NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 705 of 2015

- Divisional Manager, the National Insurance Company Limited Divisional Office Supela, Bhilai Tehsil And District Durg C.G. Trough Authrised Signatory National Insurance Company Limited, Divisional Office B-1 Taha Complex, Ring Road II, Priydarshani Nagar, Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Smt. Kamlavati, wd/o Late Ramanuj Aged About 46 Years

2. Khemraj Verma S/o Late Ramanuj Aged About 27 Years

3. Ku. Neeta Verma D/o Late Ramanuj Aged About 24 Years

4. Ku. Suman Verma D/o Late Ramanuj Aged About 20 Years

5. Siddhanath S/o Late Ramadhin Aged About 82 Years

6. Nevasua W/o Siddhanath Aged About 76 Years

All above are r/o New Khursipar, near jagir Square, Bhilai- 12, Ward No.36 Police Station Khursipar Tehsil & District Durg (CG) & Road 21 Sector- 2, Police Station Bhilai Nagar Tehsil & District Durg CG

7. Tikesh Kumar Sonwani S/o Suresh Kumar Sonwani Aged About 26 Years, s/o Suresh Kumar Sonwani, R/o Shankar Nagar Kranti Square, near Verma Floor Mill Chhavni Bhilai PS Chhavni District Durg Chhattisgarh. (Driver)

8. Suresh Kumar Sonwani S/o Amoli Ram Sonwani R/o Shankar Nagar Kranti Square, Near Verma Floor Mill Chhavni Bhilai P.S. Chhavni District- Durg, Chhattisgarh (Owner)

---- Respondents

For Appellant	:	Shri BN Nande, Advocate
For Respondents- 1 to 6	:	Shri Praveen Durandhar, Advocate
For Respondents- 7 & 8	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

20.06.2019

1. Appellant Insurance Company has filed this application under Section 173 of Motor Vehicle Act, 1988 challenging the impugned awarded dated 24.11.2014 passed by 6th Additional Motor Accidents Claims Tribunal, Durg (for short, 'Claims Tribunal') in claim case No.21 of 2013 wherein learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.4,97,750/- as compensation along with 6% interest in a death case.

2. Brief facts relevant for disposal of this appeal are that on 18.02.2013 at about 8.30 pm Ramanuj was returning to his house situated at Khursipar on his motorcycle (Yamaha) bearing No. CG07 LB- 5184 and when he was crossing road at KH square, at that relevant time one Tata Sumo bearing No.CG 07-6926 (offending vehicle) driven by non-applicant 1 dashed motorcycle of Ramanuj due to which he suffered severe injuries on his person and during the course of treatment he succumbed to accidental injuries on 28.2.2013. Matter was reported to concerned Police Station based on which criminal case bearing No.74 of 2013 was registered against non-applicant 1 for offence punishable under Section 304A IPC.

3. On account of death of Ramanuj, claimants who are widow, children and parents of deceased have filed claim application before competent Claims Tribunal claiming compensation of Rs.94,27,817/- mentioning therein that on the date of accident deceased Ramanuj was working as Senior Operator in Bhilai Steel Plant at Bhilai and getting Rs.53,999/- as monthly salary.

4. Non-applicants 1 & 2 who are driver and owner of offending vehicle submitted reply to claim application and pleaded that no accident took place with it. They further pleaded that offending vehicle was insured with non-applicant 3/Insurance company and Insurance Policy was also effective on the date of the accident. They have also pleaded that non-applicant 1 was possessing valid and effective driving license on the date of accident.

5. Non-applicant 3 insurance company also filed its reply to claim application and denied fact that offending vehicle was insured with it. It was also pleaded that as claimants 2, 3 & 4 are major on the date of accident, therefore, they were not dependent on deceased. On the date of accident, driver of offending vehicle was not possessing valid and effective driving license and further pleaded that accident took place due to negligence on the part of deceased, driver of motorcycle also.

6. Learned Claims Tribunal on the basis of pleadings made by respective parties, made as many as seven issues for consideration along with issue of contributory negligence on the part of deceased driver of motorcycle. On conclusion of trial, learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the parties, has held that there was no contributory negligence on the part of driver of motorcycle and further that accident took place due to rash and negligent driving of non-applicant 1, driver of offending vehicle- Tata Sumo. Therefore, awarded a total sum of Rs.44,77,500/- as compensation.

7. Learned Counsel for appellant/ Insurance Company submits that learned Claims Tribunal committed error in deciding issue of contributory negligence in negative. Further it committed error in awarding excessive amount on other conventional heads. It is further submitted that learned Claims Tribunal committed error in deducting ⅓ towards personal and living expenses of deceased ignoring the fact that claimants 2 to 4 are major and were not dependent upon the deceased.

8. Per contra, learned counsel appearing for respondents-1 to 6/ claimants submits that learned Claims Tribunal rightly held that there is no contributory negligence on the part of driver of motorcycle which is based on evidence and material available on record and impugned award does not call for any interference. He further submits that there are six claimants out of which one is widow and two are old parents of deceased aged about 82 and 76 years, and therefore, even after considering that children of deceased are major, learned Claims Tribunal had not committed any error in deducting 1/3rd amount towards personal expenses of the deceased. He also submits that he has filed cross-objection seeking enhancement of amount of compensation awarded by learned Claims Tribunal. Learned Claims Tribunal committed error in not awarding any amount towards future prospects even after considering age of deceased as 51 years on the date of accident.

9. I have heard learned counsel for the parties and perused records.

10. So far as first ground raised by learned counsel for the appellant/ Insurance Company that learned Claims Tribunal committed error in deciding the issue of contributory negligence in favour of deceased is concerned, Insurance Company has not led any evidence in support of its pleading of contributory negligence.

11. Perusal of record would show that Ajit Kumar Jaiswal has been examined as AW1 showing him to be an eyewitness to the accident. From perusal of this evidence, it is evident that he specifically stated that deceased was crossing road after looking to the green signal light towards his side. He further stated in his chief that accident took place due to negligence of driver of offending Tata Sumo. In para-7 of his cross examination, this witness has denied the suggestion given to him by counsel appearing on behalf of appellant/Insurance Company before learned Claims Tribunal that deceased was crossing the road even when there was red light towards his way and met with an accident. AW1 also in his cross-examination stated that at the crossing, where signals are present there was lot of crowd on the side where red signal is glowing.

12. Non-applicant-3/Insurance Company got examined one Tikesh Kumar Sonwani NAW1/3, driver of offending vehicle in support of its pleadings, who in his evidence stated that he was crossing the road where there was green signal on his side but driver of motorcycle was crossing the road violating the rules by crossing the road on red signal on his side but in his cross examination this witness admitted that he had not complained to any superior Police officer with respect to falsely impleading him in the crime registered against him. He further admits that he was driving the vehicle with high speed and was going from Raipur to Durg. He further admits that his side of road was busy. He further admits that when he was driving with high speed accident took place. Apart from this evidence appellant/Insurance company not produced any other evidence on record. NAW1/3 appears to be driver of offending vehicle and therefore his sole testimony could not be taken into account as Gospel Truth to arrive at a finding that there was contributory negligence on the part of other driver involved in the accident, particularly when the respondents have not produced any independent eyewitness who was present on the spot at the time of accident. It was not a case where driver of offending vehicle was driving his vehicle at normal speed but his evidence is very clear that he was driving his vehicle with a considerable speed. Apart from it, claimants presented eyewitness before the Court who was an independent witness.

13. Other argument raised by learned counsel for the appellant is that as the accident took place on centre of road therefore, it indicates that it was the driver of motorcycle who was negligently crossing the road without looking the signals or other vehicles.

14. Hon'ble Supreme Court while considering the issue of contributory negligence in the matter of **Jiju Kuruvila and others Vs Kunjujamma Mohan and others** reported in **(2013) 9 SCC 166**, held as under:

> “20.5 The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.”

15. In the aforementioned judgment Hon’ble Supreme Court held that merely position of vehicle as shown in the Nazari Naksha itself would not be sufficient to arrive at a conclusion that there was contributory negligence on the part of driver of other vehicle. The contributory negligence is a fact which is required to be proved on the basis of legal and admissible piece of evidence by the party asserting it. Learned Claims Tribunal while deciding the issue of contributory negligence after considering the judgment passed on the issue, held that non-applicants have failed to produce any temporary or acceptable and admissible piece of oral evidence and therefore decided the issue of contributory negligence against non-applicants. The said finding recorded by learned Claims Tribunal cannot be said to be erroneous finding on the basis of material and evidence placed on record by respective parties.

16. In view of above, ground of contributory negligence raised by learned counsel for the appellant is not sustainable and it is hereby rejected.

17. Other ground raised by learned counsel for the appellant that learned Claims Tribunal committed error in deducting ⅓ amount towards personal and living expenses ignoring the fact that claimants 2 to 4 are major and they are not dependent on the deceased. In this regard law is well settled by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt) and others Vs Delhi Transport Corporation and another** reported in 2009 (6) SCC 121 in which it was held that even when claimant is a widow of deceased alone, then also deduction towards personal and living expenses of the deceased would be ⅓ of his assessed income. In the instant case along with widow of deceased there are two old aged parents who are aged about 80 and 76 years on the date of filing of claim application.

18. Insurance company also not led any evidence to show that major children of deceased were not dependent upon him. Merely on attaining the age of majority it cannot be said that legal heirs of deceased were not dependent on him. The burden was on Insurance Company to prove the said fact by admissible and legal evidence before the claims tribunal that claimants 2 to 4, who are major children of deceased, were not dependent on the deceased on the date of filing of claim application, which Insurance Company utterly failed.

19. In view of above, ground raised by learned Counsel for the appellant is not sustainable and it is repelled.

20. Last ground raised by learned counsel for appellant is that learned Claims Tribunal committed error in awarding excess amount on other conventional heads. On perusal of award it would show that learned Claims Tribunal awarded total sum of Rs.2,75,000/- (loss of consortium, love and affection to wife -Rs.1,00,000/-; love and affection to children- Rs.1,00,000/-; filial consortium to parents- Rs.50,000/-; and for funeral expenses- Rs.25,000/-).

21. Hon'ble Supreme Court in the matter of **National Insurance Company Limited Vs Pranay Sethi and others** reported in 2017(16) SCC 680, dealt with the issue of awarding mount of compensation on other conventional heads. In this matter, it is held that claimants would be entitled for an amount of Rs.15,000/-towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. In view of the law laid down in case of **Pranay Sethi** (*supra*), the learned Claims Tribunal committed error in awarding Rs.2,75,000/- on other conventional heads which is hereby set aside.

22. Hon'ble Supreme Court in the aforementioned judgment dealt with the issue of awarding amount of loss of consortium ie loss of consortium to widow, loss of estate and funeral expenses as Rs.70,000/-, thereby total amount on other conventional heads would come to Rs.70,000/- for which respondent /claimant will be entitled, instead of Rs.2,75,000/-.

23. Now, coming to the cross objection filed by respondents 1 to 6/Claimants, on perusal of award it would show that learned Claims Tribunal did not award any amount towards future prospects ignoring the fact that the deceased was in permanent employment with a public sector Government company and 51 years of age on the date of accident. The issue of awarding future prospects also has been decided by Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra). As in the case in hand, deceased was aged about 51 years and was in permanent job on the date of accident, he is entitled for an addition of 15% of his established income for calculating total income of deceased.

24. In view of above discussion and law laid down by Hon'ble Supreme Court the amount of compensation awarded by learned Claims Tribunal requires reconsideration and recalculation.

25. Income of deceased has been held by learned Claims Tribunal as Rs.53,919/- per month as per his salary slip Ex.P/15, thus, yearly income would come to Rs.6,47,028/- (53919 x 12). After deducting income tax of Rs.77,028/- from yearly income, his net income comes to Rs.570000/-. By adding 15% towards future prospectus on the established income, total yearly income would come to Rs.6,55,500/- {570000 + (570000 x 15/100)}. After deducting 1/4th of total yearly income towards personal and living expenses of the deceased, yearly dependency of claimants would come to Rs.4,91,625/- {655500 – (655500 x1/4)}. Looking to the age of deceased appropriate multiplier applicable in this case would be 11. By multiplying yearly dependency of Rs.4,91,625/- with multiplier of 11, total loss of dependency would come to Rs.54,07,875/-.

26. Apart from aforementioned total loss of dependency, claimants will also be entitled for an amount of Rs.70,000/- towards other conventional heads. Now, claimants will be entitled for a total sum of Rs.54,77,875/- (Rupees fifty four lakh seventy-seven thousand eight seventy five) instead of Rs. 49,77,500/-. This amount shall carry interest @ 6% per annum from the date of filing of claim application till its realization.

27. Other conditions imposed by Learned Claims Tribunal will remain intact.

28. The appeal filed by the Insurance Company and cross appeal filed by respondents 1 to 6/ claimants are allowed in part.

29. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma