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HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 219 of 2014

(Arising out of award dated 12.02.2013 passed in Claim Case No.239 of 2011 by the 4th Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh)

1. Smt. Nanda Devi Verma W/o Late Ramji Verma, aged about 45 years,

2. Urvashi Verma D/o Late Ramji Verma, aged about 22 years,

3. Lokesh Kumar Verma D/o Late Ramji Verma, aged about 13 years,

   Minor appellant No.3 is legal guardian through Mother Smt. Nanda Devi Verma,

   All are resident of Devendra Nagar Sector-3, Janta Quarter No.12, Raipur, Tahsil & District Raipur, Civil & Revenue District Raipur (C.G.).

---- Appellants

Versus

1. Manoj Verma S/o Tangu Verma, aged about 28 years, R/o village Kurra, Post Nandghat, District Durg (C.G.).

2. Smt. Anjum Bano W/o Haji Gulam, aged about not known, R/o Subhash Nagar Moudha Para, Raipur Tahsil & District Raipur (C.G.).

3. Branch Manager, the New India Insurance Company Limited, Through office civil line Baloda Bazar, District Raipur (C.G.) Now Baloda Bazar-Bhathapara (C.G.).

---- Respondents

For Appellants : Shri S.P. Sahu, Advocate
For Respondents No.1 & 2 : None
For Respondent No.3 : Shri Shivendu Pandya, 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

25.08.2020

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 12.02.2013 passed by the 4th Additional Motor Accident Claims Tribunal Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.239 of 2011 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.6,13,130/- as compensation in a death case after deducting 50% of the calculated amount of compensation towards contributory negligence.

2. Brief facts relevant for disposal of this appeal, are that, on 02.05.2007, Ramji Verma was travelling on his Bullet Motorcycle (hereinafter referred to as 'motorcycle') from Bhilai to Durg. When he reached near Kanji House Square, Kumhari, at about 1.30 pm, one Matador bearing registration No.CG04/ZB/2439 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1, dashed the motorcycle of Ramji Verma. In the aforementioned accident, Ramji Verma suffered grievous injuries over his person, he was taken to the hospital, where he succumbed to the

accidental injuries suffered by him. The accident was reported to the concerned Police Station, based on which, the crime was registered against non-applicant No.1 for the offence defined under Sections 279, 337 and 304A of IPC.

3. Appellants/claimants, who are widow and children of the deceased Ramji Verma filed an application under Section 166 of M.V. Act seeking compensation of Rs.21,90,600/- on account of untimely motor accidental death of Ramji Verma pleading therein that on the date of accident, deceased was working with Central Bank of India, Branch Sadar Bazar, Raipur on the post of Computer Terminal Operator and earning Rs.21,200/- per month.

4. Non-applicant No.1/driver of offending vehicle filed reply to claim application and denied all the adverse pleadings made in claim application. It was pleaded that the accident took place on account of rash and negligent driving of motorcycle by the deceased himself; at the time of accident, offending vehicle was standing waiting to cross the road and it is the deceased who dashed his motorcycle with rear side of offending vehicle. It was further pleaded that accident was reported by non-applicant No.1 himself at Police Station Kumhari, on which, Police registered Crime No.98 of 2007 against the deceased, but on account of accidental death of injured, Closure Report was submitted. It was also pleaded that while he was crossing the road to go another side of

road, which is a four-lane road, heard the noise of accident from his rear side of his vehicle and while sitting, he also realized the jerk of dashing of something with his vehicle and upon looking at back side of offending vehicle, he saw that driver of motorcycle dashed with rear side of his vehicle. It was lastly pleaded that on the date of accident, non-applicant No.1 was possessing valid and effective driving licence, offending vehicle was insured with non-applicant No.3/Insurance Company, as such, the liability, if any, would be upon the Insurance Company to satisfy the amount of compensation.

5. Non-applicant No.2/owner of the offending vehicle did not choose to appear before learned Claims Tribunal and was proceeded *ex parte*.

6. Non-applicant No.3/Insurance Company submitted separate reply to claim application and denied the pleadings made in claim application. It was pleaded that there was non-compliance of Rule 220 of the Motor Vehicles Rules, therefore, claim application is liable to be dismissed; no information was forwarded by the owner of offending vehicle under Section 158(6) of the M.V. Act with respect to involvement of vehicle in accident. It was further pleaded that the amount of compensation claimed is highly exaggerated, denied the employment and income of deceased as pleaded in claim application. There was breach

of conditions of insurance policy as there was no valid permit and fitness as well as no valid and effective driving licence with the driver of offending vehicle on the date of accident.

7. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as five issues for consideration. On appreciation of the pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that the death of Ramji Verma was as a result of motor accidental injury suffered by him on account of rash and negligently driving of the offending vehicle by non-applicant No.1; there was no breach of conditions of insurance policy; there was contributory negligence on the part of the deceased to the extent of 50% and awarded a total sum of Rs.6,13,130/- as compensation.

8. Shri S.P. Sahu, learned counsel for the appellants/claimants submits that learned Claims Tribunal has recorded a finding of contributory negligence contrary to the evidence available on record. He further submits that income of deceased assessed by learned Claims Tribunal is on lower side as only the basic pay of deceased as mentioned in salary slip (Ex.P/16) has been taken for the purpose of calculating the amount of compensation. When the claimants have placed on record salary slip (Ex.P/16) issued by the employer i.e. Central Bank of India mentioning the gross income of deceased as Rs.21,413.54, then gross salary is to be taken

for the purpose of assessing the income of deceased and to calculate the amount of compensation to be awarded to the claimants. It is contended that learned Claims Tribunal has erred in not awarding any amout of compensation towards future prospects; adding that, on the date of accident, the deceased was aged about 50 years, therefore, as per law laid down by Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680**, 30% of the established income is to be added towards future prospects. It is further contended that learned Claims Tribunal has awarded only Rs.14,500/- towards other conventional heads, which is on the lower side in view of law laid down by Hon'ble Supreme Court in the matters of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**.

9. Per contra, Shri Shivendu Pandya, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal upon considering the entire evidence available on record, arrived at a finding of contributory negligence to the extent of 50%, which does not call for any interference. He further submits that it is the driver of offending vehicle who lodged the First Information Report against the driver of motorcycle within half hour of accident

for rash and negligent driving of deceased. He met with an accident from rear side of offending vehicle. It is contended that First Information Report (Ex.P/1) placed on record by the claimants, is lodged after 27 days of the accident by one Ravindra Kumar, who has been examined as eyewitness to the accident. He is not related with the deceased in any manner and lodging of a report by him after 27 days shows that the manner of accident mention in it is a cooked up story. He has not lodged First Information Report immediately but only to prove the case of the claimants, he has been implanted as an eyewitness and made the so-called eyewitness as complainant. It is further contended that the Insurance Company has placed on record the copy of Final Report (Ex.D/6), wherein it is specifically mentioned that while non-applicant No.1 was waiting for crossing of the road, the motorcycle came and dashed the rear side of offending vehicle. Non-applicant No.1- Manoj Verma, driver of offending vehicle entered into the witness-box as NAW-1, who stated in clear terms as to how the accident took place. When he was standing with his vehicle for crossing the road for going another side, after 2 minutes, motorcyclist dashed his vehicle from rear side. He further submits that the road, on which, accident took place is a National Highway Road and four-lane road, the time of accident is 1.30 pm (afternoon). It is lastly contended that learned Claims

Tribunal has calculated just and proper amount of compensation in the facts and circumstances of the case, which does not call for any interference.

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

11. To appreciate the submission made by learned counsel for the appellants with regard to contributory negligence, we have perused the documents of criminal case placed on record by non-applicant No.1, which was registered on his complaint. The date and time of accident is shown as 02.05.2007, at about 1.30 pm (day time) and First Information Report was lodged by non-applicant No.1 on the same day at about 1.50 pm i.e. within 30 minutes of the accident. The crime was registered initially against the deceased as per the Report, but, on account of death of motorcyclist, Closure Report was submitted vide Ex.D/6. In the Closure Report as well as First Information Report, it is mentioned that the motorcycle dashed the offending vehicle from its rear side and the road, on which, accident took place is mentioned as G.E. Road, which is a National Highway Road. Manoj Verma (non-applicant No.1) himself was examined as NAW-1, who in his evidence, stated that he was standing with his vehicle for crossing the road for going another side of the road, after 2 minutes, the motorcycle dashed his vehicle from rear side. In cross-

examination, he has stated that where he was standing with the offending vehicle on road, there is a crossing to cross the road and as on the other side of the road, traffic was moving, he has to stop his vehicle. The claimants have produced the copy of First Information Report as Ex.P/1, which is lodged on 29.07.2007 after about 27 days of the accident by one Ravindra Kumar.

12. From perusal of contents of First Information Report, it reveals that Ravindra Kumar was working as Salesman and was travelling on a motorcycle for the work of Company from Bhilai to Raipur. In front of his vehicle, motorcycle of the deceased was running. As per the contents of First Information Report (Ex.P/1), the offending vehicle came from side road to main road and suddenly stopped. Ravindra Kumar was examined as AW-3, who admits in his evidence that service road is there for the purpose of running two-wheeler. He stated in his evidence that he was out of station, therefore, he could not lodge First Information Report immediately and when Police called him on phone then, he went to Police Station and lodged the First Information Report.

13. Taking into consideration the time of accident i.e. 1.30 pm, which is a day time, the road, on which, accident took place is a National Highway Road (two lane on each side), even if the offending vehicle came from side road, then also, looking

to the place and time of accident, the deceased could have avoided the accident if he was vigilant and driving safely his motorcycle. It is not a case where the motorcycle dashed with offending vehicle from its front side, but it met with an accident by dashing rear side of offending vehicle.

14. In view of aforementioned facts and circumstances of the case, we do not find any error or perversity in the finding recorded by the learned Claims Tribunal that the deceased was contributory negligent to the extent of 50% in the accident.

15. The next argument which is advanced by learned counsel for the appellants that learned Claims Tribunal erred in assessing the monthly income of deceased, we have perused the record, in which, claimants have filed Form-16 (Ex.P/14 and Ex.P/15) as well as salary slip (Ex.P/16) issued by Central Bank of India for the month of April 2007, in which, gross salary has been shown as Rs.21413.54. The claimants have examined Shri J.P. Hedau (AW-2), Senior Manager of Central Bank of India to prove the income of deceased. Shri J.P. Hedau (AW-2) stated in his evidence that Shri Ramji Verma was working as Computer Terminal Operation with Central Bank of India prior to the date of accident and he also proved the salary slips (Ex.P/16, Ex.P/17 and Ex.P/18). In paragraph-5 of his evidence, he stated that total emoluments for the month April 2007 is

Rs.21,413.54 and there was a deduction of 10% towards tax.

16. In view of aforementioned documentary and oral evidence available on record, income of deceased is assessed as Rs.21,413.54 mentioned in salary slip (Ex.P/16) issued by Central Bank of India and proved by Shri J.P. Hedau (AW-2). Learned Claims Tribunal has erred in taking into account only basic pay of Rs.13,770.00 as mentioned in Ex.P/16. Assessing of the income by learned Claims Tribunal is erroneous and not sustainable in the eyes of law. The income of deceased for the purpose of calculating the amount of compensation is taken as Rs.21,413.54 less tax.

17. Learned Claims Tribunal has taken the age of deceased as 51 years as mentioned in postmortem report (Ex.P/9). The claimants have not placed any proof with regard to age of the deceased, therefore, in absence of any documentary proof with regard to age of deceased, learned Claims Tribunal is justified in accepting the age of deceased as 51 years mentioned in postmortem report (Ex.P/9).

18. The deceased was in permanent employment with Central Bank of India, aged about 51 years, therefore, there will be addition of 15% of the established income towards future prospects in the salary of the deceased for the purpose of

assessing his total income as per law laid down by Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra).

19. Learned Claims Tribunal has awarded only a sum of Rs.14,500/- towards other conventional heads, which is on lower side in view of the law laid down by Hon'ble Supreme Court in the matters of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited** (supra).

20. In view of above amount of compensation to be awarded to the appellants/claimants requires re-computation, which are in the following terms :

The income of deceased as per salary slip (Ex.P/16) will be taken as Rs.21,413.54 (rounded off to Rs.21,414/-) and yearly income will come to Rs.2,56,968/- (21,414 x 12). After adding 15% in gross salary towards future prospects, total yearly salary will be Rs.2,95,513/- (2,56,968 x 15% = 38,545 and 2,56,968 + 38,545). For the purpose of computing compensation, net income is to be taken, which means gross income – income tax. The income tax slab of the year 2007-08 is as under :

Upto Rs.1,45,000	-	Nil
Rs.1,45,000 to 1,50,000	-	10% of the amount exceeding 1,45,000
Rs.1,50,000 to 2,50,000	-	Rs.500 + 20% of the amount exceeding 1,50,000
Rs.2,50,000 and above	-	Rs.20,500 + 30% of the amount exceeding 2,50,000

The tax liability of the deceased come to Rs.20,500 + 45,513 x 30%, therefore, the net income of the deceased will be Rs.2,61,359/- (2,95,513 – 34,154). The deceased was survived by widow and two children, therefore, there will be a deduction of 1/3rd towards his personal and living expenses i.e. Rs.87,119.6 rounded off to Rs.87,120/- (2,61,359 / 3) in view of the case law of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121.** The yearly dependency of the claimants' comes to Rs.1,74,239/- (2,61,359 – 87,120). Multiplier of 11 is to be applied with the yearly loss of dependency. After applying the multiplier of 11, the total loss of dependency comes to Rs.19,16,629/- (1,74,239 x 11). Apart from the above amount of compensation, the claimants are entitled for a sum of Rs.40,000/- towards parental consortium (payable to children because of the death of parents) and Rs.40,000/- towards spousal consortium (payable to the spouse because of the death of the partner) in view of law laid down by Hon'ble Supreme Court in the matter of **Magma General Insurance Company Limited** (supra). The claimants are also entitled for a sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of funeral expenses.

21. On the basis of above recalculation, now the total compensation comes to Rs.20,26,629/- (19,16,629 + 40,000 + 40,000 + 15,000 + 15,000). As it has been held that

deceased was contributory negligent to the extent of 50%, therefore, there will be deduction of 50% to the total calculated amount of compensation. After deducting 50% to the amount of compensation, appellants/claimants will be entitled for a sum of Rs.10,13,314.50, rounded off to Rs.10,13,315/- (20,26,629 x 50%) instead of Rs.6,13,130/- as awarded by learned Claims Tribunal. The enhanced amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. Other conditions imposed by the learned Claims Tribunal shall remain intact.

22. In the result, appeal is allowed in part. The impugned award is modified to the extent indicated herein above.

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

Yogesh