NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 951 of 2014

- Reliance General Insurance Company Limited Thru- Its Legal Officer, Reliance General Insu.Co.Ltd., Corporate House, 3rd Floor, Opposite Maruti Business Park, G.E. Road, Raipur, Chhattisgarh

---- Appellant/Insurer

Versus

1. Rajmati Maravi, Wd/o Late Bharatlal Maravi Aged About 39 Years

2. Dharmendra Maravi S/o Late Bharatlal Maravi Aged About 21 Years

3. Rameshwari Maravi D/o Late Bharatlal Maravi Aged About 20 Years

4. Naresh Maravi S/o Late Bharatlal Maravi Aged About 18 Years

5. Narendra Maravi S/o Late Bharatlal Maravi Aged About 16 Years Minor

6. Birsingh Maravi S/o Late Bharatlal Maravi Aged About 12 Years Minor

7. Vishal Maravi S/o Late Bharatlal Maravi Aged About 8 Years Minor

Respondents-5 to 7 are minors represented Thru- Mother Smt. Rajmati, wd/o late Bharat Maravi

All are R/o village Amtara, P.S. Koni, Tah. And Distt. Bilaspur Chhattisgarh

8. Maniram Sahu S/o Chandrika Sahu Aged About 24 Years R/o Sarishtal, Tah. Lormi, Present Address- Kudrapara, Tifra, Tah. And Distt. Bilaspur Chhattisgarh (Driver)

9. Arvind Singh Chhabra S/o D.S. Chhabra Aged About 34 Years R/o Palash- 69, Rajkishore Nagar, Bilaspur, P.S. Sarkanda, Tah. And Distt. Bilaspur, Chhattisgarh (Owner of Tractor)

10. Smt. Prabha Chhabra, W/o Arvind Singh Chhabra Aged About 32 Years R/o Palash- 69, Rajkishore Nagar, Bilaspur, P.S. Sarkanda, Tah. And Distt. Bilaspur, Chhattisgarh (Owner of Trolley)

11. The Oriental Insu.Co.Ltd. Thru- Branch Manager, Raveev Trade Center, 1st Floor, In front Of Rajeev Plaza, Near Bus Stand, Bilaspur, Tah. And Distt. Bilaspur Chhattisgarh (Insurer of Trolley)

----Respondents

For Appellant/Insurance Company	:	Shri Saurabh Sharma, Advocate
For Respondents-1 to 7/Claimants	:	Shri Ravindra Agrawal, Advocate
For Respondent-8/Driver	:	None appears
For Respondents-9 and 10/Owner of Tractor-Trolley	:	Shri Vivek Shrivastava, Advocate
For Respondent-11/Insurer of Trolley	:	Shri HS Patel, Advocate

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

<u>Per Parth Prateem Sahu, J.</u>
<u>22.07.2020</u>

1. Appellant/Insurance Company of Tractor has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 15.05.2014 passed in Claim Case-60 of 2011 by Motor Accident Claims Tribunal, Bilaspur (for short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed Claim application in part and awarded a sum of Rs.5,48,000/- as compensation and fastened the liability upon NA-1 to 3, who are Driver, Owner and Insurer of the offending Tractor.

2. During the pendency of this appeal, respondents-1 to 7, who are claimants have filed cross-objection challenging the quantum of award on 21.07.2020. As the appeal filed by the Insurance Company was not admitted till date and during the pendency of this un-admitted appeal cross-objection is filed and further taking into consideration the object of the act in the larger interest, the appeal of the Insurance Company and cross-objection filed by respondents/claimants are admitted for hearing and heard finally with the consent of parties.

3. Brief facts relevant for disposal of this appeal are that on 03.12.2010 at about 6 pm, Bharat Maravi was travelling on a Jeep and coming to his house at Amtara at Bilaspur. At that relevant time, when the Jeep reached near Lodhipara, Sarkanda, Tractor bearing No.CG 10 D-2935 (for short, 'offending vehicle') driven by NA1/respondent-8 dashed the Jeep from its front side. In the aforementioned accident, Bharat Maravi suffered grievous injuries and was admitted to CIMS Hospital, Bilaspur, where, during the course of treatment, he died. The accident was reported to concerned Police Station based upon which, Crime No.60/2010 was registered and charge-sheet was also produced before the Chief Judicial Magistrate, Bilaspur.

4. Respondents-1 to 7/claimants, who are widow and children of deceased Bharat Mandavi filed claim application under Section 166 of Act of 1988 seeking compensation of Rs.51,00,000/- due to untimely motor accidental death of Bharat Mandavi, pleading therein that the deceased was working as Road-roller driver and earning Rs.600/- per day and claimants are dependants upon the income of deceased.

5. Respondent-1/NA1, driver of offending vehicle denied the pleading made in the claim application and pleaded that death of deceased was not on account of accident with offending vehicle; compensation claimed in the claim application is highly exaggerated; and on the date of accident, offending vehicle was insured with NA3/Insurance Company/appellant herein and Trolley attached to the offending vehicle bearing No.CG 10 D 4681 (for short, 'Trolley') was insured with respondent-11/NA5/Insurance Company.

6. NA2 and 4, who are owners of offending vehicle and Trolley respectively, submitted reply to the claim application. They denied the claim application, as also the income as pleaded by the claimants. They admitted ownership of offending vehicle and Trolley and further pleaded that on the date of accident, offending vehicle was insured with appellant/NA3/Insurance Company and Trolley was insured with respondent-11/NA5/Insurance Company. It was stated that while returning after completion of agricultural work, some mechanical fault occurred in the engine of Tractor for which offending vehicle was sent for towing the Tractor suffered from mechanical failure. After towing the Tractor, the offending vehicle left the Trolley by side of road and went away. There was no accident from the offending vehicle and it is the driver of Jeep, who drove his vehicle rashly and negligently and dashed the Trolley, parked on the side of the road.

7. Appellant/NA3/Insurance Company of offending vehicle submitted reply to the claim application and pleaded that copy of the Insurance Policy has not been placed on record in original; the amount of compensation claimed is highly exaggerated; there was no valid and effective driving incense with NA1/driver of offending vehicle and thereby, there was breach of conditions of Insurance Policy. Respondent-11/NA5 Insurance Company of Trolley submitted reply to claim application pleading therein that the accident occurred on account of collusion between the offending vehicle and Jeep. Therefore, it attracts contributory negligence. Owner and Insurance Company of the Jeep have not been arrayed as party respondent/Non-applicants before learned Claims Tribunal, there was non-joinder of necessary parties, amount of compensation is highly exaggerated; there was breach of conditions of Insurance Policy of the Jeep and driver of Tractor was possessing valid and effective driving license on the date of accident.

8. On the basis of pleading and evidence on record, learned Claims Tribunal framed as many as five issues for consideration and after conclusion including the issue with regard to breach of conditions of Insurance Policy, held that the accident took place on account of rash and negligent driving of Tractor by its driver in which Bharat Mandavi died; there was no breach of conditions of Insurance Policy; the owner and Insurance Company of the Jeep not to be considered as necessary party and awarded Rs.5,48,000/- as compensation, fastening liability upon NA1, 2 and 3 ie Owner, Driver and Insurance Company of the Tractor bearing No. CG 10 D2935.

9. Learned counsel for the appellant /Insurance Company submitted that at the time of accident, offending vehicle was attached with Trolley but learned Claims Tribunal erred in fastening liability only upon the appellant/Insurance Company of offending vehicle. He further contended that 'Tractor' is defined in

Section 2(44) of the Act of 1988 and 'Trolley' in 2(46). Therefore, in view of above provisions, the Trolley will also fall within the definition of MV Act 1988. He placed reliance in case law in the matter of **Natwar Parikh and Company Limited Vs State of Karnataka** reported in **AIR 2005 SC 3428**. He submits that the amount of compensation be apportioned between Owner, Driver and Insurance Company of the Tractor and Trolley equally. He also submits that the amount awarded by learned Claims Tribunal is on higher side as there was head on collusion between two vehicles. Learned Claims Tribunal ought to have held contributory negligence on the part of deceased also, who was occupant of Jeep.

10. Shri Ravindra Agrawal, learned counsel for respondents 1 to 7 first of all submits that cross-objection has been filed under Order 41 Rule 22 of the CPC by the claimants for enhancement of compensation in the impugned award. With regard to the other submission of learned counsel for the Insurance Company is concerned, he submits that admittedly, as there was head on collusion between the offending vehicle and Jeep, therefore, learned Claims Tribunal has rightly fastened liability upon Owner, Driver and Insurance Company of the offending vehicle. He further submits that there is no involvement of Trolley in the accident except it is shown to be attached with the offending vehicle and therefore, finding recorded by learned Claims Tribunal of fastening liability upon Owner, Driver and Insurance Company of the Tractor involved in the accident, is well within the four corners of law. He also submits that deceased was not driver of other vehicle but he is only an occupant and therefore, learned Claims Tribunal has rightly held that there will be no deduction towards contributory negligence and the occupant of vehicle can file application seeking compensation against owner driver and Insurance Company of any of the two vehicles involved in the accident. He

placed reliance in judgement of Hon'ble Supreme Court in the case of **TO Anthony Vs Karvarnan and others** reported in 2008(3) SCC 748.

11. Shri Vivek Shrivastava, learned counsel for respondents- 9 and 10 supports the award passed by learned Claims Tribunal.

12. Shri HS Patel, learned counsel for respondent-11 /Insurance Company of Trolley argued that at the time of accident, Trolley was not attached with the Tractor as per pleading made by its owner and therefore, no liability can be fastened upon the Owner and Insurance company of the Trolley and award passed by learned Claims Tribunal is absolutely in accordance with law, which do not fall for any interference.

13. We have heard learned counsel for the parties and perused the record.

14. So far as the ground taken by learned counsel for the appellant/ Insurance Company with regard to the apportionment of liability between Owner & Insurance Company of Tractor and Owner & Insurance Company of the Trolley is concerned, we have perused copy of FIR on record as Ex.P1. It is mentioned that Driver of offending vehicle due to his rash and negligent driving, dashed the Jeep. In the claim application, the claimants have pleaded that when deceased Bharat Maravi was returning on Jeep at 6 pm on 03.12.2010, the driver of the Tractor, due to rash and negligent driving dashed the Jeep from its front side.

15. From the aforementioned facts available on record, it is apparent that accident is head on collusion between two motor vehicles. It is only the owner of Tractor who filed his affidavit under Order 18 Rule 4 of the CPC in support of his pleading but he did not appear for his cross examination. The affidavit was filed on 05.12.2013 and thereafter, the case was fixed for several dates but the Owner

of the Tractor did not appear for his cross examination. Therefore, evidence of the respondents was closed on 07.05.2014.

16. In view of the aforementioned facts available on record that NA2/owner of offending vehicle has not appeared for his cross-examination, the pleadings made by him in the affidavit filed under Order 18 Rule 4 of the CPC cannot be considered as evidence. From the material available on record, it is not in dispute that the accident was head on collusion between two vehicles. This fact is not disputed by the learned counsel for the appellant, but his only argument is that on the date of accident, offending vehicle is attached with Trolley and liability to be apportioned between the Owner, Driver and Insurance Company of both these vehicles ie Tractor and Trolley equally.

17. Looking to the facts and circumstances of the case, where, the Tractor, met with an accident head to head with another vehicle Jeep and therefore, in these facts and circumstances of the case, we do not find any error in fastening the liability upon the Driver, Owner and Insurance Company of the offending vehicle. Learned counsel for the appellant could not point out in any way about the fact that any part of the Jeep was hit with the Trolley.

18. Hon'ble Supreme Court in the matter of **TO Anthony** (*supra*), decided the issue with respect to composite and contributory negligence. Hon'ble Supreme Court also considered in the said judgment with respect to the status of occupant of one of the vehicle within the two which involved in the accident and held as under:

> "6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and

severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence."

19. For the foregoing reasons, we do not find any force in both the submissions /grounds raised by learned counsel for the appellant/Insurance Company of the offending vehicle and it is hereby repelled. Consequently, the appeal filed by the Insurance Company of Tractor bearing No.CG 10 D-2935 is dismissed.

20. Now, we will consider the grounds raised by the cross-objectors/claimants in their cross-objection with regard to the enhancement of compensation awarded in the impugned award.

21. Shri Ravindra Agrawal, learned counsel for the claimants/cross-objectors have argued that learned Claims Tribunal has applied wrong deduction of 1/3rd instead of 1/5th in the facts and circumstances of the case, where the deceased was survived by seven dependants, including widow and six children. He further submits that learned Claims Tribunal not awarded any amount towards future prospects, as per law laid down in the case of **National Insurance Company Vs Pranay Sethi** reported in **2017 16 SCC 680** and meagre amount is awarded on the other conventional heads and seeks enhancement of compensation suitably.

22. The accident is of December 2010. Learned Claims Tribunal has assessed income of the deceased as Rs.4,500/- per month which appears to be correctly assessed. Learned Claims Tribunal has deducted 1/3rd of his income towards personal and living expenses which appears to be erroneous in the facts and circumstances, where there are seven dependants and in view of law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt) and Others Vs Delhi Transport Corporation and Another** reported in **(2009) 6 Supreme Court Cases 121.** In the facts of the case, appropriate deduction will be 1/5th. Award of future prospects has been held by Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra) and the age slab is fixed for addition of percentage of income towards future prospects to the established income of the deceased. Age of the deceased has been taken by learned Claims Tribunal in between 45-50 years so, there will be addition of 25% of his established income towards future prospects. Learned Claims Tribunal has awarded only Rs.80,000/- towards other conventional heads which, in the facts of the present case, appears to be on lower side.

23. For the foregoing reasons, we find it appropriate to recompute the amount of compensation to be awarded to the cross-objectors/claimants as under:

> Income of the deceased has been assessed as Rs.4,500/- per month and Rs.54,000/- per annum.
>
> By adding 25% of the established income, total yearly income of the deceased will come to Rs.67,500/- {54000 + (54000 x 25/100)}.
>
> There will be deduction of 1/5th from the total income towards personal and living expenses. After deducting 1/5th of the yearly income, yearly dependency will come to Rs.54,000/- {67500 – (67500 x 1/5)}.
>
> Deceased on the date of the accident was in between the age group of 45 - 50 and therefore, appropriate multiplier would be 13, as applied by learned Claims

Tribunal. Upon applying multiplier of 13, total dependency of the claimants will come to Rs.7,02,000/-.

Apart from the above total loss of dependency, respondent-1, widow of deceased will be entitled for a sum of Rs.40000/- towards loss of spousal consortium and respondents-2 to 7 who are children of deceased will be entitled for a sum of Rs.40000/- towards loss of parental consortium. Apart from this amount, claimants will be further entitled for Rs.15,000/- towards funeral expenses and Rs.15,000 towards loss of estate.

24. Now, appellants / claimants will be entitled for a total sum of **Rs.8,12,000/-** (702000 + 40000 + 40000 + 15000 + 15000) as compensation instead of Rs.5,48,000/- as awarded by learned Claims Tribunal.

25. Aforementioned amount will carry interest @ 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal will remain intact.

26. In the result, the appeal filed by the Insurance Company is dismissed. Cross objection filed by respondents- 1 to 7 is allowed in part and the impugned award is modified accordingly.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma