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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 180 of 2015

1. Chandrika Rajwade S/o Dil Bahal Rajwade, Aged About 40 Years, Case Rajwar, Occupation-Owner of Vehicle
2. Krishna Rajwade S/o Dil Bahal Rajwade, Aged About 35 Years, caste Rajwar, Occupation-Driver
Both are resident of Village Latori, P.S. & Tahsil Lakhanpur, District Surguja (C.G.)

---- Appellants

Versus

1. Manmatiya W/o Jeet Ram Rajwade, aged about 45 Years, Caste Rajwar,
2. Chandramani D/o Jeet Ram Rajwade, aged about 24 years, Caste Rajwar,
3. Vijay S/o Jeet Ram Rajwade, age about 22 years, Caste Rajwar,
4. Kiran D/o Jeet Ram Rajwade, aged about 20 Years, Caste Rajwar,
5. Lalmani, D/o Jeet Ram Rajwade, aged about 18 years, Caste Rajwar,
6. Rajmani, D/o Jeet Ram Rajwade, aged about 12 years, Caste Rajwar,
7. Anil, S/o Jeet Ram Rajwade, aged about 8 years, Caste Rajwar, Appellant No. 6 & 7 Minor, guardian mother Manmatiya Wd/o Jeet Ram, aged about 45 years, Caste Rajwar, All Resident of Village Latori, P.S. & Tahsil Lakhanpur, District Surguja (C.G.),
8. United Insurance Company, Bram Road, Ambikapur, District Surguja (C.G.).

---- Respondents

For Appellants	:	None
For Respondents No.1 to 7	:	Shri Rahul K. Mishra, Advocate
For Respondent No. 8	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

02.11.2020

1. Appellants/owner and driver of the offending vehicle have preferred this appeal under Section 173 of the Motor

Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 29.08.2013 passed by the Additional Motor Accident Claims Tribunal, (FTC) Ambikapur District Surguja, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.13 of 2013 whereby learned Claims Tribunal allowed the claim application filed under Section 166 of the M.V. Act in part and awarded Rs.2,71,200/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal, are that, on 05.08.2009, Jeet Ram Rajwade was returning to his home from village Latori Trisect (T point round), at that relevant time, non-applicant No.2 while driving his motorcycle bearing No.CG-15/C/9234 (hereinafter referred to as “offending vehicle”) rashly and negligently dashed Jeet Ram Rajwade and caused accident. In the aforementioned accident, Jeet Ram Rajwade died on spot.

3. Respondents No.1 to 7/claimants filed application under Section 166 of the M.V. Act seeking compensation of Rs.4,55,000/- pleading therein that on the date of accident deceased was earning Rs.3,500/- per month from his agricultural and the work of labourer.

4. Non-applicants No.1 and 2/owner and driver of offending vehicle submitted reply to claim application denying the pleading made therein. They have further pleaded that

deceased was habitual drinker and on the date of accident, under the influenced of liquor, he ran on the road and dashed himself with hand pump and fell down. The deceased has not suffered any motor accidental injury. Non-applicant No.2 has been falsely implicated in the accident on the basis of false and fabricated report.

5. Non-applicant No.3/Insurance Company submitted reply to claim application denying the contents of application. In additional pleadings, it was pleaded that proposal for insurance of motorcycle bearing No.CG-15/C/9234 was submitted in the office on 05.08.2009, which was accepted by Insurance Company. Documents were produced and proposal was submitted at about 4.00 PM on 05.08.2009 and Insurance policy was issued on 06.08.2009 for a period from 06.08.2009 to 05.08.2010. On the date of accident i.e. 05.08.2009 at about 11.00 AM, the motorcycle was not insured with non-applicant No.3/Insurance Company, as such, no liability can be fastened upon Insurance Company and claim is to be dismissed with respect to non-applicant No.3.

6. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that Jeet Ram Rajwade died on account of motor accidental injuries suffered by him due to rash and negligent driving of motorcycle bearing No.CG-15/C/9234 owned by

non-applicant No.1 and driven by non-applicant No.2; insurance of the vehicle on the date of accident was not found to be proved, exonerating the Insurance Company from liability, awarded Rs.2,71,200/- as compensation and fastened liability to satisfy the amount of compensation upon non-applicants No.1 and 2/appellants.

7. No one appeared on behalf of the appellants even in the second round of hearing of the case.

8. Shri Rahul K. Mishra, learned counsel for respondents No.1 to 7/claimants submits that learned Claims Tribunal has assessed the income of deceased as Rs.3000/- per month only against the claim of Rs.3,500/- per month for an accident which took place on 05/08/2009; the assessment of income of deceased cannot be said to be on higher side. He further submits that deduction towards personal and living expenses and application of multiplier is in accordance with law laid by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. It is contended that impugned award passed by learned claims Tribunal is just and proper, which does not call for any interference.

9. Shri Dashrath Gupta, learned counsel for respondent No.8/Insurance Company submits that Insurance Company is exonerated by learned Claims Tribunal by recording a finding that non-applicants No. 1 and 2/owner and driver of

offending vehicle failed to place on record any document to show that on the date of accident, offending vehicle was insured with non-applicant No.3. He further contended that in absence of any policy issued by Insurance Company covering risk on the date of accident, learned Claims Tribunal is justified in exonerating the Insurance Company from liability to satisfy the amount of compensation.

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

11. Upon going through the grounds raised in memo of appeal, it would show that appellants/owner and driver of offending vehicle have raised ground that erroneous finding has been recorded by learned Claims Tribunal with regard to rash and negligent driving of offending vehicle by appellant No.2; awarding higher amount of compensation by assessing income of deceased as Rs.3000/- per month; erroneous finding recorded with regard to death of Jeet Ram Rajwade due to motor accidental injuries suffered by him and proper opportunity for defending the case was not afforded to the appellants.

12. To appreciate the grounds raised by appellants in memo of appeal, I have perused the record of claim case minutely. In reply to claim application, they have pleaded that they have made complaint to higher authorities of false implication in the case and lodging false and fabricated report against

them.

13. Perusal of record of claim case would show that appellants have not entered into witness box to prove their pleadings. Even before this Court, they have not filed any document to show that they have made any complaint to higher authorities of falsely implication of non-applicant No.2 and offending vehicle in the case and lodging of false crime against non-applicant No.2. Appellants have not filed any proceedings before appropriate Court against registration of crime in a motor accident case against driver of offending vehicle.

14. In view of above facts of the case, I do not find any merit in the grounds raised by appellants with regard to false implication of non-applicant No.2/respondent No.2 as well as offending vehicle in the case.

15. Rather, perusal of First Information Report (Ex.P/2) would show that date of accident is 05.08.2009 at about 11.00 AM, report was lodged on same day i.e. 05.08.2009 within one hour of the accident i.e. 11.50 AM and there is specific mention of name of driver of offending vehicle i.e. Krishna Rajwade.

16. In view of aforementioned facts and circumstances of the case, finding recorded by learned Claims Tribunal with regard to motor accidental injuries suffered by deceased Jeet Ram Rajwade on account of rash and negligent driving

of motorcycle by non-applicant No.2 cannot be said to be erroneous finding. I do not find any illegality, infirmity or perversity in the aforementioned finding recorded by learned Claims Tribunal with regard to involvement of motorcycle and non-applicant No.2 in the motor accident.

17. The other ground raised by appellants in grounds of appeal is with regard to quantum of compensation. Learned claims Tribunal has assessed the income of deceased as Rs.3,000/- per month taking into consideration the date of accident and number of dependents of deceased, I do not find that income assessed by learned Claims Tribunal is on higher side. Learned Claims Tribunal has deducted 1/5th towards personal and living expenses, which is in consonance with the law laid down by Hon'ble Supreme Court in case of **Sarla Verma** (supra) as number of dependents in this case are seven and applied the multiplier of 9 considering age of the deceased as 56 years. The age of deceased assessed by learned Claims Tribunal is not disputed, hence, application of multiplier of 9 in the facts of case is correct and in consonance with the ruling rendered by Hon'ble Supreme Court in case of **Sarla Verma** (supra). Learned Claims Tribunal has awarded only Rs.12,000/- on other conventional heads.

18. Taking into consideration aforementioned calculation for awarding the amount of compensation, I do not find any

reason/ground to interfere with the quantum of compensation awarded by learned Claims Tribunal to the claimants/respondents No. 1 to 7.

19. So far as exoneration of Insurance company on the ground of not having valid and effective policy of offending vehicle on the date of accident is concerned, Insurance Company has very specifically pleaded that motorcycle was produced before non-applicant No.3 at 4.00 PM for purchasing the insurance policy and proposal was submitted on 05.08.2009. The insurance policy was issued on 06.08.2009 whereas accident took place on 05.08.2009 at about 11.00 AM as mentioned in First Information Report (Ex.P/2). Seizure memo (Ex.P/1) available on record would show that offending vehicle and documents were seized on 06.08.2009, in which, seizure of insurance policy has been shown with its validity upto 05.08.2010. From the contents of seizure memo showing the date of validity of insurance policy till 05.08.2010 specifies that the policy was issued on 06.08.2009 and will lapse on midnight of 05.08.2010.

20. Date of issuance of insurance policy on 06.08.2009 is not disputed by the appellants. The policy came into effect only on 06.08.2009. Insurance Company is bound by policy, which is a contract between Insurance Company and insured/owner of offending vehicle which admittedly came into effect on 06.08.2009.

21. In view of above, learned Claims Tribunal has not committed any mistake in recording a finding that on the date of accident, offending vehicle was not insured with non-applicant No.3/Insurance Company. As such, submission made by learned counsel for respondent No.8/Insurance Company and grounds taken by Insurance Company in their reply appears to be correct that on the date of accident, there was no insurance policy of offending vehicle on the date of accident.

22. For the foregoing reasons, I do not find any tenable ground to interfere with the impugned award passed by learned Claims Tribunal. The appeal being devoid of substance which is liable to be and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh