NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A(C) No.798 of 2013

1. Smt.Bena Bai, W/o Late Sunderlal Aged About 53 Years R/o Rawanbhata, Ram Nagar, Muktidham, Supela, P.S. Supela, Bhilai, Tah. And Distt. Durg C.G.
2. Ku. Chhaya D/o Late Sunderlal Aged About 23 Years R/o Rawanbhata, Ram Nagar, Muktidham, Supela, P.S. Supela, Bhilai, Tah. And Distt. Durg C.G.
3. Ku. Minakshi D/o Late Sunderlal Aged About 20 Years R/o Rawanbhata, Ram Nagar, Muktidham, Supela, P.S. Supela, Bhilai, Tah. And Distt. Durg C.G.
4. Ku. Damini D/o Late Sunderlal Aged About 15 Years Minor, Thru- Mother Bena Bai, R/o Rawanbhata, Ram Nagar, Muktidham, Supela, P.S. Supela, Bhilai, Tah. And Distt. Durg C.G.
5. Ku. Tulsi D/o Late Sunderlal Aged About 13 Years Minor, Thru- Mother Bena Bai, R/o Rawanbhata, Ram Nagar, Muktidham, Supela, P.S. Supela, Bhilai, Tah. And Distt. Durg C.G.
6. Smt. Setbati W/o Ganesh Ram Aged About 78 Years R/o Rawanbhata, Ram Nagar, Muktidham, Supela, P.S. Supela, Bhilai, Tah. And Distt. Durg C.G.

---- Appellants

Versus

1. Devendra Kumar Sahu, S/o Bahli Ram Sahu Aged About 28 Years R/o Infront Of Rai Kirana Stores, Nakapara, Jamul, P.S. Jamul, Distt. Durg C.G.
2. Chetan @ Chaitanya Kumar S/o Tiju Ram Aged About 27 Years R/o Nandini Road, P.S. Jamul, Distt. Durg C.G.
3. Shriram General Insu.Co.Ltd. S/o E/8, Riko Industrial Area, Sitapur, Tah. And Distt. Jaipur Rajasthan, Thru- Auth. Officer, Shriram General Insu.Co.Ltd., Near Keeka Petrol Pump, Rajnandgaon C.G. ----Respondents

M.A(C) No.797 of 2013

Smt. Bena Bai W/o Late Sunderlal Aged About 53 Years R/o Rawanbhata, Ram Nagar, Muktidham, Supela, P.S. Supela, Bhilai, Tah. And Distt. Durg C.G.

---- Appellant

Versus

1. Devendra Kumar Sahu, S/o Bahli Ram Sahu Aged About 28 Years R/o Infront Of Rai Kirana Stores, Nakapara, Jamul, P.S. Jamul, Distt. Durg C.G.
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Shri SP Sahu Counsel for the Appellants.
None appears for Respondents No.1 & 2, though served.
Shri Sachin Singh Rajput, counsel for Respondent No.3.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Award On Board

06.09.2019

1. Both these Miscellaneous Appeals have been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988) against the common award dated 15.07.2013 passed by the 1st Additional Motor Accidents Claims Tribunal, Durg (CG) (for short 'the Claims Tribunal') in Claim Case Nos.51/2012 and 52/2012 instituted respectively by the legal representatives of deceased Sunderlal and Claimant Smt Bena Bai whereby the Claims Tribunal, has awarded respectively a sum of Rs.10,80,000/- and Rs.39,000/- with 6% interest per annum from the date of filing the claim Petition till its realization while exonerating the Insurance Company from its liability. The parties to these Appeals shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 22.01.2012 deceased Sunderlal was coming by his motorcycle along with his wife Smt Bena Bai towards Bogada bridge, en-route he was dashed vehemently by the offending vehicle “Matodor” bearing its registration No.CG 07/LX 2927 owned by Non-Applicant No.2-Chetan @ Chaitanya Kumar insured with Non-Applicant No.3-Sriram General Insurance Company Limited. At the relevant time, the vehicle in question was being driven in a rash and negligent manner by its driver Non-Applicant No.1- Devendra Kumar Sahu, as a result of which, both Sunderlal

and his wife Smt Bena Bai got injured badly and during the course of the treatment, Sunderlal expired on 11.02.2012, while Smt Bena Bai has suffered permanent disability to the extent of 20%. On account of the alleged accident, a criminal case has been registered against the driver of the offending vehicle under Sections 279, 337, 338 and 304-A IPC in Crime No.35/2012.

3. On the basis of the aforesaid accident, Claim Petitions have been instituted by Claimants enumerated under Section 166 of the Act of 1988 registered as Claim Case Nos.51/2012 and 52/2012 alleging *inter alia* that deceased Sunderlal was employed as a Senior M.T.O in Bhilai Steel Plant and used to earn Rs.42,500/- per month and therefore, total amount of compensation to the tune of Rs.64,50,000/- was claimed in Claim Case No.51/2012 while, a sum of Rs.09,36,956/- has been claimed in Claim Case No.52/2012 as Claimant Bena Bai was engaged in the business of embroidery and used to earn Rs.5,000/- per month.

4. While disputing the alleged accident, it has been stated by Non-Applicants No.1 & 2, the driver and the owner of the vehicle in question that the alleged accident has not occurred due to the rash and negligent driving of the driver of the offending vehicle, in fact it occurred due to the negligent driving of the deceased himself. They pleaded further that since the vehicle in question was insured with Non-Applicant No.3, therefore, in case of any liability being fastened, the same could be indemnified by the said Insurance Company. While Non-Applicant No.3-Insurance Company has contested the claim mainly on the ground that the vehicle in question was being used in violation of the insurance policy as the driver of the offending vehicle was neither possessing the valid and effective driving license nor it was being used with valid permit. The Insurance Company is therefore, not liable to indemnify

the insured.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 22.01.2012 due to rash and negligent driving of the driver of the offending vehicle (Matador) resulting into the sad demise of Sunderlal while his wife Smt Bena Bai suffered permanent disability to the extent of 20%. It held further that since the vehicle in question was being used without any valid permit, therefore, while exonerating the Insurance Company from its liability, awarded the amount of compensation as observed hereinabove.

6. Being aggrieved, the Claimants have preferred these Appeals. In M.A (C) No.798/2013 preferred against Claim Case No.51/2012, it is contended by learned Counsel for the Appellants that while awarding the amount of compensation, the Claims Tribunal has failed to consider the future prospects of the income of the deceased and that apart, only a sum of Rs.20,000/- has been awarded towards conventional heads. In support, he placed his reliance upon the principles laid down in the matters of *National Insurance Company Limited vs. Pranay Sethi And Others* and *Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram And Others* reported respectively in **(2017) 16 Supreme Court Cases 680** and **(2018) 18 Supreme Court Cases 130.** He further submits that in M.A.(C) No.797/2013 preferred by the Claimant Smt Bena Bai, a meager amount of compensation to the tune of Rs,39,000/- has been awarded on finding that she (Smt Bena Bai) was not engaged in the alleged embroidery business. He submits further that although the Insurance Company has been exonerated from its liability, but while applying the principle of “pay and recover” as held in the matter of *Manager, National Insurance Company Limited vs. Saju P. Paul and Another* and

Manuara Khatun and Others vs. Rajesh Kumar Singh and Others reported respectively in **(2013) 2 Supreme Court Cases 41** and **(2017) 4 Supreme Court Cases 796,** the Claims Tribunal ought to have directed the said Insurance Company to pay first the said awarded sum while entitling to recover the same from the owner of the alleged offending vehicle.

7. Shri Sachin Singh Rajput, learned Counsel for Respondent No.3/Insurance Company, while supporting the award impugned submits that a just and proper compensation as required under the law has been awarded, therefore, the same is not required to be interfered. He submits further that since the vehicle in question was being used without any valid permit, therefore, the Claims Tribunal has rightly exonerated the Insurance Company without applying the principles of pay and recover.

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

9. The main contention of learned Counsel for the Appellants herein is that while awarding the amount of compensation in Claim Case No.51/2012, the Claims Tribunal has failed to consider the future prospects of the income of the deceased and also failed further in providing proper compensation towards conventional heads. In order to ascertain the said contention, I examined the entire record and on bare perusal of which, it appears that while awarding the amount of compensation, the Claims Tribunal has failed to consider the future prospects of the income of the deceased. However, while determining the income of the deceased, an addition of 15% of his actual salary towards his future prospects was required to be added as he was found to be 57 years old at the time of the alleged accident. The actual salary of the deceased has been assessed by the Claims Tribunal to the tune of Rs.39,260/- upon

deducting tax amount of Rs.3,192/- to his gross salary of Rs.42,452/-. As such, the Claims Tribunal ought to have considered the future prospects of the income of the deceased by adding 15 % of its actual salary to Rs.39,260/-. The award impugned is therefore, liable to be modified in this regard. Likewise, a sum of Rs.20,000/- alone has been awarded towards conventional heads even without considering the filial consortium as well as love and affection which are payable respectively to the mother and children of the deceased in order to provide just and proper compensation to the Claimants in the light of the principles laid down in the above referred judgments.

10. Considering the aforesaid facts and circumstances of the case, it would be just and proper to consider the actual salary of the deceased by adding 15% of his income of Rs.39,260/- i.e. Rs.5,889/-. By adding as such, his actual salary would be worked out to the tune of Rs.45,149/- (39,260 + 5,889), yearly Rs.5,41,788/- and by deducting 1/4th of it, i.e. Rs.1,35,447/- towards his personal expenses, the yearly dependency would arrive at Rs.4,06,341/- (5,41,788 – 1,35,447) and that by applying multiplier of 9 to it, a total amount of dependency would be arrived at Rs.36,57,069/-. In addition to this, the Claimants would be entitled to a sum of Rs.3,10,000/- towards conventional heads instead of Rs.20,000/- as assessed by the Claims Tribunal, as under :-

i. Consortium to wife	=	Rs. 40,000
ii. Filial Consortium to mother	=	Rs. 40,000
iii. Loss of love and affection to 4 children @ 50,000/- each	=	Rs. 2,00,000
iv. Funeral Expenses	=	Rs. 15,000
v. Loss of estate	=	Rs. 15,000
Total	=	Rs.3,10,000

. 11. The Claimants in M.A(C) No.798/2013 would thus be entitled to a total sum of Rs.39,67,069/-. They would be entitled to interest @ 6% per annum on the enhanced amount of compensation i.e. Rs.28,87,069/- (39,67,069/- – 10,80,000/-).

12. In so far as M.A(C) No.797/2013 preferred by Claimant Bena Bai is concerned, I do not find any infirmity in the amount of compensation as assessed by the Claims Tribunal as the Claimant herself has admitted in her statement that she is not engaged in any profession. The award impugned passed in Claim Case No.52/2012 does not require to be interfered and the Appeal preferred against it is accordingly dismissed.

13. According to Shri S.P. Sahu, learned Counsel for the Appellants/Claimants, although Non-Applicant No.3, Insurance Company has been exonerated on the ground of breach of insurance policy but the insurance policy (Ex.D-2) submitted by the owner of the alleged vehicle shows that it was a goods carrying commercial vehicle package policy and was in existence at the relevant time. He therefore submits that the Insurance Company may be directed to pay the awarded sum to the Claimants while entitling it to recover the same from the insured (Non-Applicant No.2) on the principles of "pay and recover" by placing his reliance upon the principles laid down in the matter of *National Insurance Company Limited vs. Saju P. Paul and Another* (supra) followed in the matter *Manuara Khatun and Others vs. Rajesh Kumar Singh and Others* (supra).

14. The aforesaid contention is refuted by Mr. Rajput, learned Counsel for Non-Applicant No.3, the Insurance Company by submitting *inter alia* that since the principle of "pay and recover" has not been applied by the Claims Tribunal, therefore, such a principle is not required to be taken into consideration at this stage. The contention of Mr. Sahu is, therefore, liable to be rejected.

15. Considering the aforesaid contention of the parties based upon the aforesaid principles, it would be just and proper to issue a direction to Non-Applicant No.3/Insurance Company to first pay the awarded sum as observed hereinabove in M.A(C) No.798/2013 as well as by the Claims Tribunal in Claims Case No.52/2012, to the Claimants while entitling the said Insurance Company to recover the same from the owner of the vehicle in question i.e. Non-Applicant No.2-Chetan @ Chaitanya Kumar. Accordingly, I direct Non-Applicant No.3/Sriram General Insurance Company Limited to first pay the awarded sum as observed hereinabove to the Claimants and then to recover the said sum from the owner of the vehicle in question i.e. Non-Applicant No.2-Chetan @ Chaitanya Kumar in execution proceedings arising in this very case.

16. Consequently, both these Appeals have been disposed of with the aforesaid directions. Rest of the conditions, as observed by the Claims Tribunal, shall remain intact. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Priya