NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 686 of 2013

1. Smt.Dhirajmati Patel, W/o Late Narayan Patel Aged About 40 Years R/o Vill. And Post- Bore, Tah. Baramkela, Distt. Raigarh C.G.,

2. Ku. Anita Patel D/o Late Narayan Patel Aged About 24 Years R/o Vill. And Post- Bore, Tah. Baramkela, Distt. Raigarh C.G.,

3. Ajeet Patel S/o Late Narayan Patel Aged About 17 Years Minor, Thru- Mother Smt. Dhirajmati Patel, R/o Vill. And Post- Bore, Tah. Baramkela, Distt. Raigarh C.G.,

4. Anil Patel S/o Late Narayan Patel Aged About 15 Years Minor, Thru- Mother Smt. Dhirajmati Patel, R/o Vill. And Post- Bore, Tah. Baramkela, Distt. Raigarh C.G.,

---- Appellants/Claimants

Versus

1. Kalinder Prasad Singh And Ors. S/o Ramusingh Rathiya Aged About 35 Years R/o Vill. And Post- Ambatoli, P.S. Kunkuri, Distt. Jashpur C.G.,

2. Krishna Kumar Sharma S/o Kewal Ram Sharma R/o At Post- Bajarangpara, Raigarh, Thana And Tah. Raigarh, Distt. Raigarh C.G.,

3. The New India Insu.Co.Ltd. S/o Thru- Branch Manager, Branch Office, Sattigudi Chowk, Raigarh, Thana And Tah. Raigarh, Distt. Raigarh C.G.,

---- Respondents

MAC No. 738 of 2013

- Dasrath Nayak S/o Late Rekram Nayak Aged About 45 Years R/o Vill. And Post Bar, Thana And Tah. Baramkela, Distt. Raigarh C.G.,

---- Appellant

Versus

1. Kalinder Prasad Singh, S/o Ramusingh Rathiya Aged About 35 Years R/o Vill. And Post- Ambatoli, P.S. Kunkuri, Distt. Jashpur C.G.,

2. Krishna Kumar Sharma S/o Kewal Ram Sharma R/o At Post- Bajarangpara, Raigarh, Thana And Tah. Raigarh, Distt. Raigarh C.G.,

3. The New India Insu.Co.Ltd. S/o Thru- Branch Manager, Branch Office, Sattigudi Chowk, Raigarh, Thana And Tah. Raigarh, Distt. Raigarh C.G.,

---- Respondents

(In both the Appeals)		
For Appellants	:	Shri R.S.Patel, Advocate.
For Respondents No.1 & 2:		Shri Amit Sharma with Shri Krishna Tandon, Advocate
For Respondents No.3	:	Shri Hanuman Prasad Agrawal, Advocate.

Hon'ble Shri Justice Sanjay Agrawal

Order / Award on Board

21.10.2019

1. Since both these appeals arise out of the same accident and common questions of law and facts are involved, therefore, they are being disposed of by this common order/award.

2. Both these Miscellaneous Appeals have been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the award dated 21.02.2013 passed by the Additional Motor Accident Claims Tribunal, Sarangarh, District Raigarh in Claim Case No.21/2008 and Claim Case No. 22/2008 instituted respectively by the legal representatives of deceased and injured Claimant, by which, the Claims Tribunal, while allowing the claim in part, awarded total amount of compensation to the tune of Rs.3,47,000/- and Rs.4,72,600/- respectively with interest @ 6% per annum from the date of filing of Claim Petition till its realisation. The parties to these Appeals shall be referred hereinafter as per their description in the Court below.

3. Briefly stated the facts of the case are that on 05.06.2008, deceased Narayan Prasad Patel was going by his motorcycle along with his friend, namely Dashrath Nayak from village Bore to Raigarh and as soon as they reached near the by-pass road at Chhatmuda chowk, it was dashed vehemently by the offending vehicle (truck) bearing its registration No.C.G 13-A-3573, which was owned by Non-Applicant No.2 Krishna Kumar Sharma and insured with Non-Applicant No.3, the New India Insurance Company Limited. At the relevant time,

the vehicle in question was being driven rashly and negligently by its driver, namely, Kalinder Prasad Singh, owing to which, the alleged accident occurred and Narayan Prasad Patel expired while his friend Dashrath Nayak was injured badly and suffered permanent disability to the extent of 45%.

4. On account of the aforesaid accident, a claim being Claim Case No. 21/2008 has been filed by the legal representatives of deceased Narayan Prasad Patel under Section 166 of the Act of 1988 alleging, inter alia, that the deceased was an agriculturist and used to run (rice) huller mill and from which he used to earn Rs.12,000/- per month, and therefore, total amount of compensation to the tune of Rs.48,10,000/- has been claimed under various heads, while a sum of Rs.55,80,000/- has been claimed by the injured Dashrath Nayak in Claim Case No. 22/2008 instituted by him under Section 166 of the Act of 1988 by submitting therein that due to the said accident, he suffered permanent disability to the extent of 45% and since he was engaged in agricultural purposes, therefore, he claimed total amount of compensation to the tune of Rs.55,80,000/- under various heads.

5. Non-Applicants No. 1 & 2 were proceeded ex parte, while Non-Applicant No.3/Insurance Company has contested the claim mainly on the ground that the driver of the offending vehicle was not possessing the effective and valid driving license at the relevant time, and therefore, no liability could be fastened upon it.

6. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the accident occurred on 05.06.2008 due to rash and negligent driving of the driver of the offending vehicle resulting into sad demise of Narayan Prasad Patel whereas Dashrath Nayak got injured badly and owing to which, he suffered permanent disability to the extent of 45%, by relying upon the disability certificate, marked as Ex.P.108. It held further that since the driver of the offending vehicle was authorised to drive the light motor vehicle whereas the vehicle in question was a truck, a transport vehicle, therefore, he was not

authorised to drive the same. As a consequence, while exonerating the insurance company from its liability, awarded total amount of compensations, as mentioned herein above in both the claim matters.

7. Being aggrieved, the Claimants in both Claim Cases have preferred these appeals. Shri R.S. Patel, learned counsel for the appellants submits that while passing the award impugned, the Claims Tribunal has committed an illegality in exonerating the insurance company from its liability by holding that the driver was not authorised to drive the alleged offending vehicle. While inviting attention to the extract of the driving license, marked as Ex.N.A.3 (in Claim Case No. 21/2008), submits that the driver was authorised to drive the transport vehicle as well. However, without considering the said documentary evidence in its proper manner, the Claims Tribunal has erred in exonerating the insurance company from its liability. He submits further that while assessing the amount of compensation, the Claims Tribunal ought to have considered the future prospects of the deceased while applying the proper multiplier. Having failed so, the amount of compensation as assessed by the Tribunal deserves to be enhanced in both the Claim Cases.

8. On the other hand, Shri H.P.Agrawal, learned counsel for respondent No.3, in both the Claim Petitions, submits that after due consideration of the alleged document, marked as Ex.N.A.3, the Claims Tribunal has rightly exonerated the insurance company on finding that the driver of the offending vehicle was not entitled to drive the alleged offending vehicle (truck). As such, the award impugned is not liable to be interfered.

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

10. From perusal of the record, it appears that the extract of driving license marked as Ex.N.A.3 was not taken into consideration in its proper manner as a bare perusal of it, would show that the driver of the offending vehicle was

authorised to drive the transport vehicle as it was valid w.e.f. 13.12.1996 upto 01.01.2015. The burden was heavily upon the insurance company to establish the fact that on the date of alleged accident, the driver of the offending vehicle was not authorised to drive the same. However, no cogent and reliable evidence has been placed on record in order to show that he was not authorised to drive the alleged offending vehicle on the fateful day. It is true from a bare perusal of the said document that the driver of the offending vehicle was authorised to drive the light motor vehicle on the date of accident, but the fact reflected from the said document, as observed herein above, cannot be overlooked unless and until it is proved that the driver was not authorised to drive the alleged transport vehicle. In such circumstances, it cannot be held that the driver was not holding the effective and valid driving license, as held by the Claims Tribunal. The finding so recorded by the Tribunal exonerating the insurance company from its liability deserves to be and is hereby set aside.

11. Consequently, the insurance company is held to be liable to indemnify the insured in both the above mentioned Claim Petitions.

12. As far as the amount of compensation in Claim Case No. 21/2008 is concerned, it appears that just and proper compensation payable to the claimants has not been awarded. While assessing the amount of compensation, the Claims Tribunal has assessed the monthly income of the deceased to the tune of Rs.3,000/-, yearly Rs.36,000/- and that by deducting 1/3rd of it, annual dependency has been assessed to the tune of Rs.24,000/- and that by applying the multiplier of 13 while considering the age of deceased as 45 to 50 years, the Claims Tribunal assessed total dependency to the tune of Rs.3,12,000/-. In addition to this, the Claims Tribunal has awarded a total sum of Rs.35,000/- under conventional heads and thus, awarded a total sum of Rs.3,47,000/-, with 6% interest per annum from the date of filing of Claim Petition till its realisation.

13. While awarding the amount of compensation as above, the Claims Tribunal ought to have taken into consideration the future prospects of the income of the deceased. In the matter of ***National Insurance Company Limited*** vs. ***Pranay Sethi*** reported in **(2017) 16 SCC 680**, it has been held that while determining the income of the deceased, the future prospects in the income of the deceased is also required to be taken into consideration in order to provide just and proper compensation payable to the Claimants.

14. Considering the income of the deceased as Rs.3,000/- per month, yearly Rs.36,000/-, as held by the Tribunal, and that by adding 25% of it, i.e., Rs.9,000/- towards future prospects of the income of the deceased in the light of the aforesaid decision, it would be worked out at Rs.45,000/- (Rs.36,000 + 9,000). Since as many as 4 persons were dependents upon him, therefore, after deducting 1/4th of it, i.e., Rs.11,250/-(Rs.45,000 x ¼), yearly dependency would thus be arrived at Rs.33,750/- (Rs.45,000 - Rs.11,250). As the deceased was 40 years old, as evidenced from the post-mortem report, the proper multiplier, therefore, would be 15 and that by applying it, the total dependency would be worked out at Rs.5,06,250/- (Rs.33,750 x 15). In addition to this, the Claimants are entitled to a sum of Rs.2,20,000/- under conventional heads in following terms:

1. Loss of consortium to wife	= Rs. 40,000/-
2. Loss of Estate	= Rs. 15,000/-
3. Funeral Expenses	= Rs. 15,000/-
4. Loss of Love and Affection to 3 children at the rate of Rs.50,000/- each.	= Rs.1,50,000/-
	===========
Total :	Rs.2,20,000/-
	-------------------

15. Thus, the Claimants in Claim Case No. 21/2008 would be entitled to a total amount of compensation to the tune of Rs.7,26,250/- with 6% interest per annum from the date of filing of Claim Petition till its realisation.

16. In so far as the amount of compensation assessed in Claims Case No.22/2008 by applying the multiplier of 13 is concerned, the same, however, appears to be 14 looking to the age of the Claimant Dashrath Nayak as he was found to be 45 – 50 years old. Thus, by applying the proper multiplier of 14 on his annual loss of income of Rs.16,200/-, it would be arrived at Rs.2,26,800/- (Rs.16,200 x 14). The Claimant would thus be entitled to total sum of Rs.4,88,800/- (Rs.2,30,000 + 10,000 + 10,000 + 12,000 + 2,26,800), instead of Rs.4,72,600/- as assessed by the Tribunal.

17. In view of the foregoing discussions, both these appeals are disposed of with the aforesaid observations while directing Non-Applicant No.3 / Insurance Company to indemnify the insured. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Anjani