NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 359 of 2014

- Murali Prasad Jhariya S/o Vishram Jhariya Aged About 39 Years R/o Ramnagar Ward No. 01, Kawardha, Thana- Kawardha, Civil Revenue Distt. Kabeerdham, Chhattisgarh (wrongly mentioned ward No.9 in Order)

---- Appellant/Owner

Versus

1. Jayprakash Mishra, S/o Late Sachchidanand Mishra, Aged About 30 Years, R/o Kawardha, Thana- Kawardha, Distt. Kabeerdham C.G., At Present R/o Abhishek Vihar, Face-1, House No. D-32, Mangla Road, Bilaspur, Civil and Revenue Distt. Bilaspur, Chhattisgarh (Claimant)
2. Jitendra Chandravanshi, S/o Ramkishun Chandravanshi Aged About 21 Years R/o Kawardha, Thana- Kawardha, Distt. Kabeerdham C.G., At Present R/o Mathanikala, Post- Bharka, Thana- Pipariya, Civil and Revenue District : Kawardha (Kabirdham), Chhattisgarh
3. The New India Insu.Co.Ltd. Raipur D.O.-II 451800, LIC Building, First Floor, Pandari Road, Raipur, Tah. Raipur, Civil and Revenue Distt. Raipur Pin- 492001, Chhattisgarh

----Respondents/Non-claimants

For Appellant	:	Shri Sunil Sahu, Advocate
For Respondents-1 and 2	:	None appears
For Respondent-3	:	Shri Anil Gulati, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
21.09.2020

1. NA2, owner of the Tavera Car bearing No.CG 09 2352 (offending vehicle) filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 13.03.2014 passed by the Second Additional Motor Accident Claims Tribunal, whereby learned Claims Tribunal allowed the application under Section 166 of the Act of 1988 in part and awarded Rs.1,15,000/- as compensation in a death case while exonerating the Insurance Company from its liability, fastened liability upon respondents 1 and 2, driver and owner of the offending vehicle.

2. Facts relevant for disposal of this appeal are that Sachidanand, father of claimant/respondent-1 along with his other relatives by name, Gopal, Ghanshyam, Sudama, Renuka, Indrani and Rudrani was returning from Prayagraj on the offending vehicle on 13.10.2012. When their vehicle reached near Amarkantak Police Station, NA1, driver of offending vehicle drove his vehicle rashly and negligently and dashed it with a tree on the road side. In the said accident, Sachidanand suffered grievous injuries and succumbed to the injuries on the spot. Accident was reported to concerned Police Station based upon which crime was registered against NA1.

3. Respondent-1/Claimant filed application under Section 166 of the Act of 1988 pleading therein that his father/deceased was a retired teacher and drawing pension of Rs.10,000/- per month. He was practising tuition classes, by which he was earning Rs.10,000/- apart from the pension. Claimant was dependant upon his father and sought compensation of Rs.20,50,000/-.

4. NA1 and 2 submitted reply to claim application, admitted their status as driver and owner of the offending vehicle. It was further pleaded that on the date of accident, offending vehicle was insured with NA3, Insurance Company, and Chandrika Prasad Choubey is family friend of NA2. His family members and relatives wanted to go Prayagraj for some ritual ceremony, he gave his vehicle only on account of their friendship. The pleading of rash and negligent driving by NA1 was denied. In attempt to save the animal jumped on the road suddenly, accident took place. NA1 was possessing valid and effective driving license.

5. NA3/ Insurance Company submitted reply to the claim application denying the pleadings made therein. The accident was not reported to the Office of NA3/Insurance Company, NA1 was not possessed of valid and effective driving license. The vehicle was insured as private Car, but was being used for commercial purpose and thereby, there was breach of Policy conditions.

6. Upon appreciation of pleadings and evidence placed on record by the respective parties, learned Claims Tribunal held that Sachidanand suffered motor accidental injuries resulting in his death on account of rash and negligent driving of offending vehicle by NA1; offending vehicle was being plied in breach of policy conditions; awarded Rs.1,15,000/- as compensation; and fastened liability upon the appellant /owner.

7. Shri Sunil Sahu, learned Counsel for the appellant/owner of offending vehicle submits that learned Claims Tribunal erred in arriving at a finding that the vehicle was being used for hire. He further argued that arising out of the same accident claim application was filed by other claimants bearing claim case -19 of 2013, before the Additional Motor Accident Claims Tribunal, Bemetara, in which Claims Tribunal fastened liability upon the Insurance Company holding that there was no breach of policy conditions. He submits that there cannot be contradictory finding of two different claims arising out of the same accident with regard to liability to satisfy the amount of compensation. He submits that the vehicle was not used as commercial vehicle but only on account of relationship of the appellant with Chandrika Prasad Choubey, appellant gave his vehicle for visiting Prayagraj to perform some rituals by family members of Chandrika. He submits that the Insurance of the vehicle during the period of accident as private car package policy is not in dispute and therefore, the liability to satisfy the amount of compensation is upon the Insurance Company. Shri Sunil Sahu, learned counsel for the appellant also submits that learned Claims Tribunal erred in awarding excessive amount of compensatin to the claimant ignoring the fact that the deceased was shown to be 78 years of age on the date of accident and the claimant is his married son, aged about 30 years, who cannot be said to be dependant upon the deceased.

8. Per contra, Shri Anil Gulati, learned counsel for respondent-3 Insurance Company submits that the claimant in his evidence in categorical terms has stated that his grand father hired the offending vehicle. He further submits that un-disputedly, the vehicle was insured as private car but in view of the evidence of claimant in para-14, the use of vehicle has been very specifically mentioned to be as commercial vehicle. The findings recorded by learned Claims Tribunal exonerating the Insurance Company from its liability on account of use of vehicle as commercial vehicle is based on the evidence which does not call for any interference.

9. We have heard learned counsel for the parties and perused the record of claim case.

10. Only two grounds have been raised by learned counsel for the appellant/owner of offending vehicle ie exoneration of Insurance Company on account of use of offending vehicle for hire and reward and secondly, the amount of compensation to be on higher side.

11. So far as the first ground raised by learned counsel for the appellant that in other two claim cases, Insurance Company has been held liable is concerned, finding recorded by learned Claims Tribunal may be on the basis of evidence available on record in those two claim cases. So far as the award before us, which is under consideration is to be looked into, based on the pleadings and evidence available on record of claim case in which the impugned award has been passed. Learned Claims Tribunal has recorded a finding in para13 of the impugned award that the claimant himself admitted the fact that his maternal grand-father took the offending vehicle on hire which remained uncontroverted. In view of aforementioned specific evidence available on record, and further taking into consideration the Insurance Policy available on record, which is a private car package policy, we do not find any error or infirmity in the finding recorded by learned Claims Tribunal that on the date of accident, offending vehicle was being used as commercial vehicle in breach of policy conditions. Insurance policy of offending vehicle specifically mentions about the limitations as to use which is as under:

> "Limitations as to use: The Policy covers use of the vehicle for any purpose other than a) Hire or Reward b) Carriage of goods (other than samples or personal luggage) c) Organized racing d) Pace making e) Speed testing f) Reliability Trials g) Any purpose in connection with Motor Trade"

12. The limitations as to use of vehicle as mentioned in the Insurance Policy bars the vehicle to be used for hire or reward.

13. In view of above, the submissions of learned counsel for the appellant that learned Claims Tribunal erred in exonerating the Insurance company from its liability is not sustainable and it is hereby repelled.

14. So far as the second ground raised by learned counsel for the appellant that the claimant being married son, aged about 30 years, was not dependant upon the deceased, hence, he is not entitled for any amount of compensation is concerned, we are not convinced with the submission of learned counsel for the appellant.

15. It is not in dispute that the deceased was a pensioner and drawing pension of Rs10,000/- per month. Claims Tribunal has not taken the income of the deceased as pleaded in the claim application but have assessed his income as Rs.3,000/- per month on notional basis. Deceased was aged about 78 years on the date of accident. Being father of claimant, the amount earned by the deceased will definitely be used by the claimant as estate of his father. Claims Tribunal has deducted ½ towards personal and living expenses, looking to the age of the deceased and while applying multiplier of 5, has awarded Rs.90,000/- towards the loss of dependency and further Rs.25,000/- for funeral expenses.

16. Hon'ble Supreme Court in case of **National Insurance Company Vs Pranay Sethi** reported in **2017 16 SCC 680** has considered the heads and quantum of amount to be awarded under conventional heads, which are Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and

Rs.40,000/- for loss of consortium. Further, recently in case of **National Insurance Company Limited Vs Birender and others** reported in AIR 2020 SC 434 Hon'ble Supreme Court had considered the entitlement of married son for compensation on account of death of his parent and held thus :

> "15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs. 1,00,000/- and Rs. 1.50,000/- per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years."

17. In view of aforementioned law laid down by Hon'ble Supreme Court and upon considering the facts and circumstances of the case, the amount of compensation awarded to the claimant cannot be said to be higher than what he is entitled for. We do not find any tenable ground to interfere with the impugned award.

18. The appeal being devoid of any substance, it is liable to be and is hereby dismissed.

Sd/-	Sd/-
(PR Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

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