NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 957 of 2014

- National Insurance Company Limited Thru- Divisional Manager, Divisional Office, Inside Lal Ganga Shopping Mall, G.E. Road, Raipur, Thru- Auth. Sign. For National Insu.Co.Ltd., Divisional Office, Bilaspur, Chhattisgarh

---- Appellant/Insurer NA2

Versus

1. Smt. Kanti, Wd/o Late Rajendra Kumar Banjare Aged About 25 Years
2. Minor Aakash S/o Late Rajendra Kumar Banjare Aged About 5 Years
3. Minor Gulshan S/o Late Rajendra Kumar Banjare Aged About 3 Years

   Respondents 2 and 3 Thru- Mother Smt. Kanti Banjare, wd/o Late Rajendra Kumar Banjare
4. Smt. Sukvantin Banjare, W/o Late Khedu Ram Banjare, Aged About 60 Years

   Respondents 1 to 4 R/o Village Mokhla, P.S. Aarang, District : Raipur, Chhattisgarh
5. Beni Ram Sahu, S/o Bali Ram Sahu, Aged About 45 Years, R/o village Tamasivani, P.S. Aarang, District : Raipur, Chhattisgarh

----Respondents

For Appellant	:	Shri BN Nande, Advocate
For Respondents-1 to 4	:	Shri Raghavendra Pradhan, Advocate

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

Per Parth Prateem Sahu, J.
28.08.2020

1. Challenge in this appeal is to the order dated 02.05.2014 passed in claim case No.130 of 2012 by Motor Accident Claims Tribunal, Raipur (for short, 'Claims Tribunal') whereby learned Claims Tribunal allowed claim application in part and awarded sum of Rs.21,00,000/- as compensation to the claimants in a death case.

2. Facts relevant for disposal of this appeal are that on 29.09.2012 Rajendra Kumar Banjare (since deceased) along with his brother Fulsingh

Banjare was driving on Motorcycle bearing No.CG04KB-2033 and going towards Nawpara for some work. When they reach near Nursery at village Torla on the main road, another Motorcycle bearing No.CG 04 CL 1239 (for short, 'offending vehicle') coming from opposite direction driven by NA1, dashed motorcycle of Rajendra Kumar Banjare. In the said accident, Rajendra Kumar Banjare suffered grievous injuries and died on the spot. The accident was reported to concerned Police Station, based upon which crime was registered against the driver of offending vehicle NA1. Claimants who are widow , children and widow mother of deceased filed an application under Section 166 of the Motor Vehicle Act 1988 seeking compensation of Rs.36,50,000/- mentioning therein that on the date of accident, late Rajendra Kumar Banjare was aged about 29 years and was working as Shiksha Karmi Gr II at Government Higher Secondary School, Belsonda and earning Rs.9,330/- per month.

3. NA1, driver of offending vehicle submitted reply to claim application pleading therein that the accident was a result of rash and negligent driving by the deceased himself. NA1, rider of offending vehicle also suffered injuries on his person and was on bed for about five months. The offending vehicle was insured with NA2, Insurance Company. As he was possessing valid and effective driving license, therefore, the liability to satisfy the amount of compensation would be upon NA2/Insurance Company.

4. NA2/Insurance Company submitted its reply to the claim application and while denying the pleadings made in the claim application, further pleaded that the accident was a result of head on collusion of two

motorcycles, there was contributory negligence of drivers of both the vehicles. NA1 was not possessing valid and effective driving license on the date of accident and as such, there is breach of conditions of Insurance Policy. The amount claimed is highly exaggerated.

5. Learned Claims Tribunal, on appreciation of evidence and pleadings placed on record by respective parties, held that the motor accidental death of the deceased was on account of rash and negligent driving of the motorcycle by NA1; contributory negligence could not be proved; breach of conditions of Insurance Policy also could not be proved and awarded a total sum of Rs.21,00,000/- as compensation.

6. Shri Nande, learned counsel for appellant/Insurance Company submits that there was head on collusion by two Motorcycles in day time and therefore, it is a case of contributory negligence but the learned Claims Tribunal has not taken into consideration and held NA1 solely negligent for the accident. He also argued that learned Claims Tribunal erred in awarding excessive amount of compensation on other conventional heads, which is contrary to the law laid down by Hon'ble Supreme Court in the case of **National Insurance Company Vs Pranay Sethi and others** reported in 2018 (17) SCC 683. He further submits that the amount of compensation in view of above submissions, is required to be scaled down suitably. He also pointed out that the Tribunal erred in awarding conditional interest @ 12% if the amount of compensation awarded is not deposited with the time fixed.

7. Per contra, Shri Raghaendra Pradhan, learned counsel for respondents 1 to 4 submits that the claimants in their claim application, have very specifically pleaded that when they reached near nursery at village Torla Main Road, NA1 while driving his Motorcycle rashly and negligently, dashed their motorcycle in which late Rajendra Kumar Banjare died. He further contended that the accident was reported to concerned Police Station, based upon which, Criminal Case was registered against NA1, driver of offending vehicle and after completion of investigation, charge-sheet was also filed against him. It is further contended that NA1 in reply to the to the claim application, pleaded that the accident was a result of rash and negligent driving of the deceased himself, but to prove his pleadings, he did not appear before learned Claims Tribunal as witness. The Insurance Company though have taken the plea of contributory negligence but have not brought on record any evidence to prove its plea of contributory negligence. Claims Tribunal, based upon the documents and evidence placed on record, has rightly arrived at a finding that Non-applicants failed to prove the negligence /contributory negligence on the part of deceased.

8. Shri Raghavendra Pradhan, while refuting the contention of learned counsel for the appellant/Insurance Company that excessive amount of compensation is awarded on other conventional heads, submits that the claimants have filed cross-objection for enhancement of the award. He points out that learned Claims Tribunal has not awarded any amount towards future prospects ignoring the fact that the deceased was in permanent employment and working as Shksha Karmi Gr II. It is further

contended that the learned Claims Tribunal applied wrong multiplier of 16 in place of 17.

9. We have heard learned counsel for the respective parties and also perused the record.

10. So far as the ground raised by learned counsel for the appellant/Insurance Company with regard to the contributory negligence, perusal of pleadings would show that NA1, driver of the offending vehicle has pleaded in his reply to the claim application about the negligence of the diseased but he himself did not appear before the learned Claims Tribunal to prove the pleadings by examining himself as witness. In absence of oral evidence before Claims Tribunal by the party pleading the fact of contributory negligence, pleadings only cannot be accepted as evidence. Even otherwise, perusal of record would show that Criminal case was registered against NA1 for offence punishable under Sections 279, 337, 338 and 304A of IPC as it is evident from Ex.P1 final report and Ex.P2 FIR.

11. The appellant/Insurance Company in reply to the claim application, has taken the plea of contributory negligence, but the appellant has also not examined any witness before learned Claims Tribunal to prove the pleading of contributory negligence. It is a settled law that contributory negligence is a fact which is required to be proved by placing cogent and clinching piece of evidence before the learned Claims Tribunal, more so, when a Criminal case is registered against NA1, driver of offending vehicle

and after investigation, final report and charge-sheet was also filed against him.

12. The issue of contributory negligence has been considered by Hon’ble Supreme Court in case of **Jiju Kuruvila and others Vs Kunjujamma Mohan and others** reported in (2013) 9 SCC 166, and 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.”

13. In another judgment rendered by Hon'ble Supreme Court in the matter of **Minu Rout and another Vs Satya Pradyumna Mohapatra and others 2013** reported in **AIR SCW 5375**, while setting aside the finding of contributory negligence, it is held as under:

> “12. ------The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck driver for the offences punishable under Sections 279 read with Section 302 of IPC read with the provisions of the M.V. Act. The Insurance Company, though claimed permission under Section 170 (b) of the Motor Vehicles Act, 1988 from the Tribunal to

contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet- Exh. 1 in which the deceased driver was mentioned as an accused and on his death; his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of PW.2 and PW3 in their cross-examination and placed reliance on them to record the finding on issue No. 1. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No. 1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law."

14. In the case at hand, neither NA1/driver of offending vehicle nor the Insurance Company has brought any cogent and clinching piece of evidence before learned Claims Tribunal in support of their pleadings with regard to contributory negligence, therefore, we are of the view that learned Claims Tribunal has not committed any error in recording the finding that the Non-applicants failed to prove their plea of contributory negligence on the part of the deceased.

15. So far as other ground raised by learned counsel for the appellant/Insurance Company that learned Claims Tribunal erred in awarding excessive amount of compensation on other conventional heads is concerned, the constitutional Bench of Hon'ble Supreme Court in case

of **Pranay Sethi** (supra) clarified as to under what heads amount of conventional compensation to be awarded. Compensation can be awarded only on the heads of loss of consortium, loss of estate and funeral expenses. The amount is also fixed by the Hon'ble Supreme Court under the aforementioned heads. In the case at hand, learned Claims Tribunal has awarded Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of consortium and loss of love and affection to the spouse, Rs.1,00,000/- each to the children towards the loss of love and affection and Rs.50,000/- to the widow mother towards loss of love and affection. Tribunal awarded Rs.3,75,000/- as compensation on other conventional heads. The award of Rs.3,75,000/- is much more than that what is held by Supreme Court. Tribunal awarded the compensation on the head of loss of love and affection which is not the head mentioned under 2nd Schedule of the Act of 1988 and also is Contrary to the law laid down by the Hon'ble Supreme Court in case of **Pranay Sethi** (supra). The award of the amount under the conventional head is not sustainable, it is set aside and re-computed.

16. The last submission made by learned counsel for the appellant/Insurance Company that learned Claims Tribunal erred in awarding conditional interest/penal interest of 12% to be erroneous. Section 171 of the Motor Vehicle Act envisages the award of interest on the amount of compensation. The provisions under the Act specifically provides for the award of simple interest, not earlier than the date of making the claim and it does not prescribe for the award of the penal

interest /conditional interest, if the amount awarded by the Claims Tribunal is not deposited in the prescribed period.

17. In view of the specific provision of Section 171 under the Act of 1988, the award of interest of 12% if the amount is not deposited within a period of one month is not sustainable and it is hereby set aside.

18. So far as cross appeal field by the respondents/claimants is concerned, learned Claims Tribunal has assessed the amount of income as proved by the claimants and added 30% of established income towards future prospects. Learned Claims Tribunal accepted the age of deceased as 29 years, which is less than 40 years and therefore, 50% of the amount is required to be added in view of law laid down by Hon’ble Supreme Court in the case of **Pranay Sethi** (supra) wherein Hon’ble Supreme Court has held thus:

> “59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. xxxxxx”

19. In view of the above law laid down by Hon’ble Supreme Court, there will be an addition of 50% of the established income towards future prospects, instead of 30% as added by learned Claims Tribunal. The learned Claims Tribunal erred in applying the multiplier of 16 after accepting the age of deceased as 29 years, which is erroneous and not sustainable in view of law laid down by Hon’ble Supreme Court in case of

Sarla Verma Vs DTC (2009) 6 SCC 121. The appropriate multiplier as per law laid down by Hon'ble Supreme Court should be 17 instead of 16.

20. For the foregoing reasons, the amount of compensation to be awarded to the claimants requires re-computation, which is as under:

> Income of the deceased is taken as Rs.9,300/- per month and Rs.1,11,600/- per annum.
>
> By adding 50% of established income towards future prospects, yearly income of the deceased comes to Rs.1,67,400/- {111600 + (111600 x50/100)}
>
> Looking to the number of claimants as 4, there will be deduction of ¼ towards personal and living expenses of the deceased. After deducting ¼ towards personal and living expenses, yearly dependency of the claimants will come to Rs.1,25,550/- {167400 — (167400 x1/4)}.
>
> By multiplying yearly dependency with multiplier of 17, total loss of dependency comes to Rs.21,34,350/- (125550 x 17)
>
> Apart from the above total loss of dependency, claimants will be further entitled for Rs.40,000/- towards spousal consortium to the widow of deceased, Rs.40,000/- towards parental consortium to the children, Rs.40,000/- towards filial consortium to the widow mother, Rs.15,000/- towards estate, and Rs.15,000/- for funeral expenses.

21. Now, the claimants are entitled for a total sum of Rs.22,84,350/- as compensation, instead of Rs.21,00,000/- as awarded by learned Claims Tribunal.

22. The aforementioned amount of compensation will carry interest @ 9% per annum as awarded by the learned Claims Tribunal in the facts and circumstances of the case.

23. For the foregoing reasons, the appeal filed by the Insurance Company and the cross appeal filed by the claimants are allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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