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HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 81 of 2014

(Arising out of award dated 21.10.2013 passed in Motor Accident Claim Case No.57 of 2010 by the Motor Accident Claims Tribunal, Koriya (Bainkunthpur), Chhattisgarh)

Branch Manager Sri Ram General Insurance Company Ltd. Rico Industrial Area Sitapur Jaipur (Rajisthan).

---- Appellant

Versus

1. Smt. Poomamdevi W/o late Kamal Prasad, Aged about 35 years.
2. Ku. Rekhawati Daughter late Kamal Prasad, aged about 15 years
3. Prakash son late Kamal Prasad, Aged about 13 years.
4. Vikas Kumar son Kamal Kumar, aged about 11 years.
5. Smt. Thakurin Bai …......(Died and deleted).
   Respondent No. 2, 3, 4 are minor through their natural guardian mother Smt. Poonamdevi.
   All resident Vishnpur, Thana Charcha Tahsil Baikunthpur Zila Koria, C.G.
6. Mohd. Ishryal s/o Navidad Resident Gram Mahora, Thana, Patna Tehsil Bainkunthpur Zila, Koria, C.G.
7. Sharafat Khan s/o Ramjan Khan Resident Gram Tongni (Khutanpara) Thana, Patna, Tehsil Bainkunthpur Zila Koria C.G.

---- Respondents

For Appellant	:	Shri Deepak Gupta, Advocate
For Respondents No.1 to 4	:	Shri Anil Gulati, Advocate
For Respondent No.6	:	None
For Respondent No.7	:	None

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

Judgment On Board

Per Parth Prateem Sahu, Judge

17.07.2020

1. Appellant/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter

referred to as 'M.V. Act') challenging the impugned award dated 21.10.2013 passed by the Motor Accident Claims Tribunal, Koriya (Bainkunthpur), Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.57 of 2010 whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.20,90,800/- as compensation in a death case.

2. Claimants have also filed cross appeal/cross objection challenging the impugned award and sought for enhancement of amount of compensation awarded by learned Claims Tribunal.

3. Facts relevant for disposal of this appeal are that, on 10.03.2010 Kamal Prasad was driving his motorcycle bearing registration No.CG-16/ZE/0129 and coming to his house at Vishunpur from Baikunthpur, while so, when he reached near Shivpur bridge, one Commander Jeep bearing registration No.CG-16/ZD/1347 (hereinafter referred to as 'offending Jeep') driven by respondent No.7/non-applicant No.2 rashly and negligently, dashed the motorcycle of Kamal Prasad and caused accident. In the aforementioned, accident, Kamal Prasad suffered grievous injuries over his person. He was taken to Regional Hospital, Charcha, where he was declared dead. The accident was reported by the Hospital management to Police Station Charcha. On the

basis of information given by informant, merg intimation bearing No. 07/2010 was registered and the Police started the investigation of crime. After completion of investigation, final report was submitted before the competent Court.

4. Claimants who are widow, children and widow mother of deceased Kamal Prasad filed claim application before the competent Claims Tribunal claiming compensation of Rs.96,65,000/- on the grounds mentioned therein.

5. Non-applicants No. 1 and 2/respondents No. 6 and 7 submitted reply to claim application and pleaded that the accident took place on account of negligence on the part of driver of the motorcycle, who dashed his motorcycle with offending Jeep and became victim of the accident. It was further pleaded that on the date of accident, offending Jeep was insured with non-applicant No.3/Insurance Company and respondent No.7/non-applicant No.2 was possessing valid and effective driving licence to drive the vehicle, therefore, the liability, if any, for payment of any amount of compensation would be on the Insurance Company.

6. Appellant/Insurance Company/non-applicant No.3 submitted reply to claim application pleading therein that from the documents placed on record, it is apparent that after 10 days of the accident, written report was forwarded and on the basis of which, crime was registered against the offending

Jeep and the Jeep was seized. The merg was intimated immediately after the accident, but in the merg, there is no mention about the alleged accident, therefore, pleadings made in claim application with regard to accident appears to be suspicious. It was further pleaded that there was no valid and effective driving licence with non-application No.2, there was no valid registration and permit, which are breach of conditions of insurance policy, therefore, Insurance Company is not liable for payment of any amount of compensation. It was also pleaded that the Insurance Company of motorcycle has not been arrayed as party non-applicants and in *Naksha Panchayatnam*a, it is mentioned that the deceased fell down due to dizziness.

7. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as eight issues for consideration. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that the accident was due to rash and negligent driving of offending Jeep by non-applicant No.2 and in that accident, Kamal Prasad died; there was no negligence on the part of deceased, non-applicant No.2 was possessing valid and effective driving licence; there was no breach of conditions of insurance policy and awarded a total sum of Rs. 20,90,800/- as compensation.

8. Shri Deepak Gupta, learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal erred in recording a finding that there was involvement of offending Jeep in the accident contrary to the facts and evidence available on record. He further submits that the vehicle has been involved in the accident after four months from the date of alleged accident and there was no explanation given for the said delay in lodging First Information Report against the offending Jeep. He further submits that there is no evidence on record to show that the accident took place from the offending Jeep and further Krishna Kumar (AW-2) who was examined as eyewitness to the accident, has not supported the case of the claimant.

9. Per contra, Shri Anil Gulati, learned counsel for respondents No.1 to 4 submits that the learned Claims Tribunal on the basis of the evidence placed on record has rightly arrived at a finding that the accident occurred on account of rash and negligent driving of the offending Jeep by non-applicant No.2. It is pointed out that non-applicants No.1 and 2 in their pleadings i.e. reply to claim application has very specifically admitted the fact of accident and pleaded that the accident took place on account of negligence on the part of deceased/motorcycle driver. It is further argued that the date of accident is 10.03.2010 and merg intimation was given on 11.03.2010 at 6.10 O' clock. It is also pointed out that the

claimants have examined Krishna Kumar (AW-2), who in his evidence has stated that he was eyewitness to the accident and based on his evidence, learned Claims Tribunal has rightly arrived at a finding that there was accident between offending Jeep and motorcycle of the deceased and in that accident, Kamal Prasad suffered grievous injuries and succumbed to those injuries. He further submitted that the claimants/respondents No. 1 to 4 have also filed cross objection challenging the impugned award for enhancement of amount of compensation. He points out that the learned Claims Tribunal has deducted $1/3^{rd}$ towards personal and living expenses instead of $1/4^{th}$ as held by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) v. Delhi Transportation Corporation** reported in **(2009) 6 SCC 121**. It is also pointed out that learned Claims Tribunal has not awarded any amount towards future prospects and conventional heads in view of the dictum of Hon'ble Supreme Court in the matters of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680,** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**.

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

11. The only ground raised by learned counsel for the appellant/Insurance Company is with regard to delay in lodging First Information Report and falsely impleading the offending Jeep in the accident. We have gone through the recored. The claimants have filed copy of final report as Ex. P-1, copy of merg intimation as Ex. P-3, copy of application dated 19.07.2010 made by claimant No.1/respondent No.1 to the Station House Officer, Police Station Charcha mentioning therein that the vehicle bearing No.CG-16/ ZD/1347 dashed motorcycle of deceased Kamal Prasad and this fact was informed by one Sakhendra Kumar and Krishna Kumar at Baikunthpur as Ex. P-4, *Naksha Panchayatnama* which was recorded as Ex. P-5 and postmortem report as Ex. P-7 to proof the death of Kamal Prasad on account of head injury suffered by deceased opining that "can be accidental in nature". Apart from the pleadings and documents placed on record, the claimants have examined Krishna Kumar (AW-2), who in his evidence stated in very specific terms that on the date of accident, he was travelling on the same Jeep, which was involved in the accident. He submits that offending Jeep dashed the motorcycle and driver of offending Jeep did not stop the Jeep on spot apprehending that he will be beaten by public. He further admitted that along with him, there were two more persons i.e. driver and *Khalasi* in the offending Jeep. The driver was

known to him and he took lift on the Jeep and he has not paid any amount for travelling as fare. He also admitted that after reaching to the house in night, he has not given any information or made complaint to any of the authority.

12. Non-applicants No. 1 and 2 who are owner and driver of the offending vehicle have admitted the fact of accident in their reply.

13. Perusal of records would show that the appellant/Insurance Company has not placed on record any specific and admissible piece of evidence in support of his contention that offending Jeep was falsely implicated in the accident. Appellant/Insurance Company has failed to place on record any material and evidence to show that any proceeding has been drawn/initiated against non-applicants No. 1 and 2, who are owner and driver of the offending Jeep in pursuance to the mentioning of wrong fact of accident pleaded in their reply to claim application.

14. The Hon'ble Supreme Court in the matter of **Ravi v. Badrinarayan and others** reported in **(2011) 4 SCC 693** has dealt with the issue of delay in lodging the First Information Report of the accident and held that merely on account of delay in lodging the First Information Report, the claimants cannot be non-suited and held thus :

“17. It is well-settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

19. Lodging of FIR certainly proves the factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be a variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR

> assumes much more significance than delay in lodging thereof supported by cogent reasons.”

15. If in the light of aforementioned dictum of Hon'ble Supreme Court, the facts of the present case are taken into consideration, appellant/Insurance Company except their plea that the accident reported by the claimants against the offending Jeep appears to be suspicious, has failed to produce any material or admissible piece of evidence or any action taken against owner and driver of the offending vehicle in the light of the fact when they have admitted the fact of accident from their vehicle.

16. For the foregoing reason, we do not find any force in the submission made by learned counsel for the appellant that the offending Jeep was not involved in the accident and the same is hereby rejected.

17. Now, we will deal with cross objection filed by respondents No. 1 to 4/claimants seeking enhancement of amount of compensation.

18. Learned Claims Tribunal for computing the amount of compensation has taken the gross salary of the deceased as Rs.30,437/- and net salary as Rs.23,457/-. Learned Claims Tribunal has taken the salary by rounding it to Rs.23,500/- for the purpose of calculating the amount of compensation. The claimants in support of their case has filed salary slip as

Ex. P-11, wherein the total earning has been shown as Rs.30437.93, from which, deductions have been shown as Rs.6980.93. From the deductions as shown in the salary slip, the deduction is towards Provident Fund deduction, Family Pension Fund/LIC Pension Fund, Additional Pension Fund and Non-payable deductions. The deductions made towards Provident Fund, Family Pension Fund and Additional Pension Fund are for the benefit of deceased or his family members and it is to be treated as the income of the deceased. The salary slip also shows the amount of income of the deceased as Basic Pay, S.D.A., V.D.A., U.G.A, Night Allowance, Transaction Subsidy and Additional Increment. Apart from this, the other income has been shown as P-H Wages, Sunday Wages, OT Double Pay and OT Bonus/Mis.

19. Learned counsel for the claimants has not raised the ground with regard to assessment of monthly income of the deceased as Rs.23,500/-, but has made his submission that learned Claims Tribunal erred in applying the deduction of 1/3rd, non-awarding of any amount towards future prospects and further awarding of only Rs.25,000/- towards other conventional heads to be on the lower side.

20. On the date of deciding of claim application, there were four claimants one widow and three children survived by

deceased, theretofore, as per dictum passed by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.)** (supra), appropriate deduction would be 1/4th and not 1/3rd. The deceased was in permanent employment and aged about 50 years, therefore, in view of the dictum of Hon'ble Supreme Court in the matter of **Pranay Sethi** (supara), there will be addition of 15% of the established income for calculating the total monthly/yearly income of the deceased. Learned Claims Tribunal has awarded only Rs.25,000/- towards other conventional heads, which is on the lower side in view of the dictum of Hon'ble Supreme Court in the matters of **Pranay Sethi** (supra) and **Nanu Ram** (supra).

21. For the aforementioned reasons, the amount awarded by learned Claims Tribunal requires re-consideration and re-computation, which is as under :

22. The income of the deceased as assessed by learned Claims Tribunal is Rs.23,500/- per month and Rs.2,82,000/- per annum. On the date of accident, the deceased was 51 years of age and in a permanent employment, therefore, in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra), there will be an addition of 15% of the income towards future prospects. By adding 15% of the income towards future prospects, the total annual income of deceased will come to Rs. 3,24,300/- (2,82,000 x 15% =

42,300 and 2,82,000 + 42,300). From the total yearly income, the income tax is required to be deducted. In the year 2010-2011, exempted income was Rs.1,60,000/- per annum. After deduction of Rs.1,60,000/-, income tax is to be deducted from the balance of the income. The income tax at the rate of 10% has been prescribed for the income from 1,60,000/- up to 5,00,000/-, therefore, income tax is to be deducted at the rate of 10%. After deducting the income tax from the income of the deceased, the income for the purpose of calculating the amount of compensation comes to Rs.3,07,870/- (3,24,300 – 1,60,000 = 1,64,300 and 1,64,300 x 10% = 16,430 and 3,24,300 – 16,430). There will be deduction of 1/4th in view of dictum of Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.)** (supra) towards personal and living expenses. After deducting 1/4th towards his personal and living expenses, yearly loss of dependency of the claimants will come to Rs.2,30,903/- (3,07,870 / 4 and 3,07,870 – 76,967). The deceased has been shown to be 51 years of age, the appropriate multiplier would be 11. By applying the multiplier of 11, the amount of compensation will come to Rs.25,39,933/- (2,30,903 x 11). Apart from above, the claimants will be further entitled for a sum of Rs.40,000/- towards spousal consortium, Rs.40,000/- towards parental consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

23. Now, the claimants are entitled for total compensation of Rs.26,49,933/- (25,39,933 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.20,90,800/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. The other conditions imposed by learned Claims Tribunal shall remain intact.

24. In the result, the appeal filed by Insurance Company is dismissed and cross appeal/cross objection filed by the claimants is allowed in part. The impugned award is modified to the above extent.

Sd/-	Sd/-
(P. R. Ramachandra Menon) **Chief Justice**	**(Parth Prateem Sahu)** **Judge**

Yogesh