NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1129 of 2014

- Branch Manager, The Oriental Insurance Co. Ltd., The Oriental Insurance Company Limited Branch Office, Vyapar Vihar, Distt. Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Prakash Banjare, S/o Bholadas Banjare, Aged About 38 Years
2. Binda Bai W/o Prakash Banjare Aged About 36 Years

   Both R/o Village Ghutiya Teh. Bilha, District : Bilaspur, Chhattisgarh (Claimants)
3. Himanshu Kumar Sahi, S/o Chandrika Prasad Sahi, R/o Kalika Nagar, Tifra, Bilsapur Teh. And Distt. Bilapsur, Chhattisgarh (NA1)
4. Abhishek Das S/o Nathaliyan Das, Aged About 27 Years, R/o Village Baitalpur PS Hirri, District : Bilaspur, Chhattisgarh (NA2)

----Respondents

For Appellant/Insurance Company	:	Shri Pankaj Agrawal, Advocate
For Respondents-1 and 2/Claimants	:	Shri Basant Dewangan, Advocate
For Respondents-3 and 4/NA1 & 2	:	Shri AL Singroul, Advocate

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

Per Parth Prateem Sahu, J.
24.09.2020

1. Insurance Company has filed this appeal under Section 173 of the MVA challenging the impugned award dated 01.10.2014 passed by the Additional Member of the 1st Additional Motor Accidents Claims Tribunal, Bilaspur (for short, 'Claims Tribunal') in Claim Case-187 of 2014 whereby learned Claims Tribunal allowed the claim application in part and awarded Rs.3,03,000/- as compensation in a death case.

2. Facts of the case, in nutshell, are that on 07.06.2011 NA-1 along with helper Ritesh Banjara proceeded for Sonadih from Bilaspur on Truck

Bearing No.CG11A-3613 loaded with coal. On the way when they reached near Bilha turn, NA-2, driver of the truck, has parked his vehicle and asked Ritesh Banjara to cover the coal with tarpaulin. Ritesh Banjara was putting tarpaulin over the coal loaded in the truck, while so NA-2 negligently moved the truck and due to sudden movement of truck by NA-2, Ritesh Banjare came into contact with the overhead high tension electric wire, suffered electric shock and fell down from the truck. Ritesh Banjare succumbed to the injuries suffered by him on the spot.

3. Claimants, who are parents of the deceased filed an application under 163A of the Motor Vehicle Act, seeking compensation of Rs.23,84,000/- on account of untimely death of their son Ritesh Banjare, pleading therein that on the date of accident, deceased, who was about 16 years old able bodied boy, was working as helper and earning Rs.100/- per day.

4. NA-1 and NA-2, owner and driver of the offending vehicle filed joint reply to claim application and denied entire pleadings except the details and address mentioned in the claim application. They further pleaded that no accident occurred on account of negligence of NA-2. NA-2 even denied that he asked the deceased to climb over the body of the truck and to cover the coal with tarpaulin. Deceased met with the accident on account of his own negligence. NA-2 was possessing a valid and effective driving license and the offending vehicle was insured with NA-3/Insurance Company on the date of accident. The liability to satisfy the amount of compensation if any, will be upon the Insurance Company.

5. NA-3 Insurance Company submitted reply to claim application and denied almost all pleadings made therein. It was denied that the accident took place on account of negligent driving of NA-2, the deceased on account of his own negligence met with the accident. NA-2 was not possessed with valid and effective driving license and there was no permit and fitness certificate of the offending vehicle on the date of accident. Risk of cleaner / helper was not covered under the policy and he being an occupant of the offending vehicle, could not be treated as 3rd party for the purpose of Section 147 of the Act 1988. It was also pleaded that prior to filing of claim application, the claimants have filed Case No.199 of 2011 before the 4th Additional Motor Accident Tribunal, Bilaspur which was dismissed on an objection taken under Order 7 Rule 11 of the CPC, therefore, second application filed under section 163A of the Act of 1988 was not maintainable. The case pleaded in the application under section 163A of the Act of 1988 is on the basis of false and fabricated grounds.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties held that the accident took place on account of rash and negligent driving of offending vehicle by NA2; deceased died due to accidental injuries suffered by him in the accident. The plea of *res-judicata* and also breach of policy conditions could not be proved and accordingly, awarded Rs.3,03,000/- as compensation.

7. Shri Pankaj Agrawal, learned counsel for appellant/Insurance company submits that at the time of accident deceased was travelling on the platform of the offending vehicle and not in the cabin. Any premium

covering risk of cleaner has not been paid by NA1, hence, NA3 is not liable to pay any amount of compensation on account of death of the deceased. He further submits that learned Claims Tribunal awarded Rs.15,000/- under other conventional heads ignoring the fact that the application has been filed under Section 163A of the Act of 1988 and the amount under other conventional heads is to be awarded strictly in accordance with the Second Schedule of the Act.

8. Shri Basant Dewangan, learned counsel for Respondents 1 & 2 / Claimants submits that the learned Claims Tribunal erred in applying multiplier of 16 instead of 18, as per the dictum of Hon'ble Apex Court in case of **Sarla Verma and others Vs Delhi Transport Corporation and another reported in** (2009) 6 SCC 121. He further points out that the Tribunal further erred in not awarding just amount of compensation on the head of funeral expenses, love and affection. No amount towards future prospects has been awarded as per the law laid down by Honble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in (2017) 16 SCC 680 and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram & others reported in (2018) 18 SCC 130.** Learned counsel contended that **respondents-1 and 2/ claimants have also preferred cross appeal** seeking enhancement of compensation which may be allowed and the amount of compensation be suitably enhanced.

9. Shri A.L.Singraul, learned counsel for respondents 3 & 4, owner and driver of offending vehicle submits that on the date of accident offending vehicle was insured with NA-3/Insurance Company and the offending

vehicle was not plied in breach of any of the policy conditions, therefore, no liability can be fastened upon them.

10. We have heard learned counsel for the parties and also perused record of the claim case.

11. So far as the first submission made by the learned counsel for the appellant/Insurance Company, that the claim application was hit by principle of *res-judicata* is concerned, we have perused order sheet of the Claims Tribunal dated 06.10.2012 wherein the objection raised by the appellant insurance company was dismissed by learned Claims Tribunal but that order of rejection of the objection with regard to the maintainability of claim application was not challenged before the higher Court by the Insurance Company. Copy of the order dated 10.04.2012 passed in case no.199 of 2011 is also available on record by which the 4th MACT Bilaspur dismissed the claim application on the ground that the said Tribunal is not having jurisdiction to entertain the claim against the CG State Electricity Board and further granted liberty to the claimants to file an application / case under the Electricity Act or to file case before the Tribunal against owner, driver and insurance company.

12. In view of the aforementioned facts available on record, particularly considering the order dated 10.04.2012 passed in claim case No.199 of 2011 wherein liberty was granted to the claimants to file claim case against the driver owner and insurance company, which was not challenged by the appellant/Insurance Company, we do not find any force in this submission of learned counsel for appellants and the same is hereby repelled.

13. As regards the 2nd argument raised by learned counsel for the appellant with regard to coverage of deceased, who was working as cleaner in the offending vehicle, we have perused copy of Insurance Policy, which was placed on record as Ex.D3. Under the schedule of premium, under the head of LL-Paid Driver, Conductor, Cleaner- IMT-40 and Rs.50/- was charged. Further, under the provisions of Section 147 of the Act of 1988, requirement of policies and limits of liability have been prescribed under proviso to Section 147 (i) which reads as under:

> "(a)xxxx (b)xxxx
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (ii) xxxxxxxxx
>
> Provided that a policy shall not be required—
>
> (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other then a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—
>
> (a) engaged in driving the vehicle, or
>
> (b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or
>
> (c) if it is a goods carriage, being carried in the vehicle, or.

(ii) to cover any contractual liability.

Explanation.- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place."

14. In view of the aforementioned specific provisions under the Motor Vehicle Act and looking to the fact that the deceased was working as Cleaner in the goods vehicle, under the Schedule of premium (Ex D3) premium is paid for LL-Paid driver, Cleaner, Conductor under IMT 40, the submission made by learned counsel for the appellant / Insurance company that the risk of cleaner was not covered under the policy is not sustainable and is hereby repelled.

15. Another submission made by learned counsel for the appellant is that award of compensation on other conventional heads is on higher side. Learned Claims Tribunal awarded Rs.5,000/- towards funeral expenses and Rs.10,000/- towards love and affection. This case is filed under section 163A of the Act 1988, therefore, the amount awarded under other conventional heads is to be awarded strictly under the heads specifically mentioned in the Second Schedule.

16. Under the Second schedule, amount of compensation to be awarded is prescribed as under :

Funeral expenses- Rs.2,000/-

Loss of estate- Rs.2,500/-

Loss of consortium-Rs.5,000/-

17. The amount on other conventional heads under which compensation to be awarded is fixed under Second schedule, this submission by learned counsel for the appellant Insurance Company appears to have some force. Learned Claims Tribunal has awarded excessive amount of compensation under other conventional heads, which in the opinion of this Court requires to be scaled down.

18. Learned counsel for the appellant also pointed out that the Claims Tribunal erred in awarding conditional interest @ 9% on the awarded amount, if the amount of compensation is not paid within the prescribed period. He submits that there is no provision under the law to award conditional interest.

19. Award of interest is envisaged under Section 171 of the Act of 1988, which only prescribes for award of simple interest, not earlier than the date of making the claim. Under this Section, there is no mention of awarding conditional interest, if the award of compensation is not paid within the prescribed period.

20. In view of above, the award of conditional interest @ 9% awarded by Claims Tribunal is not sustainable and it is hereby set aside.

21. The claimants have also filed cross objection under Order 41 Rule 22 of the CPC seeking enhancement of the compensation.

22. Learned counsel for the insurance company submitted that the cross objection filed by the claimants is barred by limitation but no application for condonation of delay has been filed. Learned counsel for the claimants submits that he has filed Vakalatnama on 12.10.2015 and on the same date cross objection was also filed. He further submits that if there is any delay in filing cross objection, his oral prayer for condonation of delay may be accepted.

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

24. The provision of Order 41 Rule 22 of CPC prescribes for time of 30 days from the date of service of notice for filing cross objection. The notice was served upon the respondent / claimant in the month of 11.03.2015, but they have filed cross objection on 12.10.2015. Admittedly, there is delay in filing cross objection but looking to the object of the Act of 1988 that just compensation is to be awarded to unfortunate claimants loosing their earning family member; in this case their son, we find it appropriate to accept the oral prayer of learned counsel for respondents-1 and 2 to condone the delay in filing cross objection. Accordingly, the delay in filing cross objection is hereby condoned.

25. Submission of learned counsel for the claimants that multiplier of 16 has been applied instead of 18; no amount has been awarded towards future prospects, and the amount awarded under other conventional heads is also on lower side.

26. Submission of learned counsel for the claimants for enhancement of the compensation appeal on the ground of non-awarding future prospects,

non-application of multiplier of 18 and award of Rs.15,000/- on other conventional heads is not sustainable for the sole reason that the application for grant of compensation is filed under section 163 A of the Act 1988.

27. When application is filed under Section163A, the computation of award of compensation is to be done strictly in accordance with the formula as prescribed under the Second Schedule. Under this Schedule, there is no mention of awarding future prospects; application of multiplier for the deceased between the age group of 15 to 20 years is prescribed as 16 and compensation on other conventional heads has been fixed as mentioned in the preceding paragraphs.

28. Since the deceased was bachelor on the date of accident, learned Claims Tribunal deducted 50% of amount of income towards personal and living expenses but in the considered opinion of this court, the Tribunal has erred in deducting 50%. The deduction of half towards personal and living expenses of a deceased, who was bachelor, cannot be made in claim cases filed under Section 163A of the Act of 1988. Deduction as prescribed under Note of Second Schedule is mentioned as 1/3rd. Separate deduction is not prescribed for the bachelor and married, hence, we hold that deduction towards personal and living expenses shall be 1/3rd instead of one half.

29. In view of above, the amount of compensation to be awarded to the claimants requires re-consideration and re-computation which is as under:

a) Income of the deceased is taken as 3,000/- per month and Rs.36,000/- per annum.

b) After deducting 1/3rd towards personal and living expenses, yearly loss of dependency comes to Rs.24,000/- [36000 — (36000 x 1/3)].

c) By multiplying yearly loss of dependency with multiplier of 16, total loss of dependency comes to Rs.3,84,000/- (24000 x 16).

d) Apart from above, claimants will be further entitled for Rs.2,000/- for funeral expenses, Rs.5,000/- for loss of consortium, and Rs.2,500/- towards loss of estate.

30. Now the claimants/respondents-1 and 2 are entitled for Rs.3,93,500/- as compensation instead of Rs.3,03,000/-, as awarded by learned Claims Tribunal.

31. For the foregoing reasons appeal filed by Insurance Company is allowed in part only to the extent of scaling down the award of compensation on other conventional heads.

32. Cross objection filed by respondents-1 and 2 / claimants is allowed and the claimants are entitled for a sum of Rs.3,93,500/- as compensation. The aforementioned compensation will carry interest @ 6% from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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