NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No.1161 of 2013

1. Smt. Parwati Satnami W/o Late Mohan Satnami Aged About 26 Years.
2. Ku. Nisha Satnami D/o Late Mohan Satnami Aged About 5 Years.
3. Sanat Kumar Satnami S/o Late Mohan Satnami Aged About 1 Years. [appellant nos.2 & 3 are Minor Through Their Legal Guardian Mother Appellant No. 1 Smt. Parwati Satnami. All are R/o Village Godam, Police Station Sarangarh, Distt. Raigarh, C.G.
   Present R/o Village Kaunatal, Post Office, Police Station & Tahsil - Sarangarh, District Raigarh, C.G.

---- Appellants

Versus

1. The Oriental Insurance Company Limited Branch Itwari Bazar, Raigarh, Tahsil and Distt. Raigarh, C.G.
2. Krishna Kumar Nirala S/o Dev Prasad Nirala, Caste-Satnami, Aged About 26 Years R/o Village Hardi, P.S. and Tah. Sarangarh, Distt. Raigarh, C.G.

---- Respondents

For Appellants	:	Smt. Mandavi Bhardwaj, Advocate on behalf of Shri Shivendu Pandya, Advocate.
For Respondent No.1	:	Shri Hanuman Prasad Agrawal, Advocate.
For Respondent No.2	:	None.

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

18.09.2019

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 18.09.2013 passed by learned Additional Motor Accident Claims Tribunal, Sarangarh, Distt. Raigarh C.G (in

short 'the Tribunal') in Claim Case No.79/2006, whereby the Tribunal dismissed the claim application filed by claimants/appellants.

2. Brief facts necessary for disposal of this appeal are that on 27.04.2006, deceased -Mohan was traveling as 'pillion rider' on Motorcycle bearing registration No.CG/13/F/1994, which was driven by Rajkumar Nirala, and going towards village- Barbhata from village- Hardoi. When they reached near Churela Nala, one unknown truck dashed their motorcycle. In the aforesaid accident, Mohan 'pillion rider' died on spot, whereas Rajkumar Nirala 'driver of motorcycle' suffered grievous injuries over his person. He was brought to Primary Health Centre, Sarangarh, where looking to grievousness of his injuries, he was referred to hospital at Raigarh, however, on the way he succumbed to his injuries. Matter was reported to concerned police station based on which, crime bearing no.124/06 was registered for offences under Sections 279, 337 & 304 A of IPC. As whereabouts of truck could not be traced out, during the course of investigation, therefore, closure report No.26/06 was submitted before the concerned Court.

3. Claimants, who are wife and children of Mohan (deceased), filed a claim application under Section 166 of the Act of 1988 before the competent Claims Tribunal claiming Rs.15,00,000/- as compensation on the grounds mentioned therein.

4. Non-applicant No.1/ respondent No.1 -Insurance Company herein submitted its reply to claim application and pleaded that as the accident took place from unknown truck, the whole liability for

payment of any amount of compensation would be on driver and owner of said truck. It was further pleaded that there is violation of conditions of insurance policy as on the date of accident, driver of motorcycle was not possessing valid and effective driving license.

5. Non-applicant no.2/respondent no.2 (owner of motorcycle) herein submitted reply to claim application and pleaded that on the date of accident, Rajkumar Nirala and Mohan were going to village-Barbhata on his motorcycle and at that relevant point of time accident took place. It was also pleaded that as on the date of accident, ill-fated motorcycle was insured with respondent no.1/insurance company, therefore, liability if any would be on insurance company.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties framed as many as five issues for consideration and held that claimants failed to prove rash and negligent act of driver of motorcycle, which is an important fact to be proved, and dismissed claim application in its entirety.

7. Learned counsel appearing for claimants/appellants submits that the Tribunal committed an error in dismissing claim application in its entirety by recording the above finding. He further submits that the Tribunal also erred in holding that accident took place from one unknown truck and as owner, driver or Insurance Company of said truck have not been impleaded as parties. He also submits that the Tribunal has not taken into consideration the order passed by a Division Bench of this Court in MAC No.1329/2009 order dated

02.02.2011, wherein it was held that as per circular of Insurance Regulatory Development Authority, 'pillion rider' should be treated as a 'third party' and directed to consider claim application afresh. Lastly, he submits that accident was not disputed, FIR was also lodged on the date of accident itself, wherein it has been specifically mentioned that accident took place between the motorcycle and the truck, therefore, the Tribunal ought to have allowed claim application and awarded suitable amount of compensation to claimants.

8. Per contra, learned counsel for respondent No.1/Insurance Company opposes the submission made by counsel for the appellants and submits that the Tribunal has rightly arrived at a conclusion that negligence on the part of driver of motorcycle could not be proved; and driver and owner of truck has not been impleaded as a party, as the truck was instrumental to accident.

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

10. Claimants in support of their case have placed on record relevant documents ie Ex.P/1 final report & Ex. P/2 FIR. In Ex. P/2 it is specifically mentioned that motorcycle was dashed by one unknown truck and in Ex.P/1 final report submitted by the police on 13.04.2007, it is mentioned that when Rajkumar Nirala and Mohan were going towards village- Barbhata on motorcycle, one unknown truck dashed their motorcycle and ran away. As the whereabouts of driver of said truck could not be traced, closure report was filed.

11. It is settled position that claim cases are to be decided on the basis of pre-pondrence of probabilities. In case at hand, accidental death of

deceased -Mohan was not disputed. Contents of FIR and closure report also remained uncontroverted. Even in reply of Insurance Company it has been pleaded that if accident was caused by unknown truck, then whole responsibility and liability will be of driver and owner of unknown truck. Further, Insurance Company has not disputed the contents of FIR as well as closure report ie with respect to manner in which, accident was intimated.

12. Claimants have examined Smt. Parwati Satnami Wd/o deceased-Mohan Satnami as AW-1, Mohan S/o Mahadeo Yadav AW-2 & complainant -Khageshwar Ratre.

13. AW-1 & AW-2 in their evidence stated about the manner of accident and death of deceased -Mohan and also stated about income of deceased. In their cross-examination they have specifically stated that suddenly one truck came and dashed the motorcycle of deceased and that there was negligence on the part of truck driver.

14. Complainant -Khageshwar Ratre in his evidence very specifically stated that he has lodged the report of accident in the concerned police station. In the cross-examination, he has stated that he himself has not seen the accident but he made the report on the basis of wordings of other persons.

15. Smt. Sarda Namdeo (Administrative Officer) who was examined as NAW-1, has not disputed in her evidence the fact of accident or contents of FIR, on the contrary she has stated that according to documents ie FIR & final report submitted by the police, accident caused by one unknown truck and, therefore, insurance company is

not liable to pay amount of any compensation. In para 9 of cross-examination, she has admitted that 'pillion rider' comes within the category of 'third party' and that Ex.P-1 /Insurance policy is applicable to the third party.

16. Hon'ble Supreme Court while dealing with the issue with regard to package/comprehensive policy in the matter of **National Insurance Company Limited Vs Balakrishnan and another** reported in **2013 (1) SCC 731** held in paragraphs 25 and 26 as under :-

> "25. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus :-
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> > “In view of the aforesaid, it is clear that the comprehensive/package policy of a two-wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for the Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC’s directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.”
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> 26. In view of the aforesaid factual position, there is no scintilla of doubt that a “comprehensive/package policy” would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an “Act Policy” stands on a different footing from a “Comprehensive/Package Policy”. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has

> commanded the insurance companies stating that a “Comprehensive/Package Policy” covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the “Act Policy” which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a “Comprehensive/Package Policy”, the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."

17. In case at hand, accident and accidental death of deceased -Mohan has not been disputed. Claim application was dismissed by the Tribunal only on the ground that claimants failed to prove rash and negligent act on the part of driver of motorcycle. While dismissing claim application the Tribunal also held that owner, driver and insurance company of said truck were necessary parties, but they have not been impleaded as non-applicants and further that as the accident was caused by unknown truck, therefore, Insurance Company of motorcycle is not liable to pay any amount of compensation. It is also not in dispute that deceased -Mohan was 'pillion rider' not the driver of vehicle, therefore, it will be the case of composite negligence and not a contributory negligence. The law in this regard is well settled that when accident is between two Motor vehicles then the Lr's of deceased or injured can claim against both or either of two vehicles. This issue is decided by Hon'ble Supreme

Court in the matter of **To Anthony Vs Karvarnan and others** reported in (**2008) 3 SCC 748** 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 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 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.”

18. In the instant case also deceased was 'pillion rider' and, therefore, claimants can file claim application against owner, driver and Insurance Company of any of two Motor vehicles involved in accident, ie. Motorcycle, Truck or against both.

19. In view of above, finding of the Tribunal that as per the claimants themselves have pleaded that, accident took place due to rash and negligent act of driver of unknown truck, therefore, they cannot claim compensation against owner and Insurance Company of motorcycle on which deceased was traveling, is not sustainable and the same is hereby set aside.

20. Looking to the fact that accident took place about 13 years back therefore, in the considered opinion of this Court, it will be appropriate to assess the compensation in this proceeding itself. As the accident took place in the year 2006 and claimants have pleaded income of deceased as Rs.5,000/- from the work of cycle mechanic, but failed to prove the income by adducing documentary evidence. In these circumstances, it would be proper to determine income of deceased on notional basis.

21. Looking to nature of work of deceased as pleaded before Claims Tribunal and considering the wage rate prevailing in District- Raigarh at the time of accident, income of deceased can be assessed at Rs.3,000/- per month on notional basis.

22. So far as the grant of amount towards future prospects is concerned, this issue has been dealt with by the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Pranay Sethi**

reported in (2017) 16 SCC 680, it has been held that in case the deceased was below the age of 40 years and not in permanent employment, an addition of 40% of actual income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case 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."

23. Indisputably, in case at hand, deceased was aged about 25 years, which is less than 40 years, this Court is of the considered opinion that appellants/claimants are entitled for an addition of 40% of established income i.e. Rs.3,000/-. Since the deceased was survived by his wife and children, a deduction of 1/3rd is made towards personal and living expenses. The amount towards other conventional heads is also fixed by the Hon'ble Supreme Court in the matter of ***Pranay Sethi*** *(supra).* Therefore, in view of the law laid down in aforementioned case, the claimants are also entitled for an amount of Rs.70,000/- towards conventional heads in total, in addition to the amount of compensation.

24. In view of the aforementioned discussion, the impugned award passed by the Tribunal is set aside.

25. For the purpose of calculating compensation, income of deceased is taken as Rs.3,000/- per month as above, and by adding 40% of the

income towards future prospects in view of the guidelines issued by the Hon'ble Supreme Court in the matter of Pranay Sethi (supra), total monthly income of deceased would come to Rs.4,200/- (3000+1200) and yearly income would be Rs.50,400/- (4200X12). On deducting 1/3rd towards personal and living expenses of deceased Rs.16,800/- (50,400 – 1/3rd), yearly dependency comes to Rs.33,600/- (50400-16800). As deceased on the date of accident was aged about 25 years and therefore, multiplier of 18 would be applicable (33600X18). Total loss of dependency will come to Rs.6,04,800/-. Claimants are also be entitled a sum of Rs.70,000/- for other conventional heads which make the total sum of Rs.6,74,800/- as compensation.

26. In view of above, now claimants will be entitled for total a sum of **Rs.6,74,800/-.** This amount of compensation will carry interest @ 6% p.a. from the date of filing of application till its realization.

27. Out of the total amount of compensation, 20% of the compensation for each should be kept in a fixed deposit scheme of any Nationalized Bank in the name of minor claimants ie (appellant Nos.2 & 3) for a period of three years & 20% in the name of appellant No.1 for a period of 3 years. Out of balance amount of 40%, 20% amount be paid to appellant No.1 and 10% each to appellants No.2 & 3 through their Bank accounts.

28. Appeal is allowed. No order as to costs.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal