NAFR

HIGH COURT OF CHHATTISGARH BILASPUR
M. A. (C) No. 622 of 2013

Manager, The Oriental Insurance Company Ltd. Division Office, Ramatrade Center, Near Bus Stand, Bilaspur, P.S. City Kotwali, Civil & Revenue Distt. Bilaspur (C.G.)

---- Appellant

Versus

1. Smt. Nirmala Verma wife of Harekrishna Verma, aged about 38 Years,

2. Nitesh Verma S/o Late Harekrishna Verma, aged about 16 Years,

3. Narayan Verma S/o Late Harekrishna Verma, aged about 12 Years,

4. Nagendra Verma S/o Late Harekrishna Verma, aged about 10 Years,

5. Nirjala Verma D/o Late Harekrishna Verma, aged about 15 Years,

   Respondents No. 2 to 5 are minor through guardian mother Smt. Nirmala Verma W/o Harekrishna Verma, by all caste-Kanchhi, R/o Village-Pendra, Ward No.12 (Bharrapara) P.S. & Tahsil-Pendra, Civil & Revenue District Bilaspur (C.G.).

6. Arogya Nadan Devid son of Mariyan Devid, by caste Christian, aged about 60 years, R/o Village Teliyamar (Deepak School), P.S. Pasan, Tahsil Podi-Uproda, Civil & Revenue District Korba (C.G.).

7. Basir Ahmad S/o Mohammad Tahir,l by caste Musalman, aged about 35 Years, R/o Village Pendra Ward No. 9, P.S. & Tahsil Pendra, Civil & Revenue District Bilaspur (C.G.).

---- Respondents

M. A. (C) No. 20 of 2013

1. Smt. Nirmala Verma, aged about 38 years, Wd/o Late Harekrishna Verma,

2. Nitesh Verma, aged about 16 years, S/o Late Harekrishna Verma,

3. Narayan Verma, aged about 12 years, S/o Late Harekrishna Verma,

4. Nagendra Verma, aged about 10 years, S/o Late Harekrishna Verma,

5. Ku. Nirjala Verma, aged about 15 years, D/o Late Harekrishna Verma,

Appellant No. 2 to 5 were minor therefore represented through natural guardian Mother Smt. Nirmala Verma, W/o:- Late Harekrishna Verma, Caste kachhi & All were the R/o Village Pendra, Ward No. 12 (Bharrapara), Tahsil & P.S. Pendra, District Bilaspur, C.G.

---- Appellants

Versus

1. Aarogya Nadan David, aged about 60 years, S/o Mariyan Devid, Cast Christian, R/o Village Teliyamar (Deepak School), P.S. Pasan, Tahsil. Podi-Uproda, District Korba C.G.

2. Bashir Ahmad, aged about 35 years, S/o Mohammad Tahir Cast Muslim, R/o Village Ward No. 09, Pendra, P.S. & Tahsil Pendra Road, District Bilaspur C.G.

3. The Oriental Insurance Co. Ltd. through Branch Manager, Ramatrade Center, Near Bus Stand, Bilaspur, District Bilaspur C.G.

---- Respondents

MAC No.622 of 2013

For Appellant	: Mr. Raj Awasthi, Advocate
For Respondents 1 to 5	: Mr. Hemant Gupta, Advocate
For Respondents 6 & 7	: None

MAC No.20 of 2013

For Appellants	: Mr. Hemant Gupta, Advocate
For Respondents 1 & 2	: None
For Respondent No.3	: Mr. Raj Awasthi, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge
Judgment On Board

Per Parth Prateem Sahu, Judge
08.06.2020

1. Present two appeals, one filed by the Insurance Company and other filed by the claimants are arising out of the award dated

27.09.2012 passed by Additional Motor Accident Claims Tribunal, Pendra Road District Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.91 of 2011, therefore, both the appeals are being decided by this common judgment.

2. The facts of the case in nutshell, are that, on 01/09/2011 Harekrishna Verma was travelling as pillion rider along with non-applicant No.2 on motorcycle, when they reached near village Damdam Muhalla Dhekital, Chouki Kotmikala, one Indica Car bearing registration No.CG10/F/7127 (hereinafter referred to as 'offending car') driven by non-applicant No.1, dashed the motorcycle of non-applicant No.2. Non-applicant No.2 and Harekrishna Verma suffered grievous injuries over their persons and during the course of treatment, Harekrishna Verma succumbed to the injuries.

3. Claimants who are widow and children of deceased Harekrishna Verma have filed claim application mentioning therein that the deceased was doing the business of fruit selling and thereby earning Rs.10,000/- per month. It was also pleaded that they were dependent on the deceased and claimed Rs.34,50,000/- as compensation mentioning the age of deceased on the date of accident as 40 years.

4. Non-applicant No.1 submitted reply to claim application and pleaded that deceased was travelling on Hero Honda motorcycle without being registration, they have consumed liquor and dashed the car by coming on wrong side. The deceased was a labour but the amount claimed against the death of Harekrishna Verma is highly exaggerated. It was also pleaded that on the date of accident, non-applicant No.2 while talking on the mobile phone had caused accident and non-applicant No.2 was also under the influence of liquor.

5. Non-applicant No.2 also submitted reply to claim application while denying the pleadings made in the application, pleaded that on the date of accident, he was possessing valid and effective driving license to drive the vehicle.

6. Non-applicant No.3/Insurance Company of the offending car submitted reply to claim application and pleaded that driver of motorcycle i.e. non-applicant No.2 was busy in chatting with the deceased (pillion rider) and dashed with the offending car. The accident was on account of negligence on the part of non-applicant No.2 and as such non-applicant No.3/Insurance Company of the offending car was not having any liability to pay the amount of compensation.

7. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as nine issues for consideration including the issue with regard to negligence on the part of non-applicant No.2.

8. On appreciation of the pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that non-applicant No.1 driver of offending car drove his car rashly and negligently and dashed the motorcycle driven by non-applicant No.2, rashly in which, Harekrishna Verma died, there was no violation of conditions of insurance policy and taking note of law laid down by Hon'ble Supreme Court in case of **T. O. Anthony v. Karvarnan and others**[1] has held non-applicant No.1 and non-applicant No.3/Insurance Company of the offending car to be liable for satisfying the amount of compensation and awarded a total sum of Rs.4,26,000/-.

9. Mr. Raj Awasthi, learned counsel for the appellant in MAC No.622 of 2013 submits that though learned Claims Tribunal arrived at a finding in issue No.4 that there was rash and negligent driving on the part of non-applicant No.2 owner of the motorcycle, but even then, the amount of compensation has not been apportioned between the two. It is also contended that as there was finding of contributory negligence, therefore, the equal liability ought to have been fastened upon the owner and insurer of both the vehicles.

10. Per contra, Mr. Hemant Gupta, learned counsel for respondents No.1 to 5/claimants in MAC No.622 of 2013 submits that learned Claims Tribunal has clearly recorded a finding that the defence taken by non-applicant No.1 driver-cum-owner of offending car has not been found proved by the learned Claims Tribunal. He submits that learned Claims Tribunal held non-applicant No.2

1 **(2008) 3 SCC 748**

owner and driver of motorcycle to be negligent only on the ground that there was head on collision as recorded in paragraph-13 of the impugned award. It is contended on the part of claimants that merely head on collision will not give rise to the contributory negligence on the part of driver of other vehicle unless and until the party asserting is able to prove by producing cogent and reliable piece of evidence before the Claims Tribunal, in which, appellant/Insurance Company has utterly failed. He also submits that deceased was a pillion rider and there cannot be a defence available to the Insurance Company of contributory negligence as for the claim against the death of pillion rider, it is a composite negligence.

11. We have heard learned counsel appearing for the respective parties and perused the record carefully.

12. Undisputedly, deceased Harekrishna Verma was traveling as a pillion rider. The claimants who are widow and children of the deceased seeking compensation can claim against any of the vehicle, even if, there is head on collision of the two vehicles.

13. To appreciate the submission made by learned counsel for the appellant/Insurance Company that learned Claims Tribunal had arrived at a finding that non-applicant No.2 was also negligent equally and contributed to the accident is concerned, we have gone through the finding recorded by learned Claims Tribunal in paragraph-13 of the impugned award, the learned Claims Tribunal has recorded the finding of contributory negligence only on the ground that there was head on collision between the two vehicles. Merely on account of involvement of two vehicles in the accident and that too as head on collision will not suffice to hold that driver of other offending vehicle was also contributed to accident unless and until the party asserting this fact has able to prove the fact of negligence on the part of other driver.

14. Non-applicant No.1 in his evidence has stated that the road was uneven, it was upside downs, there was no space towards his left side as there was one drain on the lower side of road and if he could have turned his car towards the left side, it might have over turned and both persons of the motorcycle were smelling liquor from their mouth. Both these grounds have not been found to be proved by learned Claims Tribunal on the basis of Ex.P/5, spot map, Ex.P/9, postmortem report and Ex.P/10, MLC of non-applicant No.2.

15. The issue of contributory negligence has been considered by Hon'ble Supreme Court in the matter of **Usha Rajkhowa and Others v. Paramount Industries and Others**[2].

> “22. Keeping these principles in mind, we find that there was absolutely no evidence to suggest that there was any failure on the part of the part of the car driver to take any particular care or that he had breached his duty in any manner. Such breach on his

2 **(2009) 14 SCC 71**

> part had to be proved by the insurance company as it was its burden and for that, the panchnama of the spot, showing tyre marks caused by brakes, and the panchnama of the damaged car and the truck could have been brought on record. The insurance company has obviously failed to discharge its burden. We, therefore, respectfully follow the abovementioned judgment."

16. Further, in the matter of **Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors.**[3] Hon'ble Supreme Court has held as to how the plea of contributory negligence is to be considered and decided and held thus -

> "17. The Tribunal, on appreciation of the oral and documentary evidence, has recorded the erroneous finding by placing strong reliance upon the charge-sheet-Exh.1 without considering the fact that the criminal case was abated against the deceased and further has made observation in the judgment that the appellants had not produced the FIR. Therefore, it has held that there was 50% contributory negligence on the part of the deceased driver in causing accident. 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

3 **(2013) 10 SCC 695**

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 P.W.2 and P.W.3 in their cross-examination and placed reliance on them to record the finding on issue no.1.

18. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious Issue 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. The Tribunal has accepted the part of oral evidence of the eyewitnesses regarding the scene of accident and it has erroneously placed reliance upon the charge-sheet, Ext. 1, which was filed against the driver of the offending truck and the deceased to hold that there was contributory negligence on his part by ignoring the fact that the criminal case against the deceased was abated. Therefore, we have to hold that the finding of fact recorded on Issue 1 by the Tribunal and affirmed by the High Court in the impugned judgment, is erroneous for want of proper consideration of pleadings and legal evidence by both of them. Accordingly, we have answered Point 1 in favour of the appellants insofar as the finding recorded by the Tribunal on the question of contributory negligence of 50% on the part of the deceased is concerned."

17. Again, in the matter of **Jiju Kuruvila and others v. Kunjujamma Mohan and others**[4]**,** the Hon'ble Supreme Court held thus :

"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

4 **(2013) 9 SCC 166**

> 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."

18. The law enunciated in the aforementioned law laid down by Hon'ble Supreme Court is that the mere collision of two vehicles will only not be sufficient to arrive at a conclusion that there was contributory negligence on the part of both the drivers. The Hon'ble Supreme Court further held that mere making the pleading is not sufficient to prove the fact of contributory negligence if it is alleged by one party or driver of the other vehicle. The contributory negligence cannot be said to be proved unless and until there is any direct or corroborative piece of evidence placed on record by the party asserting this fact, whereas in the present case, statement made by non-applicant No.1 driver of offending vehicle has been found to be not proved and Insurance Company has not led any evidence to prove the issue of contributory negligence by examining any of the witnesses on its behalf. The finding recorded by learned Claims Tribunal with regard to issue No. 4 is without any evidence. The said finding of negligence on the part of non-applicant No.2 is not sustainable and is hereby set aside.

19. The other important aspect of the case is that the deceased was pillion rider and he cannot be held to be negligent in any manner in the accident. The Hon'ble Supreme Court in the matter of **T.O. Anthony** (supra) has categorically held that contributory negligence will apply when the claimant is driver of either of the vehicle and not for the occupant or pillion rider.

20. In view of law laid down by Hon'ble Supreme Court, there will be composite negligence on the part of non-applicant No.1 and learned Claims Tribunal considering the law laid down by Hon'ble Supreme Court in the matter of **T.O. Anthony** (supra) has rightly arrived at a finding that the claimants can pursue the claim application without making Insurance Company of motorcycle also as the non-applicant and that the claim itself is maintainable against non-applicant No.1 and non-applicant No.3.

21. In view of above, we do not find any error in fastening the liability upon the appellant/Insurance Company for satisfying the amount of compensation. No other ground is raised by the learned counsel for the appellant. The appeal (MAC No.622 of 2013) being devoid of any substance, which is liable to be and is hereby dismissed.

22. Now, we deal with the appeal filed by the claimants in MAC No.20 of 2013. The submission on the part of the learned counsel for the appellants that the learned Claims Tribunal erred in holding the income of deceased as Rs.3,000/- per month ignoring the pleading and evidence of engagement of deceased Harekrishna Verma as fruit seller and earning Rs.10,000/- per month, further erred in not awarding any amount towards future prospects and awarding meager sum of Rs.21,000/- towards other conventional heads.

23. Per contra, learned counsel for respondent No.3/Insurance Company submits that the claimants have failed to prove the income of the deceased by placing any documentary or reliable piece of evidence before the learned Claims Tribunal and the learned Claims Tribunal on the basis of the evidence and material available on record by the claimants has awarded just and proper amount of compensation, which do not call for any interference.

24. True, it is that the claimants have not placed any documentary evidence or any other reliable piece of evidence to prove the income of the deceased as Rs.10,000/- per month as pleaded and stated but at the same time, it cannot be lost sight of the fact that the deceased was maintaining the family of six persons including himself. Even if the claimants failed to prove the income of the deceased by placing cogent and reliable piece of evidence then also it is the duty of the Tribunal to award just and proper amount of compensation by taking the notional income of the deceased based on the price index and wage structure prevailing on the date of accident. Even if the deceased might be doing the labour work, in the opinion of this Court, looking to the date of accident i.e. 01.09.2011 and also analyzing the price index and wage structure, we deem it appropriate and proper to hold the income of the deceased as Rs.4,000/- per month. As on the date of accident, the age of the deceased was shown to be 40 years based on the postmortem report (Ex. P/9), the claimants will be entitled for an addition of 25% of the established income towards future prospects in the income of the deceased, which makes the income of the deceased as Rs.5,000/- (4,000 + 25%).

25. The learned Claims Tribunal awarded a sum of Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium, Rs.5,000/- towards loss of estate and Rs.1,000/- towards conveyance expenses. So far as the award of amount of compensation towards other conventional heads, the law has been settled by Hon'ble Supreme Court in the matters of **National Insurance Company Limited v. Pranay Sethi and others**[5] and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others**[6]**.**

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5 **AIR 2017 SC 5157**

6 **(2018) 18 SCC 130**

26. In view of aforementioned discussions and law laid down by Hon'ble Supreme Court in the aforementioned cases, in the considered opinion of this Court, just and proper amount of compensation is to be awarded to the claimants. For the reasons stated herein-above, the amount of compensation to be awarded to the appellants/claimants requires reconsideration and recalculation, which is in the following terms :-

As the income of the deceased is assessed as Rs.4,000/- per month i.e. Rs.48,000/- per annum and by adding 25% towards future prospects i.e. Rs.12,000/-, the yearly income comes to Rs.60,000/-. The deceased was survived by the widow and four children, therefore, there will be a deduction of 1/4th towards his personal and living expenses i.e. Rs.15,000/- (60,000 / 4) in view of the case law of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[7], the yearly dependency of the claimants' comes to Rs.45,000/-. At the time of accident, the deceased was shown to be aged about 40 years, therefore, multiplier of 15 would be applicable in the present case. After applying the multiplier of 15, the total loss of dependency comes to Rs.6,75,000/- (45,000 x 15). Apart from above loss of dependency, the claimants will be entitled for a sum of Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium of spouse, Rs.40,000/- towards loss of parental consortium for the children

7 **(2009) 6 SCC 121**

(claimants No.2 to 5). Though the death was instantaneous, further sum of Rs.10,000/- towards pain and suffering. The claimants will be further entitled for a sum of Rs.1,000/- towards conveyance expenses as awarded by learned Claims Tribunal.

27. On the basis of above recalculation, now the claimants will be entitled for a total compensation of Rs.7,96,000/- (6,75,000 + 15,000 + 15,000 + 40,000 + 40,000 + 10,000 + 1,000) instead of Rs.4,26,000/- as awarded by the learned Claims Tribunal. The amount of compensation will carry interest at the rate of 7% per annum from the date of filing of the claim application till its realization. Out of total enhanced amount of compensation, 50% of the amount of compensation to be paid to the claimant No.1 i.e. widow and rest of the 50% amount to be equally deposited on the name of claimants No.2 to 5 for a period of three years.

28. In the result :-

(A) MAC No.622 of 2013 filed by Insurance Company is dismissed.

(B) MAC No.20 of 2013 filed by the claimants is allowed in part and the impugned award is modified to the extent indicted herein-above.

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

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh