

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 94 of 2014

1. Nilcharan, S/o Bhagwan Singh Sahu, aged about years, R/o village Daurega, Post- Rohara, P.S. Bhatapara, Distt. Raipur, Present Distt. Balodabazar, Chhattisgarh (Vehicle Tractor No. CG 04 DT 2379 & Trolley No. CG 04 ZD 4680 Driver)
2. Bhagwan Singh, S/o Ramcharan Sahu, aged about years, R/o Daurega, Post- Rohara, P.S. Bhatapara, Distt. Raipur, Present Distt. Balodabazar C.G. (Vehicle Tractor No. CG 04 DT 2379 & Trolley No. CG 04 ZD 4680 Owner)

---- Appellants

Versus

1. Ramhin Bai, Wd/o Umeshwar Sahu, Aged About 34 Years
2. Ku. Sewati, D/o Umeshwar Sahu, Aged About 12 Years Minor
3. Ku. Tikeshwari D/o Umeshwar Sahu Aged About 8 Years Minor
4. Ku. Divya D/o Umeshwar Sahu Aged About 6 Years Minor
5. Ku. Vedkumari D/o Umeshwar Sahu Aged About 6 Years Minor
6. Ku. Mohani D/o Umeshwar Sahu Aged About 4 Years Minor
7. Netram S/o Khowa Ram Sahu Aged About 65 Years
8. Samoda Bai W/o Netram Sahu, Aged About 60 Years

Appellants-2 to 6 are minors through guardian mother Ramhin Bai

All R/o Daurenga, Post- Rohara, Distt. Raipur, Present Distt. Balodabazar Chhattisgarh

9. Manav Motors W/o Behind P.S. Khamtarai, Bilaspur Road, Bhanpuri, Distt. Raipur, Chhattisgarh

---- Respondents

For Appellants : Smt Renu Kochar, Advocate
For Respondents-1 to 8/Claimants : Shri Amiyakant Tiwari, Advocate
For Respondent-9 : Shri Anuroop Panda, Advocate

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

Per Parth Prateem Sahu, J.
25.08.2020

1. Driver and Owner of offending vehicle filed this appeal under Section 173 of the Motor Vehicle Act, 1988 questioning the legality and propriety of the impugned award dated 30.11.2013 passed in Claim Case-4 of 2012 by Additional Motor Accident Claims Tribunal, Bhatapara

(for short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed claim application filed by the claimants in part and awarded Rs.6,85,800/- as compensation in a death case, fastening the liability of payment of compensation upon the appellants herein.

2. Facts relevant for disposal of this appeal are that on 23.10.2011 at about 9.30 am Umeshwar Sahu was travelling on Tractor Engine bearing No.CG 04 DT 2379 attached with Trolley No.CG 04 ZG 4680 (hereafter, referred to as 'offending vehicle') fell down and came under the wheels of the Trolley, suffered grievous injuries and died on the spot. Claimants who are widow, children and aged parents filed an application under Section 166 Motor Vehicles Act, 1988 seeking compensation of Rs.12,05,000/- mentioning therein that on the date of accident deceased was earning Rs.6,000/- per month from the labour work and maintaining the family.

3. NA 1 and 2/driver and owner of offending vehicle, who are appellants in this appeal submitted reply to the claim application and denied the manner of accident as pleaded in the claim application. It is pleaded that NA2, owner of offending vehicle purchased it from Manav Motors/respondent-9 herein having its branch at Bhatapara. Manav Motors accepted charges of Rs.30,000/- for insurance along with cost of offending vehicle from NA2 and even after several requisitions, RC Book and the Insurance Policy were not handed over to NA2/owner, but only on 21.02.2011. They have also pleaded that as the Manav Motors accepted money for purchasing Policy of offending vehicle but have failed to insure the vehicle due to negligence on its part, Manav Motors also has been

made necessary party and amount of compensation if any, is to be paid, then, it is the liability of Manav Motors.

4. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties, held that deceased Umeshwar Sahu died in motor accident upon driving the offending vehicle by NA1 rashly and negligently; deceased died due to accidental injuries suffered by him and awarded a sum of Rs.6,55,800/- as compensation, fastening liability to pay the amount of compensation upon NA1 and 2, ie driver and owner of offending vehicle.

