NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 114 of 2010

1. Smt Phulkunwar Bai Kurre, aged about 45 years, Wife of Khubiram Kurre
2. Khubiram Kurre, aged about 52 years

   Both residents of village Akoli, Post Khudmuda, PS Berla, Tahsil Bemetara, District Durg (CG)

---- Appellants/Claimants

Versus

1. Rajesh Das Manikpuri, aged 22 years, S/o Vishaldas Manikpuri, Occupation Driver, R/o Village Muraithi, PS Dharsinwa, Tahsil and District Raipur (CG)
2. Mayaram Yadu, aged 38 years, S/o Vishveshwar Yadu, R/o Village Muraithi, Post Siltara, PS Dharsinwa, Tahsil and District Raipur (CG)
3. The Oriental Insurance Co. Ltd., through Divisional Manager, Divisional Office, No.1 Kachhahari Chowk, Jail Road, Raipur (CG) Policy No.9581 Policy year 2008 Development Officer Code 34, period from 20.02.2008 to 19.02.2009

----Respondents/Non-Applicants

For Appellants	:	Shri Akhilesh Mishra, Advocate
For Respondents-1 and 2	:	None appears
For Respondent- 3/Insurance Company	:	Smt Chitra Shrivastava, Advocate

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

Per Parth Prateem Sahu, J.
19.08.2020

1. This is claimants' appeal under section 173 Motor Vehicle Act, 1988 challenging the impugned award dated 27.03.2009 passed by the 9th Additional Motor Accidents Claims Tribunal (FTC), Raipur (for short, 'Claims Tribunal') in Claim case-115 of 2008, wherein learned Claims Tribunal allowed the claim application in part and awarded Rs.1,55,600/- in a death case.

2. Facts relevant for disposal of this appeal are that on 30.05.2008 Kum.Chandrika Kurre (since deceased) along with other co-labourers was travelling on Tata DI bearing No. CG04J9750 (hereafter, referred to as 'offending vehicle') and going to her work place at Baldev Sponge Iron at Siltara from village Akoli at about 7.45 am. At that relevant time, when the offending vehicle reached near Akoli Paper Mill Pond, it met with an accident due to rash and negligent driving of NA1/driver of the offending vehicle and it turned turtle. In the aforementioned accident, Kum.Chandrika Kurre, who was travelling on the offending vehicle suffered grievous injuries and succumbed to those injuries on the spot.

3. Claimants / appellants who are parents of the deceased filed an application under section 166 of the Act of 1988 seeking compensation of Rs.11,25,000/- mentioning therein that the deceased was doing labour work and earning Rs.80/- per day. Apart from it she was also doing household work.

4. NA1/driver of offending vehicle denied the entire pleadings made in claim application, adding that on the date of accident he was not driver of the offending vehicle.

5. NA2/owner of offending vehicle admitted the fact that on the date of accident offending vehicle was insured with NA3/ Insurance Company and there was valid and effective driving licence with NA1.

6. NA3/Insurance Company submitted reply denying the adverse pleading made in the claim application. It was further pleaded that offending vehicle is a goods vehicle and at the time of accident it was

carrying passengers for which there was no permit, and driver of the offending vehicle was not having valid and effective driving license to drive the transport vehicle. Thereby there is breach of conditions of Insurance Policy and the Insurance Company is not liable to pay any amount of compensation. Policy does not cover the risk of the persons travelling in the Goods vehicle. No liability can be fastened upon the Insurance Company and it may be exonerated.

7. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties, held that the deceased died in the motor accident on account of rash and negligent driving of the offending vehicle by NA1. Deceased was earning Rs.80/- per day and she was aged about 18 years; there was breach of conditions of the insurance policy and while exonerating the insurance company, fastened liability upon NA1 and 2 i.e. Driver and owner of the offending vehicle, awarded Rs.1,55,600/- as compensation.

8. Learned counsel for the appellants submits that learned Claims Tribunal erred in awarding lesser amount of compensation. He submits that learned Claims Tribunal has not assessed income of the deceased properly, not awarded any amount towards future prospects, made deduction of 2/3rd erroneously, instead of ½ and applied multiplier of 16 instead of 18. It is further contended that amount of compensation on other conventional heads is also on lower side and seeks for enhancement of amount of compensation suitably. Lastly, he submits that as it is an appeal on behalf of claimants, policy was not disputed by the Insurance Company, therefore, direction may be issued to NA3/

Insurance Company to first deposit the entire amount of compensation and thereafter to recover the same from the driver and owner of the offending vehicle.

9. Smt.Chitra Shrivastava learned counsel appearing for the Insurance Company submits that learned Claims Tribunal has awarded just and proper amount of compensation. She further argued that on the date of accident the deceased was travelling on goods vehicle along with other 15-16 labourers and died in the accident. Risk of passengers travelling in goods vehicle is not covered under the policy, as the deceased was a gratuitous passenger. Direction of pay and recover as prayed by learned counsel for the appellants not to be issued in the facts of the case.

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

11. Perusal of claim application would show that claimants themselves have pleaded income of the deceased at Rs.80/- per day and the same was also stated by them in their evidence. Learned Claims Tribunal has accepted income of the deceased as pleaded by the claimants in their claim application and also stated by them in their evidence.

12. In view of the above, we do not find any error in the finding recorded by learned Claims Tribunal assessing the income of the deceased at Rs. 80/- per day and Rs.2,400/- per month for the purpose of calculating the compensation. The submission of learned counsel for the appellants that learned Claims Tribunal erred in assessing income of the deceased on lower side is not sustainable and it is hereby rejected.

13. Learned Claims Tribunal after assessing income of the deceased as Rs.2,400/- per month and Rs.28,800/- per annum, has deducted 2/3rd towards personal and living expenses, which is erroneous in view of the law laid down by Hon’ble Supreme Court in case of **Sarla Verma (Smt) and Others Vs Delhi Transport Corporation and Another** reported in **(2009) 6 Supreme Court Cases 121.** Hon’ble Supreme Court in the aforesaid case law, has clearly laid down that the deduction in case of bachelors to be ½ only.

14. Learned Claims Tribunal awarded only Rs.2,000/- towards funeral expenses and no amount is awarded on other conventional heads, which is erroneous in view of the law laid down by Hon’ble Supreme Court in case of **National Insurance Company Vs Pranay Sethi** reported in **2017 16 SCC 680** supra and **Magma General Insurance Company Limited Vs Nanu Ram** reported in 2018 ACJ 2782.

15. Learned Claims Tribunal has not awarded any amount towards future prospectus also, as held by Hon'ble Supreme Court in case of **Pranay Sethi** (supra), wherein Hon’ble Supreme Court has held that even if a person is not in permanent employment or working on fixed wages then also he / she would be entitled for an addition of 40% of the established income in a case where deceased / injured is below 40 years of age. In the case at hand, deceased was only 18 years of age and therefore there will be an addition of 40% of her established income for the purpose of calculating total income of the deceased, while calculating amount of compensation.

16. For the aforementioned reasons, compensation awarded by learned Claims Tribunal requires reconsideration and re-computation which is as under:

(a) Income of the deceased as assessed by learned Claims Tribunal is Rs.80/- per day and Rs.2,400/- per month and her yearly income will come to Rs.28,800/-.

(b) By adding 40% towards future prospects, annual income will come to Rs.40,320/- {28800 +(28800 x 40/100)}.

(c) Deceased was bachelor on the date of accident, therefore, half of her income will be deducted towards her personal and living expenses, which makes loss of dependency as Rs.20,160/- (40320/2).

(d) Deceased on the date of accident was 18 years of age and appropriate multiplier would be 18 as held by Hon'ble Supreme Court in the case of **Sarla Verma** (supra). Now, total loss of dependency of claimants comes to Rs.3,62,880/- (20160 x 18).

(e) Apart from the above, claimants will be further entitled for Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.40000/- towards loss of filial consortium.

17. Now, the claimants are entitled for a total sum of **Rs.4,32,880/-** as compensation, instead of Rs.1,55,600/- as awarded by learned Claims Tribunal.

18. The aforementioned award of compensation will carry interest at the rate of 6% per annum from the date of the filing of the claim application till its realization. Other conditions imposed by learned claims tribunal shall remain intact.

19. So far as the submission made by learned counsel for the appellants that a direction of pay and recover be issued is concerned, we are not convinced with such submission, more so when the deceased was travelling along with other 15–16 labourers on the platform of a goods vehicle. No premium was deposited by the owner of the offending vehicle for such passengers.

20. Hon'ble Supreme Court in the case of **New India Assurance Company Limited Vs Asha Rani and others** reported in 2003 (2) 223 considering the issue of risk of passengers travelling on the goods vehicle has held thus :

> "9. In **Satpal Case**[1] the Court assumed that the provisions of Section 95 (1) of the Motor Vehicles Act, 1939 are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. Xxxxxx.
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> Xxxxxxxxxx
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> 26. In view of the changes in the relevant provisions in the 1988 Act *vis-a-vis* the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used ie "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a

[1] New India Assurance Co., Vs Satpal Singh (2000) 1 SCC 237

vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."

21. In view of the above law laid down by Hon'ble Supreme Court the direction as sought for by the learned counsel for the appellants cannot be issued and the prayer is hereby repelled.

22. The direction of pay and recover can be issued only when the deceased / injured is covered under the policy but the exoneration of the Insurance Company from its liability when breach of conditions of the Insurance Policy is on some other ground like absence of license, permit etc.

23. The amount of compensation to be awarded to the claimants / appellants is enhanced to Rs.4,32,880/- from Rs.1,55,600/- and the liability to pay the compensation will be upon NA1 and NA2 / respondents-1 and 2 herein the appeal. Amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions imposed by the Tribunal will remain intact.

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

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma