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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 571 of 2013

1. Ishant Kumar Garhewal, S/o Dhani Ram Garhewal, Aged About 23 Years,
2. Ku. Snigdha Garhewal D/o Dhani Ram Garhewal Aged About 20 Years
3. Ku. Arpana Garhewal D/o Dhani Ram Garhewal Aged About 15 Years Minor, Thru- her natural guardian Father Dhani Ram Garhewal.
4. Dhani Ram Garhewal S/o Sukhram Garhewal Aged About 49 Years

   All R/o Ahead of Kabir Chowk, Near Railway Line, Ram Nagar, P.S. Gudhiyari, Raipur, Civil and Revenue District Raipur (CG)

---- Appellants

Versus

1. Jitendra Baghmar, S/o Keshav Baghmar, Aged About 26 Years R/o Infront Of Ram Darbar Gate, Dimarapara Kota, P.S. Saraswati Nagar, Tahsil and District Raipur (CG) [Driver of Tanker Truck]
2. Amir Ali Farishta S/o Late Raja Ali Farishta, Dr. Farishta Hospital, Katora Talab, Raipur (CG) [Owner of Tanker Truck]
3. The New India Insurance Co. Ltd., Divisional Office, First Floor, Madina Building, Katchhari Chowk, Raipur (CG) [Insurer]
4. Naresh Khatri S/o Mohanlal Khatri R/o House No.327-A, Near Union Bank, Samta Colony, Raipur, District : Raipur (CG)

---- Respondents

For Appellants	:	Mr. Shikhar Sharma, Advocate
For Respondent No.1	:	Mr. Raja Sharma, Advocate
For Respondent No.3	:	Mr. Anand Gupta, Advocate
For Respondent No.2 & 4	:	None though served.

Order On Board By Hon'ble Mr. Justice Parth Prateem Sahu

12/04/2019

1. The appellants have preferred this appeal seeking enhancement of compensation awarded by learned 7th Additional Motor Accident Claims Tribunal, Raipur (for short 'the Claims Tribunal') vide award dated 13.3.2013 passed in Claim Case No.145/11 whereby the Claims Tribunal awarded compensation of Rs.8,56,365/- to claimants/appellants herein

after deducting 50% towards contributory negligence on the part of rider of motorcycle in which deceased was travelling as pillion rider.

2. Facts of the case, in brief, are that on 11.12.2010 at about 7 am Smt. Vinita Garewal (since deceased) was travelling as pillion rider on motorcycle bearing registration No.CG04-F-8400 driven by her son Ishant Garewal and going towards Telghani Naka, Raipur. When they reached near Ramnagar Railway Line Overbridge, at that time one tanker bearing registration No.CG04-ZC-0632 (henceforth 'the offending vehicle'), which was being driven by respondent No.1 herein, dashed motorcycle from its backside as a result of which Smt. Vinita Garewal, pillion rider, sustained grievous injuries and subsequently succumbed to injuries. Accident was reported to concerned police station based on which offence under Sections 279, 337, 338 & 304A of the Indian Penal Code was registered against respondent No.1-driver. Claimants/appellants herein, who are children & husband of deceased respectively, have filed a claim application claiming compensation to the tune of Rs.25,51,000/- under various heads on the ground that at the time of accident, deceased was 45 years old, she was earning Rs.15,000/- per month from the business of selling of spices under the name and style of 'Aparna Grih Udyog'. They were dependent on earning of deceased and due to her death, they have been deprived of dependency.

3. Respondent No.1 & 2, owner & driver of offending vehicle, filed their reply to claim application denying averments made therein. They have stated that accident took place due to sole negligence of driver of motorcycle as the accident occurred only when driver of motorcycle tried to overtake the offending vehicle from wrong side, therefore, the owner & driver are not liable to pay compensation. It has been further contended that on the date of accident the driver was having valid & effective driving license; there

was valid permit & fitness certificate to ply offending vehicle on road and as the offending vehicle was fully insured, therefore, respondent No.3-insurance company is liable to pay compensation, if any awarded by the Claims Tribunal.

4. Respondent No.3 Insurance Company filed its separate reply and denied averments made in claim application except that on the date of accident the offending motorcycle was insured with it. It was contended that accident in question occurred due to negligence on the part of driver of motorcycle himself and therefore claimants are not entitled to get any compensation; on the date of accident the driver of offending vehicle was not having valid & effective driving license and even the offending vehicle was being plied on road without there being valid permit and fitness certificate. The offending vehicle was being plied in violation of conditions of insurance policy and therefore the insurance company is not liable.

5. The Claims Tribunal after appreciating the pleadings and evidence placed on record (oral and documentary both) by the respective parties has partly allowed claim application and awarded compensation of Rs.8,56,365/-, after deducting 50% towards contributory negligence, along with interest @ 6% p.a. by taking annual income of deceased as Rs.1,60,260/- on the basis of her last income tax return. The Claims Tribunal saddled liability upon the insurance company to pay compensation by holding that there was no violation of any of the conditions of insurance policy.

6. Learned counsel for claimants/appellants submits that the Claims Tribunal committed error in holding the deceased herself to be negligent to the extent of 50%, whereas she was travelling as pillion rider on motorcycle. He further submits that not a single penny has been awarded towards future prospects although the deceased was 45 years old at the time of accident, she was doing the business of selling spices and her income

would have certainly increased in future. He further submits that amount awarded by Claims Tribunal under other conventional heads are also on lower side and need to be enhanced suitably.

7. Learned counsel appearing on behalf of respondent No.1 & 2 supports the impugned award passed by Claims Tribunal.

8. Learned counsel appearing for respondent No.3 would argue that the Claims Tribunal has not committed any mistake in holding the deceased herself to be contributory negligent to the extent of 50%. The Claims Tribunal after considering overall facts, circumstances and evidence available on record, has rightly assessed the compensation and the same does not call for any interference.

9. I have heard learned counsel for the parties and perused the record.

10. Indisputably, on the date of accident deceased was travelling as pillion rider on motorcycle bearing No.CG04-F-8400 driven by her son Ishant Garewal. It is well settled that a pillion rider ordinarily has nothing to do with occurrence of accident, hence concept of contributory negligence cannot be made applicable to pillion rider and as such, no deductions can be made from the compensation to be awarded to pillion rider or his/her legal heirs. The Hon'ble Supreme Court in the matter of ***T. O. Anthony v. Karvarnan and others*** reported in ***(2008) 3 SCC 748***, while dealing with issue of contributory negligence has 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 wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the en-

> tire 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 wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer 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 on 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 stand reduced in proportion to his contributory negligence.
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> 7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of "composite negligence" will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

11. The Hon'ble Supreme Court in the above judgment has clearly held that contributory negligence would be applicable to driver of vehicle and not to its occupants. Therefore, in the case at hand, the deceased cannot be held to be contributory negligent and finding of Claims Tribunal holding the deceased to be contributory negligent to the extent of 50% is liable to be and is hereby set aside.

12. The claimants have pleaded and proved that the deceased was earning income by running business of selling of spices and to prove income of deceased, the claimants have filed income tax returns for the assessment years 2009-10 & 2010-11 (Ex.P-45 & P-46). In the said returns, income of the deceased for assessment year 2009-10 was shown as Rs.1,45,450/- and income for assessment year 2010-11 was shown as Rs.1,60,260/-. The Claims Tribunal considering the income shown in income tax return of assessment year 2010-11, fixed Rs.1,60,260/- as annual income of deceased, which has not been disputed or challenged by the respondents. The Hon'ble Supreme Court in catena of its decisions including in **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** has held that in case the deceased, victim of motor accident, was self-employed and between the age group of 40 to 50 years, an addition of 25% of actual income of deceased towards future prospects should be made. In the case at hand, although the deceased was self-employed i.e. engaged in the business of selling of spices, but the Claims Tribunal while calculating compensation payable to claimants failed to add any amount to the annual income of deceased towards future prospects and thereby committed serious error, which is required to be corrected by this Court.

13. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to the claimants/appellants.

14. Accordingly, annual income of deceased is taken as Rs.1,60,260/- , as determined by Claims Tribunal. Since, in this case income of deceased was gradually increasing, as shown in income tax returns (Ex.P-45 & P-46) and at the time of accident she was 45 years old self-employed lady, 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 25%

towards future prospects, which comes to Rs.40,065/- (25% of 1,60,260). Thus, annual income of deceased for the purpose of calculating compensation comes to Rs.2,00,325/- (1,60,260+40,065). Out of this amount, 1/4th is to be deducted towards personal expenses of deceased and after deducting 1/4th, annual loss of dependency would come to Rs.1,50,244 (200325-50081). By applying multiplier of 14, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.21,03,416/- (1,50,244x14). Besides this, claimants/appellants are also entitled for a lump sum amount of Rs.70,000/- under other conventional heads. Thus, claimants/appellants are now entitled to a total compensation of Rs.21,73,416/- (21,03,416+70,000), recoverable from the respondents jointly and severally. This additional amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of conditions mentioned in the impugned award shall remain intact.

15. Any amount already paid to the claimants/appellants as compensation shall be adjusted from the total amount of compensation as calculated above.

16. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-