NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 1011 of 2013

The Oriental Insurance Company Limited through the Branch Manager, Branch Office, Raigarh, P.S. and District Raigarh C.G.

---- Appellant

Versus

1. Umang Nitin Bhai Sompura [Pathak] S/o Late Nitin Bhai Mukund Rai Sompura [Pathak] Aged About 21 Years
2. Smt. Dharmishta Nitin Bhai Mukund Rai Sompura [Pathak] Wd/o Late Nitin Bhai Mukund Rai Sompura [Pathak] Aged About 43 Years
3. Ku. Sonam Sompura [Pathak] D/o Late Nitin Bhai Mukund Rai Sompura [Pathak] Aged About 24 Years

   All from Sl. no.1 to 3 are R/o Plot No. 1666-D, Shradha Deep, Gokul Society, Behind Gurukul, Sardar Nagar, Bhav Nagar, District Bhavnagar [Gujrat] Permanent R/o “Vivswan” Ashwamedh Society, Rajwadi, Gram Palitana, Post- Palitana, Distt. Bhawnagar [Gujrat].
4. Lal Babu Ram S/o Shiv Kumar Ram Aged About [not mentioned] years R/o Raidihara, Thana- Tilutu, Distt. Rohtak, Present Address- through Dilraj Singh Maan, B.M.R. Transport, Kotra Road, Gajanandpuram Colony, P.S. and District Raigarh [C.G.] 55 yrs
5. Dilraj Singh Maan S/o Kartar Singh Occupation Transport aged about [not mentioned] years R/o B.M.R. Transport, Kotra Road, Gajanandpuram Colony, P.S. and District Raigarh [C.G.]

--- Respondents

For Appellant	:	Mr. Neelkanth Malaviya, Advocate
For Respondents No. 1 to 3	:	Mr. Tarkeshwar Nande, Advocate
For Respondents No. 4 & 5	:	None

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

15/05/2019

1. This appeal has been filed by appellant/Insurance Company under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 03/08/2013 passed by Motor Accident

Claims Tribunal, Raigarh (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.122/2012 whereby learned Claims Tribunal allowed the claim application in part filed by claimants and awarded a total sum of Rs.29,41,204/- as compensation in a death case along with interest @ 6% per annum from the date of filing of claim application till its realization.

2. Brief facts necessary for disposal of this appeal are that Nitin Mukundrai Sompura (Pathak) had taken a work of contract for construction of temple at Monet Ispat and Energy Limited. On 14/07/2012, when he was returning from temple site to his house on his motorcycle and reached near Dhimrapur Square Bypass Road, at that relevant time, one Trailer bearing registration No. CG-04/JA/4494 (hereinafter referred to as 'offending vehicle') driven by respondent No. 4 dashed motorcycle of Nitin Mukundrai Sompura (Pathak). In the aforementioned accident, Nitin Mukundrai Sompura (Pathak) sustained grievous injuries on his person and succumbed to the injuries during course of treatment.

3. Claimants who are wife and children of deceased Nitin Mukundrai Sompura (Pathak) have filed claim application under Section 166 of M.V. Act for grant of compensation on account of death Nitin Mukundrai Sompura (Pathak) mentioning therein that deceased was aged about 48 years and earning Rs.3,60,000/- per annum and thereby claimed a total sum of Rs.52,50,000/- as compensation.

4. Respondents No. 4 and 5, who are driver and owner of offending vehicle filed reply to claim application and denied the fact of accident. It was pleaded that on the date of accident, offending vehicle was insured with the appellant/Insurance Company therefore, they are not liable for payment of any amount of compensation. They have raised objection that proper documents with respect to income of deceased has not been filed by claimants, on the date of accident, driver of offending vehicle was possessing valid and effective driving licence and driver of motorcycle i.e. deceased was contributory negligent in the accident.

5. Appellant/Insurance Company submitted reply to claim application and objected income of deceased as pleaded by claimants and also denied ownership of respondent No.5. It has been pleaded that driver of offending vehicle was not possessing valid and effective driving licence and as the accident between motorcycle and offending vehicle was head-on collision, therefore, driver of motorcycle was also contributory negligent in the accident.

6. Learned Claims Tribunal on appreciation of facts and evidence placed on record by respective parties, held that accident took place due to rash and negligent driving of driver of offending vehicle i.e. respondent No.4 and in the said accident, Nitin Mukundrai Sompura (Pathak) died. Learned Claims Tribunal also held that on the date of accident respondent No.4 was possessing valid and

effective driving licence, there was no violation of conditions of insurance policy, therefore, non-applicants therein jointly and severally liable to pay the amount of compensation as awarded.

7. Learned counsel appearing for appellant/Insurance Company submitted that respondents No.4 and 5 have not proved that there was valid and effective driving licence, but only photocopy of licence has been filed on record. He further submitted that since it is a photocopy of licence, therefore, appellant/Insurance Company was not having any opportunity or occasion to verify the details of the licence, which is a part of record at page No.72. He further submitted that claimants have failed to prove the income of deceased to Rs.3,67,150/- because acknowledgement of income tax receipt has been filed after death of assessee i.e. 10/09/2012 whereas accident and death took place on 14/07/2012.

8. Per contra, learned counsel appearing for respondents No. 1 to 3/claimants submitted that photocopy of licence was available with the records of learned Claims Tribunal, but Insurance Company has not taken any steps to get the licence verified by competent authority. He further submitted that even appellant/Insurance Company has not filed any application for production of documents, if they wanted that the original of licence be produced, even after the opportunity was provided by learned claims Tribunal, which is apparent from the order-sheets of learned Claims Tribunal. He further submitted that claimants have submitted Exhibit P-3,

which is income tax receipt of assessment year 2010-2011 submitted on 22/03/2011 wherein total income of assessee/deceased has been shown as Rs.2,42,267/- and income tax receipt of 2012-2013 shows total income of assessee/deceased to be Rs.3,67,464/-. He further submitted that deceased was working as a Contractor, therefore, he being in a profession of contract would have gradual growth in his income and on comparison of Exhibits P-2 and P-3, difference of growth of income is only about Rs.1,30,000/-, this difference emerged after two financial years. He further submitted that claimants have filed cross-objection to the award passed by learned Claims Tribunal mentioning therein that learned Claims Tribunal has not applied correct multiplier in view of law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[1] and further that no amount has been awarded towards future prospects. He lastly submitted that learned Claims Tribunal has awarded only Rs.4,000/- towards other conventional heads, which is also on the lower side and the same may be enhanced suitably.

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

10. So far as ground raised by appellant/Insurance Company is that respondent No.4 was not possessing valid and effective driving licence on the date of accident is concerned, appellant/Insurance

1 **(2009) 6 SCC 121**

Company though have an opportunity to get the photocopy of driving licence available on record to be verified from the competent licensing authority, for which, they have not taken any steps before Claims Tribunal. Even copies of order-sheets of learned Claims Tribunal would show that learned Claims Tribunal has granted opportunity to all the parties appearing before it that they can file application under Order 11 Rule 12 read with Rule 14 of CPC for production of any document, on which, they relied upon as their claim or defence. Insurance Company though has filed the application for production of permit as well as fitness certificate, but has not filed any application with respect to production of copy of original licence of respondent No.4.

11. In the facts and circumstances as emerging in the case, in the considered opinion of this Court, appellant/Insurance Company failed to prove the defence which they have taken in their reply or before this Court that respondent No.4 driver of offending vehicle was not possessing valid and effecting driving licence, therefore, the said ground of appellant is repelled/rejected.

12. So far as next ground raised by learned counsel appearing for appellant/Insurance Company that learned Claims Tribunal committed an error in accepting the income shown in income tax return, which was filed on subsequent date of death of Nitin Mukundrai Sompura (Pathak), therefore, income could not have been considered by learned Claims Tribunal, but the income which

is mentioned in Exhibit P-3 could have been taken into consideration for assessing the income of deceased for calculating the amount of compensation.

13. Perusal of Exhibit P-3, which is acknowledgement of income tax return submitted by deceased for assessment year 2010-2011 on 22/03/2011, shows that total income of that year was Rs.2,42,267/-. The next document showing income of deceased is of assessment year 2012-2013 vide Exhibit P-2, wherein income has been mentioned as 3,67,464/- and after deduction, the total income has been shown Rs. 3,67,150/-. The deceased was working as a Civil Contractor and as per pleadings and evidence available on record, he was doing the work of construction of a temple at Monet Ispat and Energy Limited, therefore, deceased who is engaged in such type of civil contract work could have naturally regular growth in his income. The income tax return of assessment year 2011-2012 could not be placed on record, but it does not mean that in that assessment year, deceased was not performing any work or has no source of income. It could be presumed that claimants could not place on record the income tax return of that year. Looking to the difference between Exhibits P-2 and P-3 which is of two financial years, growth of income as apparent from perusing of Exhibits P-2 and P-3 is not an exaggerated growth, therefore, learned Claims Tribunal has not committed any error in taking income of deceased as Rs.3,67,150/-.

14. So for as the cross-objection filed by respondents No.1 to 3/claimants is concerned, the learned Claims Tribunal though has considered the age of deceased as 48 years as mentioned in the postmortem report, but without any proof of age, has applied the multiplier of 12, which is not sustainable. In a case where there is no specific proof with respect to the age of deceased available on record, then the practice and the course which is being adopted by the Tribunals for assessing the age of deceased, is the age mentioned in the postmortem report. In the case at hand, age of deceased has been shown in postmortem report (Exhibit P-7) as 48 years and in view of law laid down in the matter of **Sarla Verma (Smt.)** (supra), the multiplier applicable to the present case is 13 instead of 12 as applied by learned Claims Tribunal.

15. Further, learned Claims Tribunal has also not awarded any amount of compensation towards future prospects. On the date of accident, the deceased was aged about 48 years as per postmortem report (Exhibit P-7), which is less than 50 years, therefore, in view of law laid down by the Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**[2], claimants are also entitled for the additional amount of 25% of proved income towards future prospects.

16. Learned Claims Tribunal has awarded only Rs. 4,000/- towards conventional heads, which is on the lower side. The amount

2 **AIR 2017 SC 5157**

towards conventional heads is also fixed by the Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra).

17. In view of aforementioned discussions and law laid down by Hon'ble Supreme Court in the aforementioned cases, in the considered opinion of this Court, the appropriate compensation is to be awarded to the claimants. For the reasons stated herein-above, the amount of compensation to be awarded to the claimants requires recalculation, which this Court calculates as under:-

The learned Claims Tribunal taken the annual income of deceased as Rs.3,67,150/- and by adding 25% towards loss of future prospects i.e. Rs.91,787/-, the annual income of deceased would come to Rs.4,58,937/-. After deducting 1/3rd amount towards his personal and living expenses i.e. Rs.1,52,979/- (4,58,937 / 3), the annual dependency of claimants would come to Rs.3,05,958/-. As at the time of accident, the deceased was shown to be aged about 48 years, therefore, multiplier of 13 would be applicable in the present case. After applying the multiplier of 13, the total dependency comes to Rs.39,77,454/- (3,05,958 x 13). In addition to the aforesaid amount of compensation, the claimants are also entitled for Rs.70,000/- towards conventional heads.

18. On the basis of above recalculation, the claimants will be entitled for total compensation of Rs.40,47,454/- (39,77,454 + 70,000) instead of Rs.29,41,204/- as awarded by the learned Claims Tribunal. This amount of compensation shall carry interest @ 6%

per annum from the date of filing of claim application till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.

19. In the result, appeal filed by appellant/Insurance Company is dismissed being devoid of any substance and cross objection filed by respondents No. 1 to 3/claimants is allowed in part.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh