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HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1031 of 2014

Royal Sundaram Alliance Insurance Co. Ltd. Branch Office-Rabha Trade Center, Opposite Rajiv Plaza, Near Bus Stand, Distt. Bilaspur-At present- Near Over Bridge, Mova Pandri, PS. Pnadri, Civil and Revenue Distt. Raipur C.G.

---- Appellant

Versus

1. Chandrakanti Patel W/o Late Ramayan Prasad Patel aged about 48 years
2. Hemant Kumar Patel S/o Late Ramayan Prasad Patel, aged about 32 years
3. Sumant Kumar Patel S/o Late Ramayan Prasad Patel, aged about 29 years

   All R/o Village Maheva, Tahsil Wadrafnagar, PS Wadrafnagar, Tahsil Wadrafnagar, Civil and Revenue Dist. Balrampur C.G. At present C/o Satyanarayan Patel Village Revti (Tendubandha) Tahsil Pratappur Dist. Surajpur C.G. **(Claimants)**
4. Nagendra Prasad Jaiswal S/o Krishndev Prasad jaiswal, R/o Vill and Post Mandri Tahsil Wadrafnagar, P.S. Wadrafnagar, Tahsil Wadrafnagar Civil and Revenue Dist. Balrampur C.G. **(Owner)**
5. Jamal Ahmad S/o Mahboob Ahmad C/o Nagendra Prasad Jaiswal, R/o Vill and post Mandri, Tahsil Wadrafnagar, Civil and Revenue Dist. Balrampur C.G. **(Driver)**

---- Respondents

For appellant	:	Shri Rohitasva Singh, Advocate on behalf of Mr. Bhaskar Payasi
For Respondent No.1,2 & 3	:	Mr. D.N. Prajapati, Advocate

Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

27/06/2019

1. Appellant-insurance company has preferred this appeal under

Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 16-5-2014 passed by the learned Additional Motor Accident Claims Tribunal, Pratappur, District Surajpur (henceforth 'the Claims Tribunal') in Claim Case No. 39/2013 whereby the Claims Tribunal allowed claim application in part and awarded total compensation of Rs. 8,17,000/- with interest @ 7.5% p.a. from the date of filing of application till its realization.

2. Brief facts necessary for disposal of the case are that on 24-1-2013 at about 10:30 PM when Dayaram Patel (since deceased) along with one Ramayan Patel was going to his house situated in village Maheba on motorcycle bearing registration No. CG15-CA-6604. Dayaram Patel was driving motorcycle and Ramayan Patel was travelling as pillion rider. When they reached near Primary School, Maheba, at that relevant time, one tractor bearing registration No. CG15-AE-2077 (hereinafter shall be referred to as “the offending vehicle”), driven by respondent No.5/non-applicant No.2 namely Jamal Ahmad, dashed the motorcycle driven by Dayaram Patel. As a result of which, Dayaram Patel and Ramayan Patel (pillion rider) suffered grievous injuries over their person and they succumbed to their injuries during the course of treatment. Matter was reported to police station based on which Crime bearing No.67/13 for the offence under Section 279, 337 & 304A of IPC was registered against respondent No.5/non-applicant No.2

3. Claimants-respondents No. 1 to 3, who are legal representatives

of Ramayan Patel (pillion rider), filed claim application before competent Claims Tribunal claiming an amount of Rs. 6,90,500/- as compensation on account of death of deceased Ramayan Patel due to injuries sustained by him in a motor vehicular accident.

4. Respondents No. 4 & 5/non-applicants No.1 & 2, owner & driver of offending vehicle, submitted their reply to claim application and denied all adverse pleadings made in claim application. They have pleaded that accident took place due to negligence on the part of driver of motorcycle Dayaram Patel. They have further pleaded that driver of motorcycle dashed the tractor from its backside; driver of motorcycle Dayaram Patel was not possessing valid and effective driving license and at the time of accident three persons were travelling on motorcycle, therefore, there was contributory negligence on the part of deceased also. They further pleaded that on the date of accident, respondent No. 4/non-applicant No. 1 was owner of offending vehicle and respondent No. 5/non-applicant No.2 was driver and holding valid and effective driving license to drive offending vehicle. On the date of accident offending vehicle was insured with appellant/ non-applicant No. 3-insurance company, therefore, liability, if any, would be of the insurance company.

