NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 745 OF 2013

1. Khairunnisha aged about 43 years widow of Late Sayyad Mohd Mudassir.
2. Ku. Shifa Kaleemee aged about 13 years daughter of Late Sayyad Mohd Mudassir minor through mother-Kharunnisha.
3. Shamsun Nisha aged about 73 years wife of Sayyad Munawwar.
4. Ku. Tasneem Fatima aged about 50 years daughter of Sayyad Munawwar Ulla Khan.

   All are resident of Shanti Nagar, Gully No.2, Ward No.4, Rajnandgaon, Tahsil Session Division, Civil and Revenue District Rajnandgaon, Chhattisgarh.

---- Appellants

Versus

1. Raja Soni aged about 22 years son of Shri Ramchandra Soni resident of Oswal Line Ward No.32 near Jain Dada Badi Basantpur, Police Station Bastanpur District Rajnandgaon, Chhattisgarh.
2. Suresh Kumar Dewangan son of Shri Mohan Lal Dewangan resident of Ward No.12 Mahaveer Chowk, Post Paatan District Durg Chhattisgarh.
3. The Oriental Insurance Company Limited through the Branch Old R.T.O. Office First Floor G.E. Road, Durg Tahsil and District Durg Chhattisgarh.

---- Respondents

For Appellants	:	Shri P.K.C. Tiwari, Senior Advocate with Shri Ashutosh Trivedi, Advocate.
For Respondent No.1	:	Shri Salvik Tiwari, Advocate on behalf of Shri Parag Kotecha, Advocate.
For Respondent No.2	:	Shri P. K. Dhurandhar, Advocate.
For Respondent No. 3	:	Shri H.B. Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

29/01/2019

1. By this instant appeal, appellants/claimants assailed the legality, validity and propriety of the impugned award dated 17.04.2013 passed by the Motor Accident Claims Tribunal, Rajnandgaon, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.47/2012, whereby the learned Claims Tribunal partly allowed the claim application filed by appellants/claimants and awarded an amount of Rs.5,43,000/- as compensation in a death case and fastened the liability of payment of compensation on the owner and driver of the offending vehicle.

2. Background facts in a nutshell are that, on 27.04.2011, deceased Sayyad Mohd. Mudassir went to Dhamtari along with his friends and at about 5.30 pm, when they were returning from Dhamtari on Tata Sumo bearing registration No.CG07/0529 (hereinafter referred to as 'offending vehicle') and reached near village Pasoda, at that relevant time, the offending vehicle met with an accident and turn turtled. In the aforementioned accident, Sayyad Mohd. Mudassir suffered grievous injuries over his person and succumbed to those injuries on the spot.

3. On account of death of Sayyad Mohd. Mudassir, the appellants/claimants, who are unfortunate wife, children, mother and sister of the deceased, have filed a claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the competent Claims Tribunal claiming Rs.45,90,000/- in total as compensation on all heads mentioning therein that on the date of accident, the deceased was doing the business of footwear in a shop at Juni Hatri Market, Rajnandgon and thereby he was earning Rs.12,000/- per month. They have also pleaded that as all the appellants/claimants are dependent upon the deceased, therefore, they have sustained irreparable and financial loss.

4. Respondents No. 1 and 2, driver and owner of the offending vehicle did not choose to appear before the learned Claims Tribunal and was proceeded *ex parte*.

5. Respondent No.3/Insurance Company submitted reply to the claim application and denied all the pleadings made in the claim application with respect to the accident. It has been pleaded that on the date of accident, the offending vehicle was being used for commercial purpose and further that on the date of accident, the driver of the offending vehicle was not possessing valid and effective driving licence to drive the vehicle. It has been further pleaded that the policy obtained by the insured was with respect to the 'Private Car Liability Only Policy', therefore, the Insurance Company cannot be held liable to pay any amount of compensation.

6. After appreciating the pleadings and evidence available on record, learned Claims Tribunal while dealing with issue of liability has held that though there was no violation of conditions of insurance policy proved by the Insurance Company, but as on the date of accident, the insured of the offending vehicle has taken only statutory policy i.e. Act only Policy, for which, the liability to pay the compensation is on the Insurance Company with respect to third party exonerated the Insurance Company from its liability. Learned Claims Tribunal awarded a total sum of Rs.5,43,000/- as compensation while assessing the income of the deceased as Rs.5,000/- per month as there was no reliable documentary evidence produced before the Claims Tribunal with respect to the business of the deceased as we as towards his monthly income as pleaded by the claimants in the claim application and fastened the liability of payment of compensation on the driver and owner of the offending vehicle.

7. Learned counsel appearing for appellants/claimants submitted that the claimants have very specifically pleaded in their claim application with respect to business of footwear running on the date of accident and they have also filed the rent receipts of the shop No.8, which was said to be possessed by the deceased during his lifetime. He further submitted that AW-1 Khairunnisha, wife of the deceased has categorically stated with respect to the shop of her husband and also proved the receipts of rent vide Exs. P/9 to P/13. He further submitted that other independent witnesses AW-2 Mobeen Ahmad who is doing the business in the Market, has categorically stated that Sayyad Mohd. Mudassir doing the business of footwear in the shop, which is next to his shop. He further submitted that as the learned Claims Tribunal has not found any violation of conditions of the insurance policy, which was not challenged by the Insurance Company, therefore, the Insurance Company ought to have been directed to pay the amount of compensation awarded by the learned Claims Tribunal to the claimants.

8. Per contra, learned counsel appearing for respondent No.3/Insurance Company submitted that as the policy is 'Act only Policy' and in that policy, the Insurance Company covers the risk of insured towards the person who is not occupant of the vehicle, whereas the deceased at the time of accident was travelling inside the vehicle, therefore, learned Claims Tribunal has rightly exonerated the Insurance Company from the liability to pay the compensation as there is no contract between the Insurance Company and insured to cover the risk of occupants of the offending vehicle.

9. Learned counsel appearing for respondents No.1 and 2 respectively, supported the argument of learned counsel for the appellants and submitted that on the date of accident, the driver of the offending vehicle was having valid and effective driving licence to drive the vehicle and there is no violation of conditions of the insurance policy, therefore, once the Insurance Company has issued policy of insurance of the vehicle, then it is the liability of Insurance Company to indemnify the insured and pay compensation.

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

11. So far as exoneration of Insurance Company from its liability to pay the amount of compensation is concerned, a copy of the insurance policy is placed on record vide Ex. D/1. Perusal of Ex. D/1, it would show that the offending vehicle bearing registration No.CG07/0529 registered with the R.T.O. Office, Durg and insured with the Insurance Company for a period from 21.09.2010 to 20.09.2011. The premium was paid towards Basic TP Cover, PA for Owner Driver and towards paid driver, conductor and cleaner. On the top of the policy, it has been mentioned that the policy is 'Private Car Liability Only Policy-Zone B'.

12. From perusal of the aforementioned document, there is no doubt that the policy taken by the owner of the vehicle vide Ex. D/1 for the period from 21.09.2010 to 20.09.2011 and was a 'Private Car Liability Only Policy' and it covers the risk of third party. The occupant of the vehicle cannot be treated as a third party. Third party are the persons who are outside the vehicle. By taking an 'Act Policy', the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the M.V. Act and makes the vehicle in a condition to run on public road. Though additional risk can be covered apart from the persons mentioned in policy and the liability of risk shown to be covered if the owner/insured had paid additional premium to cover additional risks.

13. The Hon'ble Supreme Court in the matter of **United India Insurance Co. Ltd., Shimla v. Tilak Singh and others**[1] held that the Insurance Company would have no liability towards the injuries suffered by the deceased who was a pillion rider as insurance policy was a statutory policy which do not cover the gratuitous passenger.

14. Further, in the matter of **New India Assurance Company Limited v. Sadanand Mukhi and others**[2] the Hon'ble Supreme Court has considered the issue of 'Act Policy' and exonerated the Insurance Company from its liability to pay the compensation.

15. In view of the law laid down by the Hon'ble Supreme Court in the aforementioned cases, the finding recorded by learned Claims Tribunal that the policy was 'Act only Policy' and at the time of accident, deceased was occupant of the vehicle exonerated the Insurance Company, cannot be said to be erroneous finding and

1 **(2006) 4 SCC 404**
2 **(2009) 2 SCC 417**

rightly exonerated the Insurance Company from its liability to pay the compensation.

16. The next question which arises for consideration before this Court is what would be the appropriate compensation for which the claimants are entitled for.

17. The learned Claims Tribunal has taken the income of the deceased as Rs.5,000/- per month by holding that the claimants have failed to produce any documentary evidence showing the income of the deceased. Undisputedly, the accident took place in the year 2011, therefore, the finding recorded by the learned Claims Tribunal with respect to the monthly income of the deceased taking into consideration the facts and circumstances of the case is just and proper.

18. The learned Claims Tribunal has deducted $1/3^{rd}$ amount of monthly income towards personal expenses of the deceased is not correct looking to the number of dependents. The amount towards personal expenses to be deducted from the income of the deceased has been decided by the Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[3] wherein the Hon'ble Supreme Court has specifically held that in case where the dependents are four to six in number, $1/4^{th}$ amount should

3 **(2009) 6 SCC 121**

be deducted from the income of the deceased towards his personal expenses.

19. Further, the learned Claims Tribunal has also not awarded any amount of compensation towards future prospects. On the date of accident, the deceased has been shown to be 43 years of age, but in the postmortem report, the age of the deceased has been mentioned as 45 years, which is less than 50 years, therefore, in view of the law laid down by the Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**[4], the claimants are also entitled for the additional amount of 25% of the proved income towards future prospects.

20. So far as the question of multiplier is concerned, the learned Claims Tribunal though has considered the age of the deceased as 45 years as mentioned in the postmortem report, but without any proof of age, has taken the age of the deceased in between 46-50 years and applied the multiplier of 13, which is not sustainable. In a case where there is no specific proof with respect to the age of the deceased, then the practice and the course which is being adopted by the Courts for assessing the age of the deceased, is the age mentioned in the postmortem report. In the case in hand, the age of the deceased has been shown in postmortem report (Ex. P/7) as 45 years and in view of the law laid down in the matter of **Sarla Verma**

4 **AIR 2017 SC 5157**

(Smt.) (supra) which has been affirmed in the matter of **Pranay Sethi** (supra), the multiplier applicable to the present case is 14 instead of 13 as applied by the learned Claims Tribunal.

21. The learned Claims Tribunal has awarded only Rs. 23,000/- towards conventional heads, which is on the lower side. The amount towards 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 the amount of Rs.70,000/- towards conventional heads in total, in addition to the amount of compensation.

22. 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 appellants/claimants require recalculation which this Court proposed the same in following terms :-

The learned Claims Tribunal taken the monthly income of the deceased as Rs.5,000/- and by adding 25% towards loss of future prospects i.e. Rs.1,250/-, the monthly income of the deceased would come to Rs.6,250/- and yearly income comes to Rs.75,000/-. After deducting 1/4th towards his personal expenses i.e. Rs.18,750/- (75,000 / 4), the yearly dependency of the claimants would come to

Rs.56,250/-. As at the time of accident, the deceased was shown to be aged about 45 years, therefore, multiplier of 14 would be applicable in the present case. After applying the multiplier of 14, the total dependency comes to Rs.7,87,500/- (56,250 x 14). In addition to the aforesaid amount of compensation, the appellants/claimants are also entitled for Rs.70,000/- towards conventional heads.

23. On the basis of above recalculation, the appellants/claimants will be entitled for total compensation of Rs.8,57,500/- instead of Rs.5,43,000/- as awarded by the learned Claims Tribunal recoverable from the respondents No. 1 & 2. The amount of compensation shall carry interest @ 6% per annum from the date of filing of the claim application till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.

24. Learned counsel for the appellant in the last made oral prayer that the direction may be issued against the Insurance Company to first pay the amount of compensation awarded and thereafter recover the same from the owner of the vehicle. The submission made by learned counsel for the appellant is repelled on the ground that it is not a case where the policy covering the occupant has also been issued by the Insurance Company and its exoneration is on the ground of violation of any of the conditions but the policy issued for the offending vehicle was an 'Act only Policy' and there is no contract between the owner and insurer to indemnify the risk. By taking calculated risk, no extra premium paid by insured for the occupants of the vehicle.

25. In the result, the appeal is allowed in part and the award impugned is modified to the extent indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh