NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 285 of 2013

1. Mahendra Kumar Sahu, S/o Bodhan Ram Sahu, Aged About 44 Years

2. Smt. Lata Sahu, W/o Mahendra Kumar Sahu, Aged About 42 Years

Both R/o Chinvri, Vhaya Kurud, District : Dhamtari, Chhattisgarh

---- Appellants

Versus

1. Narayan Lal Dewangan, S/o Ramji Dewangan, Aged About 31 Years, R/o Devrikhurd, Thana Torwa, Distt. Bilaspur C.G., Permanent Add. - Thru- Tilak Ram Dewangan, Transporter, Shitlapara, Ward No. 4, Simga, Dist. Raipur, Chhattisgarh (Driver of vehicle Bus bearing Registration No.CG 04/ZA/0780)

2. Hafiz Ahamd, S/o Zanalam, R/o Moudhapara, Raipur C.G. (Owner of vehicle Bus bearing Registration No.CG 04/ZA/0780)

3. The New India Insu.Co.Ltd. Thru- Divisional Manager, The New India Insu.Co.Ltd., Divisional Office No.1, Madina Building, First Floor, Jail Road, Raipur C.G (Insurer of vehicle Bus bearing Registration No.CG 04/ZA/0780)

4. Shekh Mehmuddin @ Shekh Moinuddin, S/o Shekh Hakimuddin, Aged About 20 Years, R/o Near Purani Masizid, Santoshi Nagar, Thana Tikrapara, Raipur C.G (Driver of vehicle Innova bearing Registration No.CG 04/DP/1199)

5. Ajay Deshpandey, R/o Choubey Colony, Raipur C.G (Owner of vehicle Innova bearing Registration No.CG 04/DP/1199)

6. The Oriental Insu.Co.Ltd. Thru- Divisional Manager, The Oriental Insu.Co.Ltd., Madina Building, Jail Road, Raipur C.G., Divisional Office No. 2, Chowala Complex, Devendra Nagar, Raipur C.G (Insurer of vehicle Innova bearing Registration No.CG 04/DP/1199)

---- Respondents

For Appellants	:	Shri KK Dewangan, Advocate
For Respondent- 3	:	Shri Raj Awasthi, Advocate
For Respondent- 6	:	Ms Anusha Naik, Advocate on behalf of Shri HS Patel, Advocate
For other Respondents	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

17.09.2019

1. Appellants/claimants who are parents of the deceased have filed this appeal under Section 173 of the Motor Vehicle Act, 1988 challenging impugned award dated 14.12.2012 passed by learned 5th Additional Motor

Accident Claim Tribunal, Raipur (for short, 'the Tribunal') in Claim Case No.44 of 2012, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.4,79,000/- as compensation.

2. Brief facts for disposal of this appeal are that on 26.02.2011 at about 12 noon, Vivek Kumar Sahu met with an accident when he was travelling on a bus bearing No.CG-04-ZA-0780 (for short, 'offending Bus'). In the aforementioned accident offending Bus turned turtle when it dashed one Innova Car bearing No.CG-04-DP-1199 (for short, 'offending Car'), due to rash and negligent driving of driver of offending Bus. In the said accident, Vivek Kumar Sahu came under offending Bus and suffered severe injuries. He was taken to Ramakrishna Hospital, Raipur but during the course of treatment, succumbed to injuries on the same day. The incident was reported to concerned Police Station, based on which Crime No.66 of 2011 was registered against non-applicant-1, driver of offending Bus.

3. Appellants/claimants, who are parents of deceased-Vivek Kumar Sahu filed claim application before competent Claims Tribunal claiming Rs.1,16,50,000/- as compensation, mentioning therein that on the date of accident, their son was studying Mechanical Engineering in Raipur Institute of Technology (RIT) College, Raipur and was in 8th Semester. After completion of his Engineering course, he could be engaged by the Government or Semi-government institutions and could have earned Rs.50,000/- per month.

4. Non-applicants 1, 2, 4 and 5 did not appear before learned Claims Tribunal, therefore, they were proceeded *ex-parte*.

5. Non-applicant 3/ Insurer of offending Bus pleaded that accident took place due to sole negligence of driver of offending Car. It was also pleaded that on the date of accident, driver of both vehicles (Bus and Car) were not possessing valid and effective driving licence and therefore, Insurance Company was not liable for payment of compensation, if any.

6. Non-applicant 6/ insurer of offending Car also submitted its reply and pleaded that as the accident was due to head on collusion between two vehicles, there was contributory negligence on the part of driver of both the vehicles. It was also pleaded that on the date of accident, both the drivers involved in the accident were not having valid and effective driving licence with them and there was no valid permit. Therefore, Insurance Company of offending Car also pleaded for its exoneration.

7. Learned Claims Tribunal based on the pleadings and evidence placed on record by the respective parties, held that accident took place due to head on collusion between offending Bus and Car; Vivek Kumar Sahu died due to accidental injuries suffered by him and it was further held that the accident occurred due to negligence of drivers of both the vehicles. Learned Claims Tribunal while exonerating Insurance Company of offending Bus on the ground that it was not having valid permit, held that 50% of total sum of compensation of Rs.4,79,000/- to be paid by driver and owner of offending Bus; balance amount of compensation to be paid by non-applicants 4 to 6.

8. Learned counsel for the appellant submits that learned Claims Tribunal erred in considering the income of deceased Vivek Kumar Sahu as Rs.3,000/- per month, ignoring the documentary evidence placed on record by his parents/claimants, showing him to be a student of RIT Engineering College, 8th Semester, affiliated to Chhattisgarh Swami Vivekanand Technical University, Bhilai. He further submitted that learned Claims Tribunal did not consider other certificates placed on record and mark-sheets as Ex.P17 to P30, showing that deceased was also involved in other curriculum, excluding his studies. He further submitted that deceased was having very bright future and career in his life and learned Claims Tribunal committed error in assessing his income at Rs.3,000/- per month. He further submitted that learned Claims Tribunal not awarded any amount for medical bills, which have been placed on record and further that learned Claims Tribunal erred in awarding very meagre amount of only Rs.20,000/- towards other conventional heads. His last submission was that learned Claims Tribunal could have directed the Insurance Companies first to pay the amount of compensation and then to recover the amount from the parties concerned.

9. Per contra, learned counsel appearing for respondent- 3, Insurer of offending Bus submits that the finding recorded by learned Claims Tribunal with respect to contributory negligence apportioned between the parties has not been challenged. He further submits that so far as it relates to validity and permit of licence on the date of accident for plying the offending Bus on public road also not challenged by respondents- 1 and 2. He further submits that the appellants not raised any ground before this

Court specifically for seeking a direction upon respondent- 3 /Insurer of offending Bus to first pay the compensation and later to recover the same from respondents- 1 and 2, driver and owner of offending Bus. Therefore, the said direction cannot be issued in favour of the appellants.

10. Learned counsel appearing for respondent- 6/Insurer of offending Car supported the award and pleaded that learned Claims Tribunal passed just and proper award of compensation in the facts and circumstances of the case. He further submits that learned Claims Tribunal, looking to the facts and evidence placed on record, rightly held that there is contributory negligence on the part of both the drivers of vehicles involved in the accident.

11. I have heard learned counsel for the parties and perused the records. The claimants in claim application, very specifically pleaded that deceased on the date of accident was a student of Engineering, studying 8th Semester in RIT, Raipur, affiliated to Chhattisgarh Swami Vivekanand Technical University, Bhilai. Mark-sheets of 7th Semester of 2010-11 also been placed on record along with other certificates of his co-curricular activities, as Ex.P/10 to P/30. They also annexed certificates in Computer operation as Ex.P/17 & P/18. Claimants, in support of their claim application, have also annexed NCC certificate as Ex.P/21. The documents were not controverted by the non-applicants/respondents.

12. Taking into consideration the aforementioned documents which are placed on record showing educational qualification as well as other co-co-curricular activities of deceased, in which he participated, learned Claims

Tribunal committed error in assessing his monthly income as Rs.3,000/- per month only, treating him to be an ordinary labour, when the deceased was prosecuting his studies of 8th Semester Engineering graduation and also active in participating other activities. True it is that there is no specific pleading of the claimants that on the date of accident deceased was engaged in some service nor he was shown to have any earnings, but looking to his background, notional income can be taken into consideration for calculating the amount of compensation to be granted to his unfortunate parents. Therefore, in the opinion of this Court, looking to the date of accident, his qualification and price index, it will be proper to assess income of the deceased as Rs.4,500/- on notional basis.

13. Learned Claims Tribunal also committed error in not granting medical bills which are placed on record to the tune of Rs.15,058/- and the bill of Pathology laboratory to the tune of Rs.6,950/- and also committed error in awarding meagre sum of Rs.20,000/- only towards other conventional heads.

14. So far as the amount to be awarded on other conventional heads, Hon'ble Supreme Court in the matter of **National Insurance Company Vs Pranay Sethi** reported in AIR 2017 SC 5157 dealt with the issue and held that in a case of unmarried children, amount of compensation on other conventional heads would be Rs.30,000/-.

15. Learned Claims Tribunal erred in awarding 50% of established income of deceased, towards future prospects contrary to the law laid down by Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra), wherein it was held that in case of self employed or private employment, there will be an addition of 40% on the established income towards future prospects in the cases where the age of deceased is less than 40 years on the date of accident. In the instant case, age of deceased is 25 years and not in permanent employment, therefore, there will be an addition of 40% of established income towards future prospects.

16. In view of above discussion, the amount of compensation awarded by learned Claims Tribunal requires re-consideration and re-calculation.

17. As the income has been taken as Rs.4,500/- per month, it comes to Rs.54,000/- per annum. By adding 40% of his established income towards future prospects, total yearly income of deceased would come to Rs.75,600/- {54000 + (54000 x 40/100)}. As the deceased was unmarried, there will be deduction of 50% of his yearly income towards his personal and living expenses. After deducting 50%, appellants' yearly loss of dependency comes to Rs.37,800/-. Deceased was 25 years of age on the date of accident, therefore, appropriate multiplier applicable would be 17. Now, by applying multiplier of 17 to the yearly dependency of the appellants, total loss of dependency comes to Rs.6,42,600/-.

18. In addition to the aforementioned total amount of dependency, appellants are entitled Rs.30,000/- towards other conventional heads, Rs.15,058/- towards medical expenses and Laboratory charges of Rs.6,950/-. Now total compensation would come to Rs.6,94,608/- (642600 + 30000 + 15058 + 6950).

19. The appellants are entitled for a compensation of Rs.6,94,608/- instead of Rs.4,79,000/-. This amount will carry interest @ 9% from the date of filing the application till its realisation.

20. So far as the argument raised by learned counsel for the appellants that 50% amount of compensation held to be payable by respondents- 1 & 2/ driver and owner of offending Bus, as respondent- 3/Insurer was exonerated from the liability of payment of compensation on the ground of not having a valid permit on the date of accident is concerned, Hon'ble Supreme Court considered the issue of violation of conditions of the Insurance Policy in the matter of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others** reported in (2018) 7 SCC 558 and held thus:-

> "We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in

> Swaran Singh (supra) and other cases pertaining to pay and recover principle."

21. Hon'ble Supreme Court in another judgment in **Manuara Khatun and others v. Rajesh Kumar Singh and others** with **Mamoni Saikia Mohanty and others v. Rajesh Kumar Singh and others**, reported in (2017) 4 SCC 796 dealt with liability of Insurance Company with respect to first to pay and thereafter recover the same from owner of the vehicle, held thus:

> "19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in *National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41*. Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in *Saju P. Paul's Case* (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in *Saju P. Paul's Case (supra)*. That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.
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> 21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd. (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum

> from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of *Saju P. Paul's* case quoted supra.
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> 22. Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No. 3 - United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured."

22. In view of aforementioned law laid down by the Hon'ble Supreme Court and object of the Act that unfortunate claimants should not go for recovery of compensation from the owner or driver of offending vehicle and to get the amount of compensation within reasonable time, but looking to the argument raised by learned counsel for the appellants, I deem it fit and proper to direct respondent- 3/Insurer of offending Bus to first pay 50% of total compensation to the claimants, which was fastened upon respondents- 1 and 2 at the first instance even though the Insurance Company is not having any liability and thereafter, to recover the same from respondent- 2/ owner of offending Bus. Respondent- 3 may recover the amount of compensation paid by it from the owner of offending Bus ie respondent- 2 in accordance with law laid down by Hon'ble Supreme Court in the matter of **Oriental Insurance Company Limited vs Shri Nanjappan and Others** reported in AIR 2004 SC 1631.

23. In view of above, the appeal is allowed in part and the impugned award is modified to the extent as mentioned above.

24. Now the appellants are entitled for a total sum of Rs.6,94,608/- instead of Rs.4,79,000/-. The amount so awarded shall be deposited in the ratio as apportioned by learned Claims Tribunal. The 50% of the amount of total compensation be deposited by respondent- 6/Insurance Company and the balance 50% of the total amount of compensation to be deposited by respondent-3 /Insurance Company and then to recover the same from respondent- 2. Respondent- 3/ Insurance Company will be at liberty to initiate proceeding of recovery of amount in the manner as provided in the matter of **Oriental Insurance Company Limited vs Shri Nanjappan and Others** reported in AIR 2004 SCC 1631.

25. The other conditions if any, imposed by learned Claims Tribunal will remain intact.

26. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

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