5. Appellant- Insurance Company submitted its reply to claim application and denied all the facts pleaded therein. It was further pleaded that the owner and driver of offending vehicle have not complied with the provisions of Sections 134 & 158 of the Act of 1988. The claimants were not dependant on the

deceased. On the date of accident, respondent No.5/non-applicant No.2 was not driving offending vehicle and there was contributory negligence as accident took place due to negligence on the part of the driver of the motorcycle i.e. Dayaram Patel.

6. The Claims Tribunal, on appreciation of pleadings and evidence placed on record by respective parties, held that the driver of offending vehicle to be rash and negligent and death of Ramayan Patel took place on account of rash and negligent driving of offending vehicle by respondent No.5/non-applicant No.2. The Claims Tribunal also held that on the date of accident the offending vehicle was not driven in violation of conditions of insurance policy and accordingly awarded a total sum of Rs. 8,17,000/- as compensation.

7. Learned counsel for appellant/insurance company submits that learned Claims Tribunal committed error in not considering that name of driver mentioned in F.I.R. (Ex. P/2) was different from the name as mentioned in final report (Ex. P/1) and thus there was suppression of material fact by owner of offending vehicle. Further, three persons were travelling on motorcycle, therefore, there was contributory negligence on the part of driver of motor cycle. It was further argued that learned Claims Tribunal committed error in assessing monthly income of deceased as Rs.9,000/- without there being any documentary evidence and in absence thereof, income of the deceased ought to have been assessed on notional basis.

8. Per contra, learned counsel appearing for respondent No. 1 to 3/ claimants argued that learned Claims Tribunal has passed the impugned award after considering all material facts and evidence available on record. He further argued that accident was seen by one Vinod Patel, lodger of F.I.R., who in his evidence has specifically stated that he could not see driver of offending vehicle as immediately after the accident, he fled away from the spot. He stated that as the persons gathered on spot were taking name of 'Kuldeep Bansod' as driver of offending vehicle, therefore, he mentioned name of driver as 'Kuldeep Bansod' in F.I.R..

9. Learned counsel appearing for respondents No. 1 to 3/claimants submits that in support of income of deceased they have produced salary certificate (Ex.P-11) of deceased issued by Durga Motor Service where deceased was working and this has not been disputed. Further, some other witnesses have also stated that at the time of accident Khalasi (helpers) were getting monthly salary of Rs. 9,000/-. In these circumstances, the learned Claims Tribunal has not committed any error in determining monthly income of deceased and therefore finding recorded by learned Claims Tribunal in this regard does not call for any interference.

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

11. So far as discrepancy pointed out by learned counsel for appellant / insurance company with respect to name of driver of offending vehicle in F.I.R. (Ex.P/2) & final report (Ex.P/1) is concerned, though in F.I.R. name of driver has been mentioned as 'Kuldeep Bansod', but in the final report submitted after completion of investigation, the police authorities had mentioned name of driver of offending vehicle on the basis of material collected by them in the course of investigation. The Insurance company had neither challenged criminal proceedings before any forum nor examined investigating officer as a witness before the Claims Tribunal in support of its pleadings. Thus, appellant/insurance company failed to prove its plea by placing legal and admissible piece of evidence on record that at the time of accident person other than respondent No.5/non-applicant No.2 was driving offending vehicle, therefore, aforesaid ground raised by learned counsel for appellant/insurance company is repelled.

12. Other ground raised by appellant/insurance company is that at the time of accident three persons were travelling on motorcycle, therefore, there was negligence on the part of deceased himself is concerned, in the given facts and circumstances of case this ground is also not sustainable. Indisputably, the deceased was not driving motorcycle but he was travelling as a pillion rider and in case of pillion rider of any vehicle, it will be composite negligence on the part of both drivers and he can claim compensation against owner of offending vehicle as also

insurance company of both vehicles or can claim compensation against anyone of them as per the law laid down by The Hon'ble Supreme Court in the matter of **T. O. Anthony v. Karvarnan and others**[1]**,** wherein while deciding the issue of contributory negligence in case of occupant of vehicle where accident was between two motor vehicles 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 entire 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

1 (2008) 3 SCC 748

> 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."

13. Last ground raised by learned counsel for appellant/insurance company is that the Claims Tribunal committed error in assessing monthly income of deceased at Rs. 9,000/-. The claimants have placed on record salary certificate of deceased issued by owner/proprietor of Durga Motor Services, Ambikapur, Distt. Surguja C.G. but author of document (Ex. P/11) has not been examined as witness by the claimants to prove the same. Other witnesses who were examined are not employer of deceased and even they have only stated that persons working as Khalasi are getting salary of Rs. 9,000/- per month. Except the aforesaid oral evidence, no documentary evidence with respect to salary of deceased or any other labour similarly placed to deceased has been produced on record by the claimants.

14. In view of above, finding recorded by the Claims Tribunal that the claimants have been able to prove income of deceased is not sustainable and the same is hereby set aside.

15. In absence of any proof of income of deceased, income of deceased is to be assessed on notional basis keeping in mind the date of accident, nature of work, price index etc. prevailing in the area where accident took place. In the case at hand, the claimants have specifically pleaded in claim application that at the time of accident deceased was working with Durga Motor Services as

'Khalasi' (Cleaner) and thereby earning Rs. 9,000/- per month. The document (Ex. P/11) would show that Durga Motor Services is situated at Old Bus Stand, Ambikapur. Thus, it can be presumed that the deceased was working with Durga Motor Services having its office at Ambikapur. Looking to the facts emerging on record, nature of work pleaded by claimants which finds corroboration from other oral evidence, this Court is of the view that it can be taken into consideration that on the date of accident the deceased was working as 'Cleaner' in Durga Motor Services.

16. Considering the date of accident i.e. 24-1-2013 and fact that deceased was working as 'cleaner' with Durga Motor Services, monthly income of deceased can be taken as Rs.4,500/- per month for the purpose of calculating amount of compensation.

17. Though there is no cross appeal filed by claimants but in view of the object of Act that the claimants should be awarded just compensation and we are assessing the income of the deceased in an appeal preferred by insurance company for arriving at a correct income for calculating the amount of compensation, amount towards future prospects is also added in monthly income.

18. The Claims Tribunal has not granted any compensation under the head of 'future prospects'. The Hon'ble Supreme Court in catena of its decisions including in **National Insurance Company Ltd. vs. Pranay Sethi**[2] has held that in case the deceased, victim of motor accident, was between the age of 50 to 60 years and was not in

2 (2017) 16 SCC 680

permanent job, an addition of 10% of actual income of deceased towards future prospects should be made. Relevant paragraph of Pranay Sethi's case (supra) reads thus;-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

In the present case, as the deceased was about 54 years old and was not in a permanent job, therefore, claimants are also entitled for an addition of 10% of the assessed income of deceased.

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

20. Accordingly, income of deceased is taken as ₹ 4,500 /- per month and since at the time of accident the deceased was 54 years of age, and was not in permanent job, therefore, in view of law laid down in the matter of **Pranay Sethi's case** (supra), the income of deceased is required to be increased by 10% towards future prospects, which comes to Rs.4,950/-(4500+450). Thus, annual income of deceased for the purpose of calculating compensation comes to Rs.59,400/-(4,950x12). As the deceased was survived by three dependants i.e. widow & children, therefore, one-third is required to be deducted from the income of deceased towards his personal and living expenses. After deducting one-third from annual income of deceased towards his personal & living

expenses, annual loss of dependency would come to Rs.39,600/- (one-third of Rs. 59,400-Rs. 66,000). By applying multiplier of 11, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.4,35,600/- (39,600x11). Besides this, claimants/respondents No.1 to 3 are also entitled for a lump sum amount of Rs.70,000/- under other conventional heads. Thus, claimants/respondent No.1 to 3 are now entitled to a total compensation of Rs.5,05,600/- (4,35,600+70,000) instead of Rs.8,17,000/- as awarded by Claims Tribunal. This amount of compensation shall carry interest @ 7.5% p.a. from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

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

Sd/-

(**Parth Prateem Sahu**)

Judge

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