

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 729 of 2013

- The Oriental Insurance Company Limited, through Regional Office, Branch Manager, The Oriental Insurance Company Limited, Itwari Bazar, Naya Ganj, Raigarh (C.G.)

---- Appellant

Versus

1. Smt. Seema Devi, W/o Late Laxman Kushwaha Age 26 Years.
2. Ku. Muskan Kushwaha D/o Late Laxman Kushwaha Age 3 Years.
3. Ku. Shrishti Kushwaha D/o Late Laxman Kushwaha Age 9 Years
4. Mangal Singh Kushwaha S/o Late Durga Singh Kushwaha Age 67 Years
5. Smt. Parwati Devi Kushwaha W/o Mangal Singh Kushwaha Age 65 Years

All resident of Village + Post- Baramkela, District Raigarh (C.G.)

Respondent No.1, 4 & 5 for self and minor respondent No.2 & 3 through capacity of Guardian mother Smt. Seema Devi Kushwaha (Respondent No.1)

6. Bihari Lal Banjare S/o Chain Singh Banjare Age 38 Years R/o Adarsh Nagar, Basna, Thana And Tah. Basna, District Mahasamund (C.G.)

(Driver of Tata Sumo No.CG04-H-7073)

7. Rajesh Kumar Patel S/o Ramkhilawan Patel Aged About 34 Years R/o Village, Post- Bijatipali, Thana And Tah. Saraipali, District: Mahasamund (CG)

---- Respondents

MAC No. 979 of 2013

1. Smt.Seema Devi, W/o Late Laxman Kushwaha, Aged About 26 Years
2. Ku. Muskan Kushwaha D/o Late Laxman Kushwaha Aged About 3 Years
3. Ku. Shrishti Kushwaha D/o Late Laxman Kushwaha Aged About 9 months
4. Mangal Singh Kushwaha S/o Durga Singh Kushwaha Aged About 67 Years

5. Parwati Devi Kushwaha W/o Mangal Singh Kushwaha Aged About 65 Years

All R/o Village And Post- Baramkela, P.S. Baramkela, Civil and Revenue District Raigarh (C.G.).

---- Appellants

Versus

1. Bihari Lal Banjare, S/o Chain Singh Banjare Aged About 38 Years R/o Adarsh Nagar, Basna, P.S. And Tahsil Basna, District Mahasamund (C.G.), (Driver)
2. Rajesh Kumar Patel S/o Ramkhilawan Patel Aged About 34 Years R/o Village and Post- Bijatipali, P.S. and Tahsil Saraipali, Distt. Mahasamund (C.G.) (Owner)
3. The Oriental Insurance Company Limited, thorough Regional Office, Branch Manager, The Oriental Insurance Company Limited, Itwari Bazar, Naya Ganj, Raigarh (C.G.) (Insurer)

---- Respondents

MAC No.729/2013

For Appellant : Shri Sudhir Agrawal, Advocate
For Respondent No.1 to 5 : Shri Shikhar Sharma, Advocate
For Respondent No.6 : None
For Respondent No.7 : Shri Amiyakant Tiwari, Advocate

MAC No.979/2013

For Appellants : Shri Shikhar Sharma, Advocate
For Respondent No.1 : None
For Respondent No.2 : Shri Amiyakant Tiwari, Advocate
For Respondent No.3 : Shri Sudhir Agrawal, Advocate.

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

17/06/2019

1. As above two appeals arise out of award dated 26.4.2013 passed by the learned Additional Motor Accident Claims Tribunal, Sarangarh, District Raigarh (for short 'the Claims Tribunal') in Claim Case No.7/12, they are being disposed off by this common order.
2. Appellant Insurance Company has filed MAC No.729 of 2013 seeking setting aside of fastening of liability on insurance

company to pay awarded amount of compensation. Whereas, claimants have filed MAC No.979/13 seeking enhancement of amount of compensation awarded by Claims Tribunal.

3. Brief facts relevant for disposal of above appeals are that on 27.12.2011 Laxman Kushwaha, Pushnath Chouhan & Sanjay Agrawal were returning from Raipur in Commander Jeep bearing registration No.CG13-ZD-0198. Laxman Kushwaha was driving said Jeep. When they reached near village Chirkopadao, front tyre of said Jeep got punctured, therefore, driver Laxman Kushwaha parked the vehicle on the side of road for changing its wheel. While the driver was changing punctured wheel of vehicle, Sanjay Agrawal was standing beside said vehicle. At that time, one Tata Sumo bearing registration No.CG04-H-7073, driven by non-applicant No.1, came from Pithora side and dashed Pushnath Chouhan & Laxman Kushwaha as a result they sustained grievous injuries on various parts of body. Matter was reported by Sanjay Agrawal to concerned police station. Injured were taken to Government Hospital, Mahasamund where Pushnath died during the course of treatment. Injured Laxman was referred to Medical College Hospital, Raipur where he also succumbed to his accidental injuries. Claimants, who are legal heirs of deceased Laxman Kushwaha, have filed claim application before competent Claims Tribunal seeking compensation of Rs.20,25,000/- on account of death of deceased Pushnath Chouhan.

4. Non-applicant No.1 & 2 - owner & driver of offending vehicle

filed their reply to claim application and denied all adverse pleadings made in claim application as also the fact of accident from their vehicle. They have further pleaded that at the time of accident, the offending vehicle was insured with insurance company and driver of offending vehicle was possessing valid and effective driving license, therefore liability, if any, for payment of compensation would be on insurance company.

5. Non-applicant No.3/appellant-Insurance Company also filed its reply denying averments made in claim application and pleaded that on the date of filing of claim application, insurance policy has not been verified and therefore they will make additional pleadings by way of amendment after the insurance policy is verified. Insurance Company submitted its reply to claim application on 13.8.2012.
6. On the basis of pleadings of respective parties, the Claims Tribunal framed as many as five issues for consideration and after conclusion of trial, allowed application in part and awarded a total sum of Rs.4,33,000/- as compensation.
7. Learned counsel for appellant Insurance Company in MAC No.729/13 submitted that insurance policy (Ex.D-1), which was submitted before Claims Tribunal, is a fake and fabricated document because insurance company has not issued any such policy in the form of Ex.D-1. He further submits that insurance policy is to be issued on the basis of cover note, but number of cover note, which has been mentioned in policy, was missing regarding which the

company has also lodged report with Police Station Misrod, District Bhopal (MP) within whose jurisdiction the questioned cover note book was lost. He further argued that perusal of insurance policy would show that alleged amount of premium was collected by office of insurance company on 27.12.2012 whereas document (Ex.D-1) shows that coverage of risk of offending vehicle would start from 23.11.2012, which could not be possible. Thus, it is *prima facie* clear that Ex.D-1 is a fake and forged document. He further submits that insurance company has made available all relevant documents, which are filed before this Court, to the counsel appearing on behalf of insurance company before the Claims Tribunal, but due to lapse on his part, the same could not be made part of record. Even said counsel did not intimate concerned officer of insurance company about the date on which he was required to lead evidence in support of case of insurance company.

8. Per contra, Shri Tiwari, learned counsel appearing on behalf of respondent No.2-owner of offending vehicle, submits that owner had purchased insurance policy after making payment of premium in cash. He further submits that as the amount was received on 23.11.2012 and cover note was also issued on 23.11.2012, therefore, insurance coverage of offending vehicle would start from the date of receipt of premium amount. The description mentioned in insurance policy is correct. He further submits that insurance company neither pleaded in its written statement nor adduced any evidence

before Claims Tribunal with respect to grounds raised in this appeal and therefore at the appellate stage, the insurance company cannot be permitted to raise those grounds. It is also argued that even if written statement was filed prior to verification of insurance policy then also as per pleadings made in reply to claim application, the insurance company, by way of additional pleadings or documents, could have brought the fact with respect to theft/missing of cover note based on which policy in question was issued, but nothing like that has been done. Even at the time of exhibition of insurance policy as Ex.D-1, no objection whatsoever was raised on behalf of insurance company.

9. Learned counsel appearing on behalf of claimants/ respondents No.1 to 5 submits that the Claims Tribunal has rightly held insurance company liable to satisfy impugned award.
10. I have heard learned counsel for the parties and perused the record of Claims Tribunal.
11. Along with memo of appeal, appellant Insurance Company has filed various documents including copy of complaint dated 15.1.2012 made by Development Officer, Bhopal to Police Station Misrod, Bhopal (MP) regarding missing of cover note book bearing Nos.1028451 to 1028475. On 21.2.2012 another complaint was made by M/s Win Win Automobile Pvt. Ltd., Bhopal with Police Station Misrod, Bhopal (MP) regarding missing of cover note book bearing No.1028451 to 1028475. It has been mentioned in the said

complaint that no cover note has been issued from said cover note book. On 10.5.2012 the Development Officer, Division No.1, Bhopal made a complaint to Police Station Misrod mentioning that one of the cover notes of cover note book misplaced from M/s Win Win Auto-mobile Pvt. Ltd., Bhopal, has been sold by some person. A copy of this complaint was also forwarded to the Senior Superintendent of Police, Bhopal. However, perusal of Ex.D1-C, which is insurance policy issued in respect of offending vehicle, shows that the same has been issued against Cover Note No.1928464. Thus, it is clear that policy in question has been issued on the basis of a different cover note than mentioned in documents filed along with application under Order 41 Rule 27 of CPC, which are said to be handed over to counsel who was appearing on behalf of insurance company before Claims Tribunal. Appellant - Insurance Company had not made any pleading with respect to cover note No.1928464 mentioned in policy in question, that is to say, whether said cover note has been issued by insurance company or not, or whether said cover note book of said series has been misplaced or lost. Insurance Company has not adduced any oral or documentary evidence before Claims Tribunal with respect to insurance policy Ex.D1-C or Cover Note No.1928464 against which insurance policy (Ex.D1-C) has been issued. Even before this Court no material challenging legality of details mentioned in policy Ex.D1-C is brought on record.

12. Considering cover note number mentioned in policy (Ex.D1-C) and series of cover note book said to have been lost or misplaced from M/s Win Win Auto-mobile Pvt. Ltd., Bhopal, which is of different series, the ground raised by learned counsel for appellant Insurance Company that policy (Ex.D-1) was issued against cover note which was missing from M/s Win Win Automobile Pvt. Ltd., Bhopal is not sustainable and the same is hereby repelled. The entire appeal was filed on the ground that cover note book bearing No.102845 to 1028475 was misplaced and therefore the ground that policy (Ex.D1-C) is a forge and fabricated document does not stand.

13. Coming to next ground raised by learned counsel for appellant Insurance Company that policy (Ex.D1-C) bears Collection No. & Date as 'CSH 3128006680, 27-12-2011', but the period of insurance is from 23.12.2011 to midnight of 22.12.2012, which is contrary to date on which amount of premium was collected by insurance company. Perusal of cover note, which is available at Page No.58 of record, would show that it was issued on '23.12.2011' and premium of Rs.14,812/- was received in cash by the person issuing said cover note. Insurance company becomes liable to indemnify the insured from the date when premium is accepted and cover note is issued by its agent or employee in favour of insured with respect to vehicle mentioned in cover note. Therefore, mere mentioning of date '23.12.2011' as effective date of commencement of insurance alone is not

sufficient to disbelieve insurance policy (Ex.D1-C), particularly when it is accepted and admitted by learned counsel for insurance company that insurance coverage would take effect from the date of issuance of cover note and not from the date of issuance of policy. Thus, this Court is of the opinion that this ground raised by learned counsel for appellant is not sustainable and is hereby repelled.

14. For the foregoing discussion, appeal preferred by appellant Insurance Company being sans merit is liable to be dismissed and is hereby dismissed.

15. Learned counsel for claimants/appellants in MAC No.979/13 submits that compensation awarded by Claims Tribunal is on lower side. He submits that deceased was working as Motor Mechanic and earning Rs.10,000/- per month, but the Claims Tribunal has assessed monthly income of deceased on notional basis i.e. Rs.3,000/- per month. He further submits that Claims Tribunal has not awarded any amount towards future prospects and amount awarded under other conventional heads is also on lower side.

16. On the other hand, learned counsel appearing on behalf of respondent No.3- Insurance Company submits that the Claims Tribunal has rightly assessed income of deceased as claimants failed to prove income of deceased by producing any documentary evidence. He further argued that the Claims Tribunal after considering overall facts, circumstances and evidence available on record, has rightly assessed compensation and the same does not call for any

interference.

17. So far as submission of learned counsel for claimants/ appellants that the Claims Tribunal wrongly assessed monthly income of deceased i.e. Rs.3,000/- p.m., is concerned, perusal of material available on record shows that though the claimants have pleaded income of deceased as Rs.10,000/- per month and in support thereof examined one Manoj Agrawal (AW-2), under whom the deceased was working as Mechanic, but they failed to adduce any documentary evidence to prove income of deceased. However, looking to the facts of case at hand, nature of work as pleaded and stated by claimants before Claims Tribunal and also considering wage rate prevailing in State of Chhattisgarh at the relevant point of time, income of deceased cannot be said to be less than Rs.150/- per day. Thus, I am of the view that income of deceased can be taken as Rs.150/- per day i.e. Rs.4,500/- per month, instead of Rs.3,000/- per month as assessed by the Claims Tribunal.
18. Further, 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** reported in **(2017) 16 SCC 680** has held that in case the deceased, victim of motor accident, was below the age of 40 years and not in permanent employment or self-employed, an addition of 40% of established 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.”

19. In the present case, the deceased was 30 years old and pleaded to be working on fixed salary i.e. Motor Mechanic, but the Claims Tribunal while calculating amount of compensation payable to claimants failed to add any amount to annual income of deceased towards future prospects and thereby committed serious error, which is required to be corrected by this Court.

20. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to claimants/appellants in MAC No.979/13.

21. Accordingly, income of deceased is taken as Rs.4,500/- per month and since at the time of accident the deceased was below the age of 40 years and shown to be working on fixed salary, 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 40% towards future prospects, which comes to Rs.6,300/- (1800+4500). Thus, annual income of deceased for the purpose of calculating compensation comes to Rs.75,600/- (6300x12). Out of this amount, 1/3rd is to be deducted towards personal and living

expenses of deceased and after deducting 1/3rd, annual loss of dependency would come to Rs.50,400/- (75600-25200). By applying multiplier of 16, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.8,06,400/- (50400x16). 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 for a total compensation of Rs.8,76,400/- (8,06,400+70,000) instead of Rs.4,19,000/-, recoverable from the respondents jointly and severally. This 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.

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

23. In the result;

- MAC No.729/2013 preferred by appellant Insurance Company is dismissed.
- MAC No.979/13 preferred by claimants/appellants is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-