NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 128 of 2014

The Oriental Insurance Company Limited, through Divisional, the Oriental Insurance Company Chawla Complex, Sai Nagar Devendra Nagar, Raipur, District – Raipur (CG) (**Insurer of vehicle Truck No.CG 04-ZC-3996**).

---- Appellant/Non-applicant No.3

Versus

1. Smt Pushpa Sahi, Wd/o Jitendra Kumar Sahu, aged about 21 years
2. Ramji Sahu, S/o Sitaram Sahu, aged about 45 years
3. Smt Dukalhin Bai, W/o Ramji Sahu, aged about 43 years

   All r/o village Bachhera, Post Damakheda, Police Station Simga, District – Raipur (CG) **(Claimants)**
4. Salvinder Singh, S/o Jagir Singh, R/o MD 148, Veer Sawarkar Nagar, Hirapur, Raipur, PS Amanaka, Tahsil and District – Raipur (CG) **(Driver of Vehicle Truck No.CG-04 ZC 3996) (NA1)**
5. Sardar Surjeet Singh, S/o Sahid Singh, R/o Builder Friend Carrier, Tatibandh, Raipur, District- Raipur (CG) **(Owner of vehicle Truck No.CG-04-ZC-3996) (NA2)**

----Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate
For Respondents-1 to 3	:	Shri Amiyakant Tiwari, 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 impugned award dated 30.11.2013 passed in Claim Case-41 of 2012 by the First Additional Motor Accident Claims Tribunal, Raipur, whereby learned Claims Tribunal allowed the Claim application in part and awarded a total sum of Rs.5,83,000/- as compensation in a death case.

2. Facts of the case in a nutshell are that on 18.01.2011 at about 9 pm, Jitendra Sahu (since deceased) while driving the Motorcycle bearing No.CG-04 DJ 8431 was going to village Chanderi from village

Bansankara, along with his friend Lekhram Dhruw (pillion). On the way, when they reached near the bridge at village Bansankara, his Motorcycle dashed a stationary Truck bearing No.CG-04 ZC 3996 (hereafter, referred to as 'offending vehicle') loaded with iron rods. Iron rods were projected outside the body of Truck and it was parked at middle of the road without there being any sign, signal, parking lights/indicators etc. Motorcycle dashed the iron rods projected outside the body of the offending vehicle. In the said accident, Jitender Sahu suffered grievous injuries over his both eyes, fore-head, chest and succumbed to the injuries on spot. Accident was reported to concerned Police Station, based upon which crime was registered against the driver of the Truck.

3. Claimants, who are widow and parents of deceased filed an application under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,16,000/- as total compensation pleading therein that on the date of accident, deceased was working as labour in Shyam Sponge Company and earning Rs.9,000/- per month. The claimants who are dependants upon the income of the deceased and due to untimely death, they are heavily suffering.

4. NA1 and 2, driver and owner of offending vehicle did not appear before the learned Claims Tribunal and were proceeded *ex-parte*.

5. NA3/Insurance Company, appellant herein resisted the claim, pleading therein that the accident was not on account of negligence of NA1, driver of offending vehicle, but the accident is on account of negligence of deceased himself. It is further pleaded that deceased

himself dashed the truck which was parked on the road side, amount claimed in the claim application is highly exaggerated, deceased was not working with Shyam Sponge Company as labour and not earning the amount of income as pleaded in the claim application. Driver of the offending vehicle was not possessing valid and effective driving license, there was no valid permit and fitness of offending vehicle, thereby, there was breach of conditions of Insurance Policy.

6. Learned Claims Tribunal on appreciation of pleadings has formulated four issues for consideration including the issue with regard to valid and effective license of NA1, driver of offending vehicle. Upon appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal recorded a finding that offending vehicle was parked negligently on the road without any sign, signal or parking lights/indicators with iron rods and awarded Rs.5,83,000/- fastening liability to satisfy the amount of compensation upon Non-applicants jointly and severally.

7. Shri Pankaj Agrawal, learned counsel for the appellant/Insurance Company submits that the accident took place on account of negligence of deceased himself as he dashed with the stationary Truck on its backside. He further argued that if sole negligence of the deceased is not taken into account, then also, there will be contributory negligence on the part of deceased as he dashed the stationary Truck. Learned counsel further submitted that on the date of accident driver of offending vehicle was not possessing valid and effective driving license and therefore, no liability can be fastened upon the Insurance Company. It is further contended that learned Claims Tribunal erred in awarding excessive amount of

compensation in the facts and circumstances of the case, which is required to be scaled down suitably.

8. Per contra, Shri Amiyakant Tiwari, learned counsel for respondents-1 to 3/ claimants submits that so far as the breach of conditions of the Insurance Policy is concerned, learned Claims Tribunal has considered the evidence placed by respective parties with regard to issue No.2 framed by it in detail and thereafter, it arrived at a finding that on the date of accident, NA1/driver of offending vehicle was possessing valid and effective driving license. It is also pointed out that in the accident, Jitendra Sahu died and pillion Lekhram Dhruw suffered grievous injuries. Two claim applications came to be filed seeking compensation, one for the compensation due to motor accidental death of Jitendra Sahu and the other for compensation for injuries suffered by Lekhram Dhruw, pillion rider. Injury case of Lekhram Dhruw was put to challenge by the Insurance Company in MAC-127 of 2014, which was dismissed by learned Single Judge vide order dated 04.12.2014. Therefore, appellant/Insurance Company cannot be permitted to raise the same ground which was already taken by the Insurance Company in its appeal, challenging the award arising out of the same accident and the said appeal was dismissed.

9. With regard to the quantum of amount of compensation, learned counsel for the claimants submits that the submission made by learned counsel for the appellant that excessive amount of compensation is awarded to the claimants is not sustainable or correct. It is contended that claimants also have filed cross-objection under Order 41 Rule 22 of the CPC seeking enhancement of compensation. Claims Tribunal though not

accepted the pleading of income of deceased as Rs.9,000/- per month, as the said income could not be proved by the claimants, then also looking to the date of accident, learned Claims Tribunal ought to have taken income of the deceased as Rs.5,000/- per month. Claims Tribunal has not awarded any amount towards future prospects, which will be 50% of established income of deceased to be added and further, learned Claims Tribunal erred in awarding meagre amount on other conventional heads.

10. We have heard learned counsel for the respective parties and perused the record of Claim Case.

11. So far as the ground raised by learned counsel for the appellant/Insurance Company with regard to the breach of conditions of Insurance Policy is concerned, when the appellant/Insurance Company had not chosen to challenge the order dated 04.12.2014 passed in MAC-127 of 2014, wherein learned Single Judge has dismissed the appeal filed by the Insurance Company and denied interference in the impugned award. The findings of the learned Claims Tribunal that on the date of accident, NA1 Driver of offending vehicle was not having valid and effective driving license to be not proved by the Insurance Company was affirmed then the appellant cannot take the same plea before this Court. The record of MAC-127 of 2014 is also linked with this appeal and we have perused the same. Perusal of grounds raised in the said appeal would show that ground 'A' with regard to holding a valid and effective driving license by the driver of offending vehicle as well as the Motorcycle was raised by the appellant.

12. In view of above, appellant/Insurance Company cannot be permitted to raise the same ground which was already turned down by learned Single Judge while dismissing the appeal MAC-127 of 2014. The ground of breach of conditions of Insurance Policy raised by the Insurance Company is repelled.

13. So far as the second ground raised by learned counsel for the appellant with regard to contributory negligence is concerned, we have perused the finding recorded by learned Claims Tribunal wherein paragraph-10 of the impugned award it is mentioned that the offending vehicle was parked at night on the centre of road negligently, without there being any sign, signal or parking lights/indicators. The time of accident was at about 9 pm. Further, there is a finding that iron rods loaded in the offending vehicle were projecting outside its body and the deceased dashed with the iron rods which were projected out side the body of offending vehicle. We have perused copy of the FIR filed as Ex.P2, wherein it is mentioned that offending vehicle was parked on the middle of the road dangerously, that too in the night, without there being any sign, signal, or parking lights/indicators.

14. Claimants have examined Lekhram Dhruw, who was pillion rider on the Motorcycle driven by the deceased as AW2. In his examination-in-chief, he stated that offending vehicle was parked on the centre of road at night, without there being any sign, signal, or parking lights/indicators. This witness was cross-examined by learned counsel for the Insurance Company at length, in which he also stated that offending vehicle was parked on the middle of the road. In his evidence, he further clarified that

at the time of accident, another truck was coming from opposite direction and trying to save themselves from said truck, they met with accident. From the aforementioned material and evidence available on record, it is clear that the offending vehicle was parked on the middle of road without there being any sign, signal, or parking lights/indicators and further, one other truck was coming from opposite direction.

15. Another aspect of the case is that in the order passed by learned Single Judge in MAC-127 of 2014, learned Single Judge has held as under:

> "8. Taking into consideration the entire facts and circumstances of the case particularly the finding that the offending truck had been parked in the middle of the road without any parking light or any other indication the liability caste on the Insurance Company of the Truck is proper....."

16. In view of above finding recorded by learned Single Judge in MAC-127 of 2014, finding with regard to contributory negligence also attained finality as the finding of learned Claims Tribunal was not put to challenge before any superior Court.

17. Apart from above, claimants have placed on record copy of FIR (Ex.P2) copy of Final Report filed under Section 173 of the Cr.PC (Ex.P1), evidence of Lekhram Dhruw as AW2 to prove their case. AW2 was examined as eyewitness to the accident as he was travelling on same Motorcycle as pillion. The appellant/Insurance Company examined one Pradeep Bhosle as NAW-3/1 to prove the license, SL Mehta as NAW3/2 Assistant Lubricant manager of appellant/Insurance Company.

Insurance Company not examined any witness to prove the accident, no driver of the offending vehicle entered into the witness box to refute the pleadings and evidence of the claimants. In view of the above the pleadings and evidence placed on record by the claimants remained uncontroverted.

18. Recently, Hon'ble Supreme Court in the matter of **Jumani Begum vs. Ram Narayan & ors** reported in **Manu/SC/1784/2019**, equivalent to **(2020) 1 SCJ 43**, has again considered the issue of contributory negligence in an accident of motor vehicle with stationary motor vehicle and held thus :-

> "9 The MACT then discussed the evidence of the driver of the truck trailer, NAW 1. After analysing the evidence of the driver, the MACT held that his evidence did not inspire confidence, when he stated that indicators on the truck trailer had been lit. On the contrary, the eye-witness, AW 2, in the course of his cross-examination, denied the existence of reflectors at the spot. The MACT noted that it did not appear that the truck trailer had been parked outside the area of the pakka road. In spite of its analysis in the above terms, the MACT surmised that if the lights of the motorcycle were lit, the deceased would have been able to avoid the accident. This part of the reasoning of the MACT is purely a matter of surmise. Once the substantive evidence before the MACT established that the truck trailer had been parked on the road at night without any reflectors, we are of the view that there was no reason or justification for the MACT to proceed on the basis of conjecture in arriving at a finding of contributory negligence. We find from the judgment of the High Court that this aspect has not been discussed at all and the High Court simply proceeded to confirm the finding of

> contributory negligence. Consequently, on the first limb of the submission, learned counsel appearing on behalf of the appellant is correct and the submission requires to be accepted.”

19. In view of above ruling, if facts of the present case are considered, it is a case where parking of truck on road in night without parking lights, without indicator lights on and without any sign or signal was parked, we do nto find any force inthe submission of learned counsel for the appellant that the Claims Tribunal erred in not considering the deceased was also contributory negligent int he accident and the same is repelled.

20. For the aforementioned reasons, both the grounds raised by learned counsel for the Insurance Company are not sustainable and they are hereby repelled.

21. So far as the quantum of compensation awarded by learned Claims Tribunal is concerned, the claimants have pleaded that deceased was working as labour in Shyam Sponge Company. It is true that the claimants have not produced any documentary evidence nor examined any witness of that Company, where the deceased was working prior to the accident, income pleaded in the claim application cannot be accepted as a Gospel Truth for assessing compensation. But looking to the date of accident as well as wage structure and nature of engagement of deceased in the Company as pleaded in the claim application, Notional income can be considered for assessing the compensation.

22. Date of accident is 18.01.2011, deceased was working as labour and considering the cost of living, price index at that time, we find it appropriate to assess income of the deceased at Rs.4,000/- per month.

23. In view of law laid down by Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in **(2017) 16 SCC 680**, looking to the age of the deceased as assessed by learned Claims Tribunal, to be of 23 years on the date of accident, there will be 40% addition to the established income of the deceased towards future prospects. Liability to satisfy the amount of compensation is of the appellant/Insurance Company.

24. Deduction would be 1/3 of total income for personal and living expenses of the deceased and appropriate multiplier would be 18 as per law laid down in case of **Sarla Verma and others Vs Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** whereas Claims Tribunal assessed income of Rs.3,000/-, applied multiplier of 17 and deducted 1/3rd towards personal and living expenses.

25. For the aforementioned reasons, impugned award requires re-computation and re-calculation which is as under:

a) Income of the deceased is assessed as Rs.4,000/- per month and Rs.48,000/- per annum.

b) By adding 40% to the established income of the deceased towards his future prospects, total yearly income of the deceased will come to Rs.67,200/- {48000 + (48000 x 40/100)}.

c) After deducting 1/3 towards his personal and living expenses from the yearly income of the deceased, yearly loss of dependency of the claimants comes to Rs.44,800/- {67200 – (67200x1/3)}.

d) As the deceased on the date of accident was only 23 years of age, therefore, appropriate multiplier will be 18. By multiplying yearly loss of dependency with multiplier of 18, total loss of dependency will come to Rs.8,06,400/- (44800 x 18).

e) Apart from the above total loss of dependency, claimants are entitled for Rs.40,000/- towards spousal consortium and Rs.40,000/- towards filial consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

26. Now, claimants/cross-objectors are entitled for a sum of **Rs.9,16,400/-** (806400 + 40000 + 40000 + 15000 + 15000) instead of Rs.5,83,000/- as awarded by the learned Claims Tribunal. This amount of compensation will carry interest @ 6% per annum from the date of filing of claim application till its realisation.

27. Claimant-1, widow of the deceased will be entitled for 50% of the total amount of compensation along with interest and remaining 50% amount of compensation along with interest will be distributed amongst claimants-2 and 3, parents of deceased equally.

28. Other conditions imposed by the learned Claims Tribunal will remain intact.

29. In the result, appeal filed by the Insurance Company is dismissed and cross-objection filed by the claimants is allowed in part.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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