**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 194 of 2013**

1. Savitri Bai Rathiya W/o Santosh Kumar Rathiya Aged About 30 Years R/o Village Jamabira, Police Station & Tahsil Dharamjaigarh, District Raigarh (C.G.)

**---- Appellant**

**Versus**

1. Kishore Singh, S/o Narayan Singh, Occupatin- Vehicle Owner & Driver, aged about 52 years, R/o H. No.473, Ward No. 2, Ratakhar, Distt. Korba (C.G.)
2. Branch Manager, Bajaj Alliance General Insurance Company Limited, Address- Shiv Mohan Bhawan, Vidhan Sabha Marg, Pandri, Raipur (C.G.)

**---- Respondents**

| | | |
|---|---|---|
| For Appellant | : | Shri Hemant K Patel, Advocate on behalf of Shri M.Jaiswal, Advocate |
| For Respondent No.1 | : | None. |
| For Respondent No.2 | : | Shri D.L. Dewangan, Advocate on behalf of Shri A.Sinha, Advocate |

**Order On Board By Hon'ble Shri Justice Parth Prateem Sahu**

**16/05/2019**

1. Challenge in this appeal is to award dated 5.12.2012 passed by the learned 1st Additional Motor Accident Claims Tribunal, Raigarh (for short 'the Claims Tribunal') in Claim Case No.186/11 dismissing claim application of claimant/appellant herein filed for grant of compensation on account of death of her husband in a motor vehicle accident.
2. Facts of the case, in brief, are that on 12.4.2011 at about 8-15 p.m. when deceased Santosh was standing near country-made liquor shop of village Hatti, one truck bearing registration No.CG12-SS-0233 dashed him due to which he

suffered multiple injuries on various parts of body and succumbed to those injuries on spot. Claimant, who is widow of deceased, filed claim application stating therein that her husband was Mason by profession and was earning Rs.5,000/- per month. She was dependent on her husband and due to his death, she has suffered loss of dependency, therefore, she is entitled for compensation of Rs.15,25,000/- from the non-applicants, jointly and severally.

3. Non-applicant No.1, owner-cum-driver, submitted his reply to claim application and denied all adverse pleadings made in claim application. He pleaded that no accident was caused by his vehicle and when he reached near barrier of village Hatti, his vehicle was stopped and after lapse of one month, proceedings have been initiated against him. He further pleaded that on the date of accident, he was having valid & effective driving license to drive offending vehicle, which was insured with respondent No.2, and therefore liability, if any, for payment of compensation would be on insurance company.

4. Non-applicant No.2 also submitted its reply to claim application and denied all the facts mentioned therein. Insurance Company also denied relationship of claimant with deceased. It was also pleaded that on the date of accident non-applicant No.1 was not driving offending vehicle and that as deceased himself was responsible for accident, therefore, the claimant is not entitled for any compensation. It was further pleaded that at the time of accident there was no valid permit and fitness certificate of offending vehicle.

5. Learned Claims Tribunal, after appreciating pleadings and evidence of respective parties, dismissed claim application by holding that claimant failed to prove that accident was caused by offending vehicle due to rash & negligent driving by its driver and that she is wife of the deceased.
6. I have heard learned counsel for the parties and perused the record.
7. Perusal of record shows that accident took place on 12.4.2011 at 8.15 p.m. and FIR (Ex.P-1) was recorded on next day at 3.30 p.m. on the basis of Dehati Nalishi. In FIR, number of offending vehicle has been mentioned as 'CG12-SS-0233'. Contents of FIR further reveal that though after accident the offending vehicle ran away, but it was caught at the barrier and thereafter offence was registered against driver of offending vehicle. Owner-cum-driver of offending vehicle though submitted reply to claim application but did not present himself in the witness box before the Claims Tribunal for his examination and cross-examination. In such a situation, the pleadings made by non-applicant No.1 could not be taken into consideration as proved fact. In the matter of **Vimla Devi & ors v. National Insurance Company Limited & anr** reported in **(2019) 2 SCC 186** the Hon'ble Supreme Court has observed thus:-

> “20.Keeping in view the aforementioned principle of law, when we examine the facts of the case at hand, we are of the considered opinion that the Claims Tribunal and the High Court were not justified in dismissing the appellants' claim petition. In our view, the appellants' claim petition ought to have been allowed for awarding reasonable compensation to the appellants in accordance with

law. This we say for the following reasons:

20.1. Firstly, the appellants had adduced sufficient evidence to prove the accident and the rash and negligent driving of the driver of the offending vehicle, which resulted in death of Rajendra Prasad.

20.2.Secondly, the appellants filed material documents to prove the factum of the accident and the persons involved therein.

20.3. Thirdly, the documents clearly established the identity of the Truck involved in the accident, the identity of the driver driving the truck, the identity of the owner of the Truck, the name of the insurer of the offending Truck, the period of coverage of insurance of the Truck, the details of the lodging of FIR in the police station concerned in relation to the accident.

20.4. In our view, what more documents could be filed than the documents filed by the appellants to prove the factum of the accident and the persons involved therein.

20.5. Fourthly, so far as the driver and owner of the Truck were concerned, both remained ex parte since inception and, therefore, neither contested the appellants' claim petition nor entered into the witness box to rebut the allegations of the appellants made in the claim petition and the evidence. An adverse inference against both could be drawn.

20.6. Fifthly, so far as the Insurance Company is concerned, they also did not examine any witness to rebut the appellants' evidence. The Insurance Company could have adduced evidence by examining the driver of the offending Truck as their witness but it was not done.

20.7. Sixthly, on the other hand, the appellants examined three witnesses and thereby discharged their initial burden to prove the case.

20.8. Seventhly, if the Court did not exhibit the documents despite the appellants referring them at the time of recording evidence, then in such event, the appellants cannot be denied of their right to claim the compensation on such ground. In our opinion, it was nothing but a procedural lapse, which could not be made basis to reject the claim petition. It was more so when the appellants adduced oral and documentary evidence to prove their case and the respondents did nothing to counter them."

8. Looking to observations made by Hon'ble Supreme Court in Vimla Devi's case (supra) and the fact that the Act of 1988 is a benevolent piece of legislation enacted with an object to

provide some solace to victims, the Courts and Claims Tribunal are not expected to deal with claim cases under the Act of 1988 in a casual manner. In the case at hand, contents of FIR (Ex.P-1), lodged immediately on the next day of accident, cannot be ignored, more so, when owner-cum-driver of offending vehicle did not submit himself in the witness box before the Claims Tribunal. There are sufficient material on record to hold that accident was caused by offending vehicle which resulted into death of deceased. In these circumstances, I am of the opinion that finding recorded by Claims Tribunal that claimant failed to prove that deceased died due to road accident caused by offending vehicle on account of rash and negligent driving by its driver, is not sustainable and is hereby set aside.

9. Coming to next ground based on which the Claims Tribunal dismissed claim application of claimant/appellant i.e. appellant failed to prove her relationship with deceased. In merg panchnama (Ex.P-3) dated 12.4.2011, name of deceased has been mentioned as 'Santosh, son of Kashiram' and his age has been shown as '30 years'. In post-mortem report (Ex.P-5) of deceased, at Page No.2 his age has been mentioned as 30 years, however, at Page No.3 it has been mentioned as '20 years'. Since there is no specific proof of age of deceased, the evidence available in the record of criminal case can be taken into consideration for determining age of deceased. When age of deceased is mentioned as 30 years at two places, it can be safely presumed that inadvertent mistake

occurred in mentioning age of deceased at Page No.2 of post-mortem report that too by a person who has not made entry at Page No.2 of post-mortem report. Hence, this Court is of the opinion that age of deceased was 30 years at the time of accident.

10. FIR (Ex.P-1) is said to have been lodged by one of the brother of deceased but he has not raised any objection before the Claims Tribunal with respect to status of claimant/appellant herein i.e. wife of deceased. Claimant/appellant herein also produced a copy of ration card i.e. BPL Card issued under the signature of Tahsildar concerned, before the Claims Tribunal in which age of deceased has been mentioned as 33 years. Claimant has also filed an application before the Claims Tribunal for taking additional document on record i.e. certificate issued by Gram Panchayat Hatti, Janpad Panchayat Dharamjaigarh in which appellant has been shown to be wife of deceased Santosh Kumar Rathiya. This application was replied by insurance company raising doubt about relationship of claimant/appellant as wife of deceased, but nothing in support thereof has been brought in evidence. In this situation, finding of Claims Tribunal that claimant/appellant failed to prove that she is wife of the deceased is not sustainable and is hereby set aside.

11. In view of the above, this Court is of the opinion that claimant/appellant is entitled for compensation on account of death of her husband Santosh Kumar Rathia in a motor accident.

12. Though the Claims Tribunal has not calculated income of deceased and amount to be awarded to claimant, but perusal of claim application filed under Section 166 of the Act of 1988 and evidence adduced by claimant/appellant would show that she has pleaded that deceased was working as Mason and thereby earning Rs.5,000/- per month. However, no documentary evidence has been adduced in support of income of deceased and therefore, in absence of any proof regarding income, the income of deceased can be assessed on notional basis. Considering the nature of work which deceased was doing and the fact that accident took place in the year 2011 i.e. on 12.4.2011, income of deceased is considered as Rs.4,000/- per month as per minimum wages prevailing at the relevant time. Accordingly, annual income of deceased comes to Rs.48,000/-. As on the date of accident the deceased was below 40 years of age, therefore, as per law laid down in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** claimant/appellant is entitled for an addition of 40% of actual income of deceased towards future prospects. Considering that at the time of accident the deceased was between the age group of 31 to 35, as per decision of HOn'ble Supreme Court in **Sarla Verma & ors v. Delhi Transport Corporation & ors** reported in **(2009) 6 SCC 121**, multiplier applicable would be of 16. As there is only one dependent i.e. widow of deceased, therefore, deduction towards personal and living expenses of deceased will be one-third.

13. Accordingly, income of deceased is taken as Rs.4,000/- per month and since at the time of accident the deceased was 30 years old self-employed man, therefore, in view of the law laid down in the matter of **Pranay Sethi's case** (supra), the income of deceased is required to be enhanced by 40% towards future prospects, which comes to Rs.5,600/- (40% of 4000). Thus, annual income of deceased for the purpose of calculating compensation comes to Rs.67,200/-(5600x12). Out of this amount, one-third is to be deducted towards personal & living expenses of deceased and after deducting one-third, annual loss of dependency would come to Rs.44,800/- (67200-22400). By applying multiplier of 16 to annual loss of dependency, total loss of dependency would come to Rs.7,16,800/- (44800x16). Besides this, claimant/appellant is also entitled for a lump sum amount of Rs.70,000/- under other conventional heads. Thus, claimant/appellant is entitled to a total compensation of Rs.7,86,800/- (7,16,800+70,000), recoverable from the respondents jointly and severally. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization.

14. The Claims Tribunal recorded a finding that violation of condition of license could not be proved and vehicle was insured with non-applicant No.2/respondent No.2, therefore, liability to pay compensation is on non-applicants/ respondents, jointly & severally.

15. Out of the amount of compensation so deposited, an amount

of Rs.3,00,000/- will be deposited in a fixed deposit scheme of any nationalized bank for a period of five years. A sum of Rs.2,00,000/- will be deposited in a fixed deposit scheme of any nationalized bank for a period of three years. Balance amount of compensation will be deposited in saving bank account of claimant/appellant herein.

16. The appeal is accordingly allowed in part.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-.