NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 541 of 2014

- The Oriental Insurance Company Limited, Branch, Bilaspur, Distt. Bilaspur (CG)

---- Appellant

Versus

1. Indrakali, Wd/o Dara Singh, aged about 25 years,
2. Urmila D/o Dara Singh, aged about 11 years,
3. Gayatri D/o Dara Singh, aged about 9 years,

   No. 2 & 3 minor, through natural guardian mother Indrakali, Wd/o Dara Singh,
4. Jai Singh S/o Amar Singh, aged about 50 years,
5. Fulmati W/o Jai Singh, aged about 48 years,

   All R/o Village Kumhari, Police Station Marwahi, Distt. Bilaspur (CG)
6. Bheekham Singh, S/o Bhelan Singh Gond, aged about 27 years, R/o Sachratola, Police Station Marwahi, Distt. Bilaspur (CG) (driver of tractor).
7. Smt. Kerolina W/o Abrosh Peter Adward, aged about 3 years, R/o Jyotipur, Gourela, Police Station Gourela, District Bilaspur (CG)

---- Respondents

For Appellant	:	Shri HB Agrawal, Sr. Advocate with Shri Pankaj Agrawal, Adv.
For Respondents No. 1 to 5	:	Smt. Anju Ahuja, Advocate.
For Respondent No.6 & 7	:	Shri P.K. Dhurandhar, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

17/06/2019

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award dated 11.3.2014 passed by Additional Motor Accident Claims Tribunal, Pendra Road, Distt. Bilaspur in Claim Case No.03/2013 awarding total compensation of Rs.6,22,800/- with interest @ 6% per annum from the date of award till realization, fastening liability on non-applicant No.3/insurance company.

02. As per claim petition, on 18.12.2011 due to rash and negligent driving of Sonalika Tractor bearing No. CG 15A 6940 attached with trolley bearing No. CG 15A 6941 by non-applicant No.1 Bhikham Singh, the said vehicle turned turtle and as a result of which Dara Singh came under the engine of the tractor and died on the spot. At the time of accident, the deceased was 28 years of age, earning Rs.5000/- per month i.e. Rs.3000/- p.m. from agriculture work and Rs.2000/- by selling vegetables. At the relevant time, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the claimants, widow, children and parents of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurance company submits that as per documents filed by the claimants themselves i.e. FIR (Ex.P/2), Dehati Nalishi (Ex.P/3) and charge sheet (Ex.P/1) as well as statement of AW-1 Indrakali, wife of the deceased, it is evident that the deceased was travelling in the offending vehicle when the accident took place. However, no premium was taken by the insurance company for any passenger or labour sitting in the tractor and carried as a passenger. The sitting capacity of the tractor is one driver as per RC Book and premium was taken by the insurance company only for third party, owner-cum-driver, paid driver, cleaner and conductor. Therefore, risk of any other person sitting in the tractor is not covered under the policy and as such, the Tribunal was not justified in fastening liability on the insurance company. This apart, the insurance company has also challenged the quantum of compensation on the ground that without there being any evidence income and age of the deceased has

wrongly been considered.

05. On the other hand, learned counsel for the claimants and owner & driver support the impugned award insofar as it relates to fastening of liability on the insurance company.

Learned counsel for the claimants submits that if this Court ultimately comes to the conclusion that the insurance company is not liable to pay compensation to the claimants on the ground of breach of policy conditions, then considering the fact that the claimants have not received any amount till date, order of pay and recover may be passed in this case in view of decision of the Hon'ble Supreme Court in the matters of ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796*** and ***Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762***.

06. The claimants have also filed cross-objection under Order 41 Rule 22 read with Rule 242(3) of CG Motor Vehicle Rules, 1994 seeking enhancement of compensation. Since the said cross-objection is barred by 1401 days, the claimants have filed an application for condonation of delay in filing the cross-objection.

07. For the reasons mentioned in the application, which is duly supported by affidavit, the application for condonation of delay in filing cross objection is allowed and the delay is hereby condoned.

08. Learned counsel for the claimant submits that the income of the deceased has wrongly been considered by the Tribunal as Rs.100/- per day, that too for only 26 days which is against the settled principle of law. It is further argued that the Tribunal has not granted any amount towards future prospects whereas considering the age of the deceased i.e. 28 years and nature of his job, there has to be 40% addition to the annual income towards future prospects in view of decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

09. Learned counsel for the insurance company as well as driver &

owner opposes the contention of the claimants in respect of enhancement of compensation and submit that the Tribunal has already awarded sufficient amount considering all the relevant aspects of the matter which needs no interference by this Court.

10. Heard learned counsel for the parties and perused the material available on record.

11. So far as the liability is concerned, it is not disputed by the parties that the vehicle involved in the accident is Sonalika Tractor bearing No. CG 15A 6940 attached with trolley bearing No. CG 15A 6941. From the documents filed and proved by the claimants i.e. FIR (Ex.P/2), Dehati Nalishi (Ex.P/3) and charge sheet (Ex.P/1) as well as statement of AW-1 Indrakali, wife of the deceased, which has been subsequently denied by her while deposing before the Tribunal, it is seen that the deceased was sitting in the offending vehicle at the time of accident. As per RC Book, sitting capacity of the vehicle is one person i.e. for driver. Definitely in the insurance policy (Ex.D/2), sitting capacity is mentioned as 1 + 1 but no premium was taken by the insurance company for any labour carried in the tractor. As per Ex.D/2 i.e. insurance policy produced and proved before the Tribunal, premium of Rs.2280/- towards third party risk, premium of Rs.100/- towards PA coverage of owner & driver and Rs.25/- for paid driver, conductor and cleaner were taken by the insurance company. No other person is permitted to sit in the offending vehicle and risk of such person is not covered under the insurance policy.

12. In the matter of ***Shivraj Vs. Rajendra and another, (2018) 10 SCC 432***, where tractor was insured only for agricultural purposes having capacity to accommodate only one person i.e. driver and the appellant was travelling in it as a passenger, it was held by the Hon'ble Supreme Court that the vehicle being driven in violation of policy conditions, the insurance company was not liable for the loss or injuries suffered by the appellant or to indemnify owner of the tractor.

In the instant case, in view of the oral and documentary evidence on record including the insurance policy, sitting capacity in the vehicle and the aforesaid decision of the Hon'ble Apex Court, this Court is of the opinion that the Tribunal was not justified in fastening liability on the insurance company. Accordingly, the insurance company is exonerated of its liability and the same is fastened upon driver & owner of the offending vehicle jointly and severally.

13. So far as quantum of compensation is concerned, though the claimants have pleaded that the deceased was earning Rs.5000/- per month by doing agriculture work and selling vegetables, but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.4200/- per month as per minimum wages at the relevant time of unskilled labour. Further, considering the age of the deceased i.e. 26-28 years as is evident from the claim petition, inquest Ex.P/5 & postmortem report Ex.P/6; the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, ***Pranay Sethi*** (supra) and ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018***, the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.4200/- per month.	50,400/- per annum
02.	40% of (i) above to be added towards future prospects.	50,400 + 20,160 = 70,560/-
03.	1/4th deduction towards personal and living expenses of the deceased	70,560 – 17,640 = 52,920/-
04.	Multiplier of 17 to be applied	8,99,640/-
05.	Towards loss of estate, loss of spousal consortium and funeral expenses	70,000/-
06.	Towards loss of parental consortium to	50,000/-

	claimants No. 2 & 3 @ Rs.25,000/- each.	
07.	Towards loss of filial consortium to claimants No. 4 & 5 @ Rs.25,000/- each.	50,000/-
	Total compensation	**10,69,640/-**

Since the Tribunal has already awarded Rs.6,22,800/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,46,840/- with interest as awarded by the Tribunal.

14. However, considering the facts and circumstances of the case, the fact that on the date of accident, the offending vehicle was duly insured with the appellant/insurance company and the deceased was the third party, in view of principles of law laid down by the Hon'ble Supreme Court in ***Manuara Khatun*** and ***Shivawwa and another*** (supra) this Court feels it proper to order for "pay and recover" in this case, meaning thereby that the insurance company shall first pay the entire amount of compensation to the claimants and then recover the same from non-applicants/owner & driver in accordance with law.

15. In the result, the appeal filed by the insurance company as well as the cross-objection filed by the claimants is allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)
Judge

Khan