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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 589 of 2013

- Kanwaljeet Singh, S/o Kuldeep Singh Gurudutta, aged about 32 years, R/o Village Station Para Mahasamund, District Mahasamund, Chhattisgarh

---- Appellant

Versus

1. Bhagiya Bai, W/o Late Nishad Ram Dheever, aged about 68 years, R/o Village Sonkar Para Rajim, PS Rajim, Distt. Raipur, Chhattisgarh

2. Dayalal Dheevar, S/o Late Nishad Ram Dheevar, aged about 50 years, R/o Ward No. 10, Mahamaya Para Rajim, PS. Rajim, District : Raipur, Chhattisgarh

3. Ramdeen Dheevar, S/o Late Nishad Ram Dheevar, aged about 48 years, R/o Ward No. 10, Mahamaya Para, Rajim, PS Rajim, District : Raipur, Chhattisgarh

4. Vimal Dheevar, S/o Late Nishad Ram Dheevar, aged about 44 years, R/o Ward No. 10, Mahamaya Para, Rajim, PS. Rajim, District : Raipur, Chhattisgarh

5. Kanhayai Dheever, S/o Late Nishad Ram Dheevar, aged about 40 years, R/o Ward No. 10, Mahamaya Para, Rajim, PS Rajim, District : Raipur, Chhattisgarh

6. Santosh Dheevar, S/o Late Nishad Ram Dheevar, aged about 36 years, R/o Ward No. 10, Mahamaya Para, Rajim, PS Rajim, District : Raipur, Chhattisgarh

7. Arvind Yadav, S/o Janardan, aged about 44 years, R/o Village Sanjay Nagar, Ward No. 4, Nayakpara, Teh. Mahasamund, District : Mahasamund, Chhattisgarh

8. The New India Insurance Co.Ltd. Through Divisional Manager, Madina Building, Jail Road, Raipur, District : Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Ms Rajni Soren, Advocate
For Respondents- 1 to 6/Claimants	:	Shri JA Lohani, Advocate
For Respondent- 8/Insurance Company	:	Smt Chitra Shrivastava, Advocate

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Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

17.09.2019

1. The appellant/owner of Truck bearing No.CG 06-C 3723 (for short, 'offending vehicle') has filed this instant appeal under Section 173 of the Motor Vehicle Act, 1988 challenging the impugned award dated

27.08.2012 passed by Additional Motor Accident Claims Tribunal, Gariyaband (for short, 'Claims Tribunal') in Claim Case No.77 of 2011, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.3,73,600/- along with interest @ 7.5% per annum and fastened the liability on the appellant herein.

2. Brief facts relevant for disposal of this appeal are that on 24.03.2011 at about 4 pm, offending vehicle driven by non-applicant-1 dashed pedestrian Nishad Ram Dhivar (hereafter referred to as 'deceased'). In the aforementioned accident, deceased suffered grievous injuries on his person. He was taken to Government Hospital, Rajim, from where he was referred to Raipur and during the course of treatment, he succumbed to injuries on 21.04.2011.

3. Claimants / respondents-1 to 6, who are wife and children of deceased, have filed claim application before competent Tribunal claiming Rs.23,30,000/- as compensation on account of death of deceased.

4. Non-applicant 1 / driver of offending vehicle did not appear before learned Claims Tribunal and was proceeded *ex parte.*

5. Non-applicant 2/ owner of offending vehicle submitted his reply to claim application and pleaded that deceased was old age person and suffering from various medical ailments. Accident took place on account of negligent act of deceased himself as he fainted on the road in front of the truck. It was further pleaded that on the date of accident, offending vehicle was insured with non-applicant 3 / Insurance Company for the period from 28.11.2010 to 27.11.2011 and therefore, liability if any, for payment of compensation is on the Insurance Company.

6. Non-applicant 3/ Insurance Company submitted its reply to claim application and pleaded that on the date of accident, driver of offending vehicle was not possessing a valid and effective driving licence and therefore, offence under Section 5/181 of Motor Vehicle Act, 1988, has been registered against owner of the offending vehicle. Non-applicant 2/ owner of offending vehicle was also charged under Section 185 of the Motor Vehicles Act. Thus, there is violation of conditions of Insurance Policy and therefore, Insurance Company is not liable for payment of compensation.

7. Learned Claims Tribunal based on the pleadings made by the respective parties and evidence placed on record, arrived at a finding that accident took place due to rash and negligent act of non-applicant 1 ie driver of offending vehicle causing death of Nishad Ram Dhivar. Learned Claims Tribunal while recording a finding that there was violation of conditions of Insurance Policy, has held that on the date of accident driver of offending vehicle was not having valid licence to drive transport vehicle. Claims Tribunal awarded a total sum of Rs.3,73,600/- as compensation and fastened liability on non-applicants 1 and 2 ie driver and owner of offending vehicle, jointly and severally.

8. Learned counsel for the appellant submits that the finding recorded by learned Claims Tribunal to the effect that on the date of accident driver of offending vehicle was not possessing valid and effective driving licence is erroneous. She further submits that appellant has filed particulars of licence bearing No.A/3467/R issued by Office of Regional Transport Officer dated 03.12.2012 valid from 04.04.2008 to 03.04.2011, which was filed as Annexure A2. She further submits that copy of licence was already available on record at page-77 wherein the validity currency of licence for transport vehicle has been mentioned as till 03.04.2014. Learned Claims Tribunal considered only extract of the driving licence placed on record by Insurance Company as Ex.D2 in which the renewal date has not been mentioned.

9. Per contra, learned counsel appearing for respondent- 8 /Insurance Company submits that learned Claims Tribunal on the basis of records available at the relevant time, passed impugned award which cannot be said to be erroneous. It is further submitted that Annexure A2, certificate issued by Regional Transport Authority, Raipur filed by the appellant along with memo of appeal, is verified from concerned Regional Transport Office through the Investigator Mohd Iqbal of the Insurance Company, in pursuance of order by this Court on 28.06.2019, wherein it has been mentioned that licence bearing No.A/3467/R is in name of Arvind Kumar Yadav, s/o Shri Janardan Yadav; lastly it was renewed from 04.04.2008 to 03.04.2011; and the licence was issued for Motor Cycle + LMV + HGV only (HGV w.e.f. 24.09.2000).

10. Learned counsel for respondents- 1 to 6/ claimants supports the argument raised by learned counsel for the appellant. He also submits that he has also filed cross-objection for enhancement of award.

11. I have heard learned counsel for the parties and perused the records.

12. Learned counsel for appellant raised only one ground for consideration before this Court that finding recorded by learned Claims Tribunal that on the date of accident driver of offending vehicle was not possessing valid and effective driving licence to drive the offending Truck, which is a Heavy Goods Vehicle is erroneous for the reason that learned Claims Tribunal has not taken into consideration document AnnexureA2 filed by appellant in support of his pleadings and submissions.

13. This Court earlier directed learned counsel for Insurance Company to verify the authenticity of document Annexure A2 from the Regional Transport Officer, Raipur, from where it was issued. Learned counsel for respondent- 8/ Insurance Company on 17.09.2019 filed verification report of the said document in which Investigator of Insurance Company mentioned that particulars of licence filed by the appellant as Annexure A2 are genuine and the licence was renewed lastly for the period for 04.04.2008 to 03.04.2011. Learned counsel further submits that on the basis of verification report/ document received from the Office of Insurance Company, and placed on record, driver of offending vehicle was possessing valid and effective driving licence on the date of accident.

14. As per material available on record, date of accident is 24.03.2011 and licence of driver of offending vehicle was valid up to 03.04.2011 for transport vehicle. In view of facts and circumstances of the case and the verification of licence done by the Insurance Company, there is no dispute that on the date of accident driver of offending vehicle was possessing a valid and effective driving licence. Therefore, finding of Tribunal regarding exoneration of Insurance Company from its liability to pay compensation only on account of non-proof of driving licence of driver of offending vehicle in light of document Annexure A2, which has been verified by the Insurance Company, is not liable to be sustained and the same is hereby set aside. Looking to the fact that licence A2 is verified by Insurance Company and statement made on the basis of report, I do not find it necessary to send back the case for evidence.

15. Learned counsel for claimants/ respondents- 1 to 6 submits that learned Claims Tribunal committed error in deducting 50% amount of pension of deceased, instead of 1/3rd. He further submits that learned Claims Tribunal has awarded only Rs.2,31,800/- as against the total claim of Rs.4,00,000/- towards medical expenses incurred for treatment of the deceased.

16. However, learned counsel for respondents- 1 to 6/ claimants fairly admits that learned Clams Tribunal granted medical bills which were placed on record, but other medical expenses which were also actually incurred by the claimants, could not be brought on record.

17. I have perused the records. In my considered view, learned Claims Tribunal has rightly awarded the actual medical expenses incurred by the claimants.

18. So far as ground raised by learned counsel for respondents- 1 to 6 that learned Claims Tribunal committed error in deducting 50% of pension of deceased and in assessing amount of pension as Rs.6,762/- is concerned, learned counsel for the claimants failed to produce any documentary evidence showing that on the date of accident deceased was getting pension of Rs.9,000/- per month instead there is certificate issued by Bank (Ex.P36) showing pension of late Nishad Ram Dhivar as Rs.6,762/-. Therefore, in the opinion of this Court, learned Claims Tribunal has rightly assessed the pension amount as Rs.6,762/- on the basis of certificate issued by the Banker disbursing pension to the deceased.

19. So far as deduction of 50% of amount of pension is concerned, learned Claims Tribunal considering the fact that even after death of deceased, widow is entitled to receive 50% of pension and therefore, loss of income suffered by the widow has been taken as 50% of the pension amount, mentioned in Ex.P36 could not be said to be erroneous.

20. The last submission of learned counsel for the claimants is that learned Claims Tribunal has awarded meagre amount towards other conventional heads.

21. As regards the amount to be awarded on other conventional heads, Hon'ble Supreme Court in the matter of **National Insurance Company Vs Pranay Sethi** reported in AIR 2017 SC 5157 has dealt with this issue and held that in case of death of married person, minimum amount of compensation towards other conventional heads would be Rs.70,000/-. However, in the present case, learned Claims Tribunal has awarded only Rs.20,000/- under other conventional heads. Therefore, in view of the decision of Hon'ble Supreme Court with respect to the award of amount on other conventional heads in the matter of **Pranay Sethi** (supra), claimants are entitled to Rs.70,000/- under other conventional heads, instead of Rs.20,000/-, as awarded by learned Claims Tribunal.

22. In the result;

- Appeal preferred by appellant/owner of offending vehicle is allowed and he is absolved from his liability and respondent/Insurance Company is held liable to satisfy the impugned award.
- Cross-objection filed on behalf of claimants/respondents No.1 to 6 is also allowed in part and it is hereby held that they are entitled to get a sum of Rs.70,000/- under other conventional heads in place of Rs.20,000/-, as awarded by the Claims Tribunal.
- Now the claimants will be entitled for total sum of Rs.4,23,600/- (231800 + 121800 + 70,000).
- The amount of compensation will carry interest @ 6% from the date of filing application till its realisation.
- Rest of the conditions imposed by the Claims Tribunal shall remain as it is.

The impugned award is modified to the extent indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma