AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.76 of 2015

Reserved on 04.09.2020
Pronounced on 18.09.2020

1. Smt. Geeta Yadav, Wd/o Lt. Namdev Yadav aged about 23 years;
2. Shyam lal Yadav, S/o Mahettar Yadav, aged about 47 years;
3. Smt. Bhagwati, W/o Shyamlal yadav, aged about 45 years;

All are residents of Village Badra Tahsil Makadi District Kondagaon (C.G.)

---- Appellants/Claimants

Versus

1. Dhannulal Yadav, S/o Laxminath Yadav, aged about 28 years (Driver)
2. Sukrat Netam, S/o Mahettar Netam, aged about 23 years (Owner)

   Both are residents of Village Badra Tahsil Makari, Districtg Kondagaon (C.G.)

3. Bharati Axa General Insurance Co. Ltd., Chawla Complex, First Floor, Devendra Naagar, Sainagar Road, Raipur (C.G.) (Insurer)

---- Respondents

For Appellants	:	Shri Pravin Kumar Tulsyan, Advocate
For Respondents No.1 & 2	:	Shri A.L.Singroul, Advocate
For Respondents No. 3	:	Shri Bhavesh Acharya, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal

C.A.V.Order / Award

1. The claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act, 1988) questioning the legality and propriety of the award dated 21.10.2014 passed by the Motor Accident Claims Tribunal, Kondagaon, (for short 'the Tribunal') in

Claim Case No. 57/2013, whereby the Tribunal, while allowing the claim in part, awarded total amount of compensation to the tune of Rs.8,12,000/- with 7.5% interest per annum from the date of filing of the claim petition till the date of actual payment. While, Non-applicants No.1 & 2, i.e. the driver and owner of the vehicle in question have raised cross-objection enumerated under Order 41 Rule 22 of the Code of Civil Procedure, 1908 (for short, the CPC) questioning the exoneration of the insurance company from its liability. The parties to this appeal shall be referred hereinafter as per their description before the Tribunal.

2. Briefly stated the facts of the case are that on 22.11.2013 at 5:00 pm, deceased Namdev Yadav was returning to his village Sathgaon while travelling in the vehicle in question, namely Tata Magic bearing Registration No. C.G-17-T-1629, which was owned by Non-applicant No. 2 Sukrat and insured with Non-applicant No.3 Bharati Axa General Insurance Company Limited. At the relevant time, it was being driven in a rash and negligent manner by its driver Dhannulal Yadav, owing to which, it dashed against the cattle and then tree and fell down in the nearby ditch of field. As a result of the alleged accident, deceased was injured badly and died on the spot, giving rise to the institution of the claim petition enumerated under Section 166 of the Act, 1988, by the legal representatives of the deceased. It is alleged in the claim petition that the deceased, a 28 years old, was a milk vendor and used to earn Rs.10,000/- per month and thus total amount of compensation to the tune of Rs.57,40,000/- has been claimed under various heads.

3. Non-applicants No.1 & 2, driver and owner of the alleged offending vehicle have contested the aforesaid claim on the ground that the vehicle in question was duly insured with Bharati Axa General Insurance Company Limited and was being used in accordance with the terms and conditions

stipulated in the said policy, therefore, in case of any liability being fastened, the same could be indemnified by the said company. While the insurer of it has contested the claim mainly on the ground that the vehicle in question was insured as a commercial vehicle-passenger-comprehensive policy and was being used in violation of the terms and conditions of its policy as the driver of it was neither holding the effective and valid driving licence nor was it being used with valid permit.

4. The Tribunal, after analyzing the evidence led by the parties, arrived at a conclusion that the alleged accident occurred on 22.11.2013 due to rash and negligent driving by the driver of the alleged offending vehicle, resulting into the sad demise of Namdev Yadav, who was 28 years old at the relevant time. It held further that the vehicle in question, insured as a commercial vehicle-passenger-comprehensive policy, was being used without any permit and that by considering the monthly income of the deceased to the tune of Rs.3,000/-, awarded the aforesaid amount of compensation along with the interest, while exonerating the said insurance company from its liability.

5. According to Shri Pravin Kumar Tulsyan, learned counsel for the appellants/claimants, the Tribunal, while determining the amount of compensation, has committed an illegality in assessing the monthly income of the deceased only to the tune of Rs.3,000/- per month merely on the ground that the claimants have failed to produce any document in order to show the monthly income of the deceased and thereby erred in awarding a meagre amount of compensation even without providing the proper amount of compensation under the conventional heads. It is contended further that the unrebutted statement of the deceased's wife would reveal the fact that he was engaged in running the dairy-farm, therefore, his monthly income ought not to have been taken into consideration as such. In support, he placed his

reliance upon the principles laid down by the Supreme Court in the matter of ***National Insurance Company Limited -v- Pranay Sethi*** and ***Magma General Insurance Company Limited*** vs. ***Nanu Ram @ Chuhru Ram and others*** reported in **(2017) 16 SCC 680** and **(2018) 18 SCC 130** respectively**.**

6. On the other hand, Shri Bhavesh Acharya, learned counsel appearing for Non-applicant No.3, while supporting the award impugned submits that since the vehicle in question was being used without any permit, therefore, the Tribunal has, rightly exonerated the insurance company from its liability. While, Shri A.L.Singroul, learned counsel appearing for Non-applicants No.1 & 2 would, however, submits that the finding of the Tribunal exonerating the insurance company from its liability is apparently contrary to law. According to him, the vehicle in question though was a commercial vehicle but was not being used as commercial vehicle at the relevant point of time and since the unladen weight of it was below 3000 kilogram, therefore, by virtue of sub-section (3) of Section 66 of the Act of 1988, no permit as such was required. However, without considering the said fact in its proper manner, the Tribunal has committed a serious illegality in exonerating the insurance company from its liability.

7. I have heard learned counsel for the parties and perused the entire record carefully.

8. According to the claimants, the deceased was a milk vendor and was engaged in running a dairy-farm while earning a sum of Rs.10,000/- per month. In support thereof, the widow of the deceased examined herself and, according to her unrebutted statement, it thus appears that her husband was involved in running the said business. However, in absence of any

documentary evidence showing his monthly income to the tune of Rs.10,000/- per month, it cannot be held to be as such. In such circumstances, it would thus be appropriate to consider the deceased's income as of a skilled worker, as provided under the Minimum Wages Act, 1948. As the alleged accident occurred on 22.11.2013, it would, therefore, be appropriate to consider the monthly income of the deceased to the tune of Rs.5,605/-, rounded off to Rs.5,600/-, yearly Rs.67,200/- prevailing at the relevant point of time, as per the Notification issued by the Prescribed Authority under the said Minimum Wages Act, 1948. Since the deceased was 28 years old, as evidenced by the post-mortem report (Ex.P.6), therefore, while determining his actual income, an addition of 40% of it, i.e., Rs.26,880/-, towards future prospects of his income, is to be made as he was the self-employed person, in the light of the principles laid down by the Supreme Court in the matter of **National Insurance Company Limited** vs. **Pranay Sethi** (supra). It would, thus, come to Rs.94,080/- (Rs.67,200/- + Rs.26,880/-) and that by looking to the number of dependents, who are 3, deduction of one-third of it, i.e., Rs.31,360/- towards his personal and living expenses, would be appropriate and the yearly dependency would thus come to Rs.62,720/- (Rs.94,080/- - Rs.31,360/-). By applying the multiplier of 17, looking to the age of the deceased, the total dependency would thus arrive at Rs.10,66,240/- (Rs.62,720/- x 17).

9. Besides, the widow of the deceased is entitled to be awarded loss of consortium under the head of spousal consortium, as held by the Supreme Court in the matter of **Magma General Insurance Company Limited** vs. **Nanu Ram @ Chuhru Ram and others** (supra). Consequently, in addition, the claimants are entitled to the following amount towards conventional heads:-

Sl. No.	Mode of Compensation	Amount in Rs.
1.	For loss of spousal consortium to widow	40,000/-
2.	For Funeral expenses	15,000/-
3.	For loss of estate	15,000/-
	Total: Rs.	70,000/-

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10. The claimants would, thus, be entitled to a total sum of Rs.11,36,240/- (Rs.10,66,240/- + Rs.70,000/-), with 7.5% interest per annum from the date of filing of the claim petition till the actual payment. Out of the said amount along with its interest, the widow of the deceased, namely, Smt. Geeta Yadav shall be entitled to 50% of it, while parents of the deceased, namely, Shyamlal Yadav and Smt. Bhagwati shall be entitled to rest of the 50%. Rest of the observations, as made by the Tribunal regarding the mode of its disbursement shall remain intact.

11. In view of above, the appeal preferred by the claimants is, thus, allowed in part to the extent indicated herein above with the aforesaid observations.

12. Now, as far as the cross-objection raised by the driver and owner of the vehicle in question under Order 41 Rule 22 of CPC questioning the finding of the Tribunal exonerating the insurance company from its liability, is concerned, it however, appears that upon due consideration of the materials placed on record, the Tribunal has rightly exonerated the same. According to the insurance policy, marked as Ex.D.1, it was insured as a commercial vehicle-passenger-comprehensive policy and a specific defence was taken by the insurer in its written statement that it was being used without any permit

and the insurance company is, therefore, entitled to be exonerated from its liability. Despite the said specific defence, it was neither controverted by the driver and owner of the vehicle in question in their written statement nor has any evidence been led in order to disprove the said fact.

13. It appears further from a bare perusal of the record that during the pendency of trial, an application was made by the insurer on 14.05.2014 under Order 11 Rule 16 of CPC seeking a direction against the owner of the alleged vehicle for the production of the permit of the vehicle in question. However, in spite of the said submission, the owner of the alleged vehicle has failed to produce the same. In absence thereof, it is difficult to hold that the vehicle in question was being used with valid permit. That apart, the insurer of the vehicle in question has examined one of its witnesses, namely, Sameer Babbar (N.A.W.1), who has deposed that the alleged vehicle was being used without any valid permit. It is, thus, evident that the vehicle in question was being used without any valid permit.

14. At this juncture, the provision prescribed under Section 66 of the Act of 1988 is required to be seen in order to consider the contention of Mr. Singroul, which provides that if the vehicle is a transport vehicle, then it cannot be used without any permit. The said provision reads as under:-

> **66. Necessity for permits.__** (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used:
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> xxxx xxxxx xxxx xxxxxxx

15. From a bare perusal of the aforesaid provision, it appears that no owner of a motor vehicle is entitled to use or permit the use of his vehicle as a transport vehicle in any public place whether or not such vehicle is actually

carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used.

16. In the present case, as observed herein above, the vehicle in question was a transport vehicle, as defined under Section 2 (47) of the Act, 1988 and in absence of any plea and evidence led by the owner that it was being used for carrying goods, it cannot be termed as a goods vehicle so as to hold that by virtue of sub-section (3) of Section 66 of the Act, the vehicle in question can be used even without a valid permit, as contended by Shri Singroul. Consequently, the Tribunal has not committed any illegality in exonerating the insurance company from its liability.

17. In view of above, the cross-objection raised by the driver and owner of the vehicle in question under Order 41 Rule 22 of CPC is accordingly rejected.

18. Since the vehicle in question was admittedly insured with the Bharati Axa General Insurance Company Limited, as evidenced by the insurance policy (Ex.D.1), therefore, by applying the principles of pay and recover, as held in the matter of ***National Insurance Co. Ltd.*** vs. ***Swaran Singh and others*** reported in **(2004) 3 SCC 297**, it would be just and proper to issue a direction to Non-applicant No.3-Bharati Axa General Insurance Company Limited to first pay the awarded sum to the claimants and then to recover the said awarded sum from the owner and driver of the offending vehicle, i.e., Non-applicants No. 1 & 2, namely, Dhannulal Yadav and Sukrat Netam respectively in execution proceedings arising in this very case.

19. In view of the foregoing discussions, the appeal preferred by the

claimants is allowed in part with the observations as made herein above, while the cross-objection preferred by the driver and owner under Order 41 Rule 22 of CPC is hereby rejected. No order as to costs.

Sd/-

(**Sanjay S. Agrawal)**
Judge

Anjani