased himself and therefore, they are not entitled for any amount of compensation. In alternative, he further submitted that learned Claims Tribunal after considering overall facts and circumstances of case has rightly passed impugned award which do not call for any interference.

10. I have heard learned counsel appearing for parties and perused entire record carefully.

11. Perusal of Exhibit P-5 would show that Crime No.174/2011 was registered against driver of offending vehicle i.e. respondent No.1 for offence punishable under Sections 283 and 304A of IPC and Section 66/192 of M.V. Act. Evidence of Rohit Kumar Devangan (AW-2) who was present near the spot where accident took place and reached on spot immediately after the accident, is to the effect that he found all four persons travelling in motorcycle lying down on the road and offending vehicle was parked without there being any safety measures, without lighting indicators and parking lights. The witness states that offending vehicle was parked on center of road itself. Said witness was cross-examined by counsel appearing for respondents, but in cross-examination, witness has not deviated from his statement of examination-in-chief.

12. The driver of offending vehicle, namely, Balram Gupta was examined as NAW-1, who in his statement proved documents related to truck. He also produced driving license which was for 'heavy goods vehicle' and was valid for the period from 12/10/2009 to 12/10/2012. License was marked as Exhibit D-4. He stated that parking light and indicators were on. Offending vehicle was parked on the side of road and accident took place as driver of motorcycle drove his vehicle with an excessive speed. He further stated that when he saw injured persons near the place of accident, he found alcoholic smell coming from their mouth.

13. Looking to the documentary as well as oral evidence available on record, it is clear that respondents No.1 and 2 failed to prove their defence that offending vehicle was parked down the road with parking lights and lighting indicators. Learned Claims Tribunal relied upon evidence of Rohit Kumar Devangan (AW-2) who has been examined as an eyewitness, present on the place of accident and held that offending vehicle was parked on road without any safety measures and without putting on indicators and parking lights. In view of above, there is negligence on the part of driver of offending vehicle and learned Claims Tribunal rightly held so.

14. The other ground raised by learned counsel for appellants is that learned Claims Tribunal has erroneously held that deceased Shivnath Devangan liable to be contributory negligence to the extent of 50%.

15. From the material and evidence available on record, it is clear that road on which offending vehicle was parked was a wide road and even evidence of Rohit Kumar Devangan (AW-2), it has come that there was much space available for passing of any other vehicle. As the deceased Shivnath Devangan himself was driving motorcycle and if he would have driven his vehicle cautiously, he could have avoided accident and therefore, in the opinion of this Court, particularly, taking into consideration other facts of the case, learned Claims Tribunal has not committed any error in holding deceased/driver of motorcycle to be 50% contributory negligent in the accident.

16. Next question which arises for consideration is whether learned Claims Tribunal awarded just and reasonable amount of compensation to claimants.

17. Before the learned Claims Tribunal, claimants have pleaded income of deceased to Rs.300/- per day by marketing work, but has not produced any evidence with respect to place of work of deceased, employer under whom deceased was working or any documentary evidence with respect to salary or income of deceased. The claimants have failed to prove income as pleaded in their claim application, therefore, in the facts and circumstances of case, income of deceased is to be assessed on notional basis. The date of accident was 25/12/2011, therefore, looking to minimum wages rate prevailing in the Districts and State, it will be proper to hold

engagement of deceased in labour work and his income to be assessed to Rs.4,000/- per month.

18. Next argument raised by learned counsel for appellants is that learned Claims Tribunal committed an error in applying multiplier on the basis of age of mother of deceased which is erroneous because multiplier is to be applied on the basis of age of deceased himself.

19. The issue of application of multiplier in case where the deceased was a bachelor came before Hon'ble Supreme Court in the matter of **Sube Singh and Others v. Shyam Singh (dead) and Others**[1], wherein the Hon'ble Supreme Court has held as under:-

> "4. On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of **Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Anr., (2015) 2 SCC 180** held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more *res integra*. In the case of **Munna Lal Jain and Anr. v. Vipin Kumar Sharma and Ors., (2015) 6 SCC 347** decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependents."

1 **2018 (3) SCJ 269**

20. In view of the authoritative pronouncement by Hon'ble Apex Court, the learned Claims Tribunal committed error in applying multiplier considering age of parents which is not sustainable and is hereby set aside.

21. As on the date of accident, deceased was aged about 21 years as per Exhibit P-4 i.e. postmortem report, therefore, correct multiplier applicable to the instant case will be 18 instead of 15 as applied by learned Claims Tribunal.

22. Though deceased on the date of accident was unmarried but learned Claims Tribunal looking to the number of claimants had deducted 1/3rd amount of his income towards personal expenses. Looking to the number of claimants who are father, mother, minor brother and minor sister and also considering the law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[2], in the opinion of this Court, learned Claims Tribunal has rightly deducted 1/3rd amount of the income of the deceased towards his personal expenses.

23. Learned Claims Tribunal has not awarded any amount towards future prospects. As per the law laid down by Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Pranay Sethi**[3], claimants are entitled for amount towards future prospects. The deceased was aged about 21 years on date of accident and not in permanent

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2 **(2009) 6 SCC 121**
3 **(2017) 16 SCC 680**

employment therefore, claimants will be entitled for addition of 40% of the monthly income towards future prospects for calculating his total monthly income. Claimants are also entitled to a sum of Rs.30,000/- towards other conventional heads.

24. For the aforesaid reasons, amount of compensation awarded by learned Claims Tribunal requires recalculation, which this Court proposes as under:-

Considering the facts and circumstances of case, I hold income of deceased on the date of accident to be Rs.4,000/- per month i.e. Rs.48,000/- per annum. By adding 40% of the aforesaid income towards future prospects (48,000 x 40% = 19,200), yearly income of deceased comes to Rs.67,200/- (48,000 + 19,200). After deducting 50% towards his personal expenses from the income of deceased, annual dependency of claimants comes to Rs.33,600/- (67,200 – 50%). Learned Claims Tribunal applied multiplier of 15, which is erroneous in the facts and circumstances of case. At the time of accident, deceased was aged about 21 years, therefore, in view of ratio laid down in the matter of **Sarla Verma (Smt.)** (supra), multiplier of 18 would be applicable in the present case. After applying multiplier of 18, total loss of dependency of claimants comes to Rs.6,04,800/- (33,600 x 18). Claimants are also entitled for Rs.30,000/- towards other conventional heads.

25. On the basis of above calculation, award passed by learned Claims Tribunal is modified accordingly and now appellants/claimants are

held entitled for a total compensation of Rs.6,34,800/- (6,04,800 + 30,000). Since it has been held in preceding paragraphs that deceased himself was contributory negligent to the extent of 50% in accident, therefore, from the total amount of compensation, 50% amount is required to be deducted towards contributory negligence, which brings the amount of compensation as Rs.3,17,400/- (6,34,800 x 50%).

26. The last submission made by learned counsel for appellants is that there is violation of insurance policy only to the extent that offending vehicle was not having valid permit on the date of accident, therefore, it may be directed that the Insurance Company to first pay the amount of award and thereafter to recover the same from owner of offending vehicle.

27. I have considered the submission made by learned counsel for appellants. Accident was of year 2011 and claimants belong to poor family and till date, have not received amount of compensation as awarded by the learned Claims Tribunal. Offending vehicle was insured with respondent No.3/Insurance Company, therefore, keeping in mind the beneficial object of M.V. Act, the Hon'ble Supreme Court in enn number of cases directed the insurer to first pay the amount of compensation and then to recover the same from the insured.

28. The doctrine of pay and recover has been considered by the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v.**

Challa Bharathamma and others[4]. Relevant portion of the said judgment reads as under:-

> "13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case

4 **(2004) 8 SCC 517**

> considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

29. In another judgment of Hon'ble Supreme Court in the matter of **Manuara Khatun and others v. Rajesh Kumar Singh and others and Mamoni Saikia Mohanty and others v. Rajesh Kumar Singh and others[5],** held thus:-

> "19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in *National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41*. Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in *Saju P. Paul's Case* (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in *Saju P. Paul's Case (supra)*. That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

5 **(2017) 4 SCC 796**

> 21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd. (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of *Saju P. Paul's* case quoted supra.
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> 22. Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No. 3 - United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured."

30. Recently, in the matter of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others**[6]**,** Hon'ble Supreme Court while dealing with the similar issue has held thus:-

6 **(2018) 7 SCC 558**

> "We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle."

31. Considering the ratio laid down in above decisions of the Hon'ble Supreme Court as also considering the beneficial object of M.V. Act as well, this Court is of the view that it will be in larger interest of justice to direct the insurer to first pay the amount of compensation to claimants and then to recover it from insured i.e. owner of offending

vehicle in accordance with law, though in law it has no liability to pay amount of compensation.

32. For the foregoing reasons, appeal is allowed in part and impugned award of learned Claims Tribunal is modified accordingly. Appellants are entitled for total compensation of Rs.3,17,400/- instead of Rs.1,61,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. The other conditions imposed by learned Claims Tribunal shall remain intact. Insurance Company is though exonerated from its liability to pay the compensation to the claimants, but keeping in mind the beneficial object of M.V. Act as also the dictum of Hon'ble Supreme Court in the above matters, this Court directs insurer of offending vehicle viz, respondent No.3 herein, to first compensate the claimants and have the said sum recovered from respondent No.2, owner of offending vehicle in the manner as provided in the matter of **Oriental Insurance Company Limited v. Shri Nanjappan and Others**[7].

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh

7 **AIR 2004 SC 1631**