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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 548 of 2014

(Arising out of Award dated 20.02.2014 passed by the Third Additional Motor Accident Claims Tribunal, Ambikapur, Sarguja in Claim Case No. 98/2012)

- Shobit Ram, S/o Aandu Ram, aged about 75 years, R/o village Karri, PS & Tahsil Rajpur, Dist. Balrampur-Ramanujganj (C.G.)

---- Appellant

Versus

1. Smt. Sukhmaniya, W/o Late Shri Ramjeet, aged about 70 years, Caste Kodaku, R/o village Sargadi, PS & Tahsil Rajpur, Dist. Sarguja (C.G.)
2. Oriental Insurance Company Limited, Manendragarh Road, Ambikapur, Dist. Sarguja (C.G.)

---- Respondents

For Appellant/Owner	:	Mr. Hariom Rai, Advocate
For Respondent No.1/Claimant	:	None present
For Respondent No2/Insurer	:	Mr. Anumeh Shrivastava, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, P. R. Ramachandra Menon, Chief Justice

31.08.2020

1. The liability mulcted upon the Owner of the Tractor bearing No.CG-15-A-3160 to satisfy the claim in respect of the deceased, who was travelling in the Tractor at the relevant time, is put to challenge in this appeal.

2. The deceased by name Santosh was travelling in the Tractor bearing No.CG-15-A-3160 on 05.06.2008 in connection with some agricultural activities and while so, because of the negligent driving of the vehicle, Tractor overturned, causing fatal injuries to the deceased, who succumbed to the same. This was sought to be compensated by filing Claim Petition by the mother of the deceased. The Claim was contested mainly on quantum and negligence. The 2nd Respondent-

Insurer contended that, being a passenger in the Tractor and for such other grounds raised, the Claim was not liable to be satisfied by the Insurer under the policy issued in favour of the Owner.

3. On completion of the evidence, the Tribunal held that the accident was because of the negligence on the part of the driver of the Tractor. Based on the pleadings and evidence brought on record, compensation payable was fixed as Rs.1,92,000/- towards the loss of income. Awarding a sum of Rs.10,000/- towards loss of love & affection, a sum of Rs.5,000/- towards funeral expenses and another sum of Rs.5,000/- towards loss of estate, a total compensation of Rs.2,12,000/- was awarded; which was directed to be satisfied with interest @ 6% per annum from the date of filing of the Claim Petition till its satisfaction. The Tribunal held that, by virtue of the absence of coverage under the policy and violation of the statutory/policy conditions, the compensation was liable to be satisfied by the Owner/Appellant and the Insurer was absolved from the same. Correctness of the verdict is sought to be questioned by the Appellant/Owner of the Tractor.

4. The learned counsel for the Appellant submits that the claimant was not a 'dependent' of the deceased, as after the death of the father of the deceased, she married another person and was living with him. It is further pointed out that, the Tribunal has deducted only 1/3rd towards the personal expenses and since the deceased was a bachelor, 50% of the annual income was to be deducted to fix the liability, where the Tribunal has gone wrong.

5. On hearing both the sides and after going through the materials on record, it is quite evident that the deceased, admittedly, was travelling as a passenger in the Tractor at the relevant time. It is quite evident that the Tractor is having only 'one seat', which is exclusively for the driver and no passenger is intended to be carried in the Tractor. There is no seat even in the Trolley and as per the decision rendered by the Apex Court in ***National Insurance Co. Ltd. Vs. Cholleti Bharatamma and Others*** reported in ***(2008) 1 SCC 423***, if at all, anybody is travelling in a Goods Carriage either in the capacity of owner/ representative of the Goods carried in the vehicle or even as an employee of the Insured, as specified, he has to travel in the 'Cabin' of the vehicle, depending upon the number of seats and not on the platform or anywhere else, so as to become eligible for coverage under the policy. The legal position has been further made clear by the Apex Court as per the decision rendered in ***Shivraj Vs. Rajendra and Another*** reported in ***(2018) 10 SCC 432*** (paragraph 10). In the said circumstance, the Tribunal was perfectly justified in absolving the Insurance Company from the liability.

6. Coming to the liability fixed upon the Appellant, the case of the Appellant is that the claimant was not a 'dependent' of the deceased. Admittedly, she is the mother of the deceased and legal heir as per the relevant provision of law. The Appellant / Owner contended that she had contracted another marriage after demise of the father of the deceased. The question whether a claim can be filed and pursued only

by a dependent, had come up for consideration before the Apex Court in ***National Insurance Company Limited v. Birender and Others*** reported in ***AIR 2020 SC 434***, wherein it has been held in categoric terms that, even married sons can file the claim petition and pursue the same, as the amount payable will go to the estate of the deceased; which hence can be claimed by the parties concerned. This being the position, there is no pith or substance in the contention raised by the Appellant under this head.

7. There is another contention for the Appellant that, the Tribunal has deducted only 1/3rd towards the personal expenses from the yearly income, which according to the Appellant ought to have been 50%, the deceased being a bachelor. We find some force in the said submission. But at the same moment, it is to be noted that the Tribunal has not reckoned the 'future prospects'; which in the case of a person aged below 50 years (as involved herein), 40% has to be added, to workout the monthly income; as per the decision rendered by the Apex Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** *reported in* ***(2009) 6 SCC 121*** and *affirmed by the Constitution Bench in* ***National Insurance Company Limited Vs. Pranay Sethi & Others*** *reported in* ***(2017) 16 SCC 680.*** The Apex Court has also made it clear that the claimants are entitled to get Rs.40,000/- towards the loss of consortium, Rs.15,000/- towards funeral expenses and another Rs.15,000/- towards the loss of estate. Since the Tribunal has awarded only a sum of Rs.10,000/-, 5,000/- and 5,000/- respectively

under these heads, there is a chance for enhancement under these heads as well. In the said circumstance, even if a re-calculation is possible, deducting 50% towards the personal expenses of the deceased and taking the remaining 50% as contributory of the family, it has to be done with reference to the monthly income fixed after adding 40% of the income reckoned by the Tribunal towards "future prospects" and then reckoning 50% of it to fix the multiplicand. This will lead only to enhancement of the compensation.

8. In the above circumstance, we are of the view that the interference sought for in the appeal is not warranted either on facts or in law. The appeal is devoid of any merit, it is dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Chandra