5. Smt Renu Kochar, learned counsel for the appellants submits that owner of offending vehicle has purchased offending vehicle on 20.10.2011 from Manav Motors and at the time of purchase of vehicle, along with the sale price, sale agency had charged Rs.30,000/- for the purpose of registering the vehicle and also getting it insured on the same date ie 20.10.2011. Accident took place on 23.10.2011. She submits that non getting the offending vehicle insured even after taking the money for purchase of Insurance Policy, is negligence on the part of sale agency ie Manav Motors/respondent-9 herein. Therefore, liability of payment of amount of compensation if any, to be fastened upon respondent-9, ie sale agency of offending vehicle. She further submits that learned Claims Tribunal awarded exorbitant amount of Rs.2,25,000/- on other conventional heads, which is required to be scaled down in view of law laid down by Hon'ble Supreme Court in the matter of **Pranay Sethi Vs National Insurance Company and others** reported in (2017) 16 SCC 680.

6. Shri Amiyakant Tiwari, learned counsel for the claimants/respondents-1 to 8 supported the award passed by learned Claims Tribunal.

7. Shri Anuroop Panda, learned counsel appearing on behalf of Shri BD Guru, learned counsel for respondent-9/Manav Motors submits that the submission made by learned counsel for the appellants is not correct. Even otherwise, it is the liability for payment of the amount of compensation upon the owner of offending vehicle, or if it is insured, then it is the Insurance Company, who indemnifies the owner. He further submits that if the offending vehicle was not got insured by the appellant/owner, he cannot escape from the liability to pay amount of compensation by making simple allegation upon respondent-9, without any proof.

8. We have heard learned counsel for the respective parties.

9. So far as the submissions made by learned counsel for the appellants with regard to liability to be shifted upon respondent-9 on account of extra payment of Rs.30,000/- to Manav Motors/sale agency for purchase of Insurance Policy, it failed to get the vehicle insured and therefore, liability to be shifted upon the Manav Motors, we are not satisfied with the above submission made by learned counsel for the appellants for more than one reason. Admittedly, in this case, the offending vehicle was not insured on the date of accident and liability to pay compensation under Motor Vehicles Act, 1988 is upon the owner . The ground raised in this appeal by learned counsel for the appellants that

even after accepting the amount towards premium for Insurance Policy, agency not got the vehicle insured is between the appellant/owner of the vehicle and sale agency/Manav Motors. Appellant/owner can pursue his remedies for the same before appropriate forum, as in this case, offending vehicle, which caused the accident and a person travelling in it died and it is the owner to satisfy the amount of compensation.

10. So far as the second ground raised by learned counsel for the appellants that learned Claims Tribunal awarded excessive amount on the other conventional heads ie of Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- towards love and affection and Rs.25,000/- for funeral expenses, is definitely on the higher side than what was held to be paid in **Pranay Sethi** case (supra).

11. In **Pranay Sethi case** (supra), other conventional heads are only three, under which the amount of compensation can be paid to the claimants, namely, loss of consortium, loss of estate and funeral expenses and there is no mention of payment of any amount towards love and affection.

12. For the foregoing reasons, the amount of compensation requires re-computation, which is as under:

- a) The claimants are entitled for Rs.4,60,800/- towards loss of dependency as assessed and calculated by learned Claims Tribunal.
- b) Apart from it, the claimants will be further entitled for Rs.40,000/- towards loss of consortium to the widow, Rs.40,000/- towards parental consortium to children, Rs.40,000/- for filial consortium to

parents, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

13. Now, the claimants will be entitled for a total sum of **Rs.6,10,800/** (460800 + 40000 + 40000 + 40000 + 15000 + 15000) as compensation in place of Rs.6,85,800/- as awarded by learned Claims Tribunal.

14. Above amount of compensation will carry 6% interest from the date of filing of claim application till its realisation. Other conditions imposed by learned Claims Tribunal shall remain intact.

15. In the result, appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge