NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 836 of 2014

The Oriental Insurance Company Ltd. Thru- The Branch Manager, Branch Office, Madina Building, Kachahari Chowk, Raipur C.G.

---- Appellant.

Versus

1. Khemin Bai Yadav W/o Vishal Yadav Aged About 30 Years.
2. Ku. Gomati Yadav D/o Vishal Yadav Aged About 12 Years.
3. Poshan Yadav S/o Vishal Yadav Aged About 10 Years.
4. Pushkar Yadav S/o Vishal Yadav Aged About 6 Years.

   Respondent No.2 to 4 are minor through natural guardian, Mother Smt. Khemin Bai Yadav

   All are R/o. Village- Chakve, Post- Kosrangi, Thana- Kharora, Distt. Raipur C.G.
5. Ramkumar Nishad S/o Jailal Nishad Aged About 35 Years R/o. Adsena, Thana- Kharora, Distt. Raipur C.G. (Driver).
6. Thakur Ram Verma S/o Nammu Lal Verma Aged About 70 Years R/o. Adsena, Thana- Kharora, Distt. Raipur C.G.

--- Respondents

For Appellant	:	Mr. N. K. Malviya, Advocate.
For Respondent No.1 to 4	:	Mr. J.K. Gupta, Advocate.
For Respondent No.5 & 6	:	None.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Parth Prateem Sahu, J

21/09/2020

1. Appellant -Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 18.06.2014 passed by learned Chief Motor Accident Claims Tribunal, Raipur in Claim Case No.73/2012, whereby the Tribunal allowed application filed under Section 163 (A) of the Act of 1988 in part and awarded **Rs.7,82,500/-** as compensation to claimants in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 25.02.2012 at about 1 :00 am in mid night, Vishal Yadav was going to village -Adsena from village -Akoli in Tata Magic bearing registration No. CG/04/T/7867. When he reached near village -Nilja, driver of Tractor bearing registration No. CG/04/DM/0290, (for short, 'offending vehicle), which was standing idle besides the road stopped his vehicle for help. When Vishal Yadav was trying to remove the iron rod stuck in front wheel of offending vehicle, driver of offending vehicle drove his vehicle rashly and negligently as a result, Vishal Yadav came under the wheel of offending vehicle, suffered grievous injuries and died while undergoing treatment.

3. Claimants, who are widow and children of deceased, filed an application under Section 163 (A) of the Act of 1988 seeking compensation of Rs.6,08,000/- on the grounds mentioned therein.

4. Non-applicant No.1 & 2, driver and owner of offending vehicle, submitted reply to application, while denying the entire pleadings made therein pleaded that deceased met with accident on account of his own negligence. Amount of compensation claimed is highly exaggerated. On the date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company, hence, liability, if any, to satisfy the amount of compensation would be of Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to application and denied the pleadings made therein. It was further pleaded that deceased met with accident on account of his own negligence. On the date of accident, non-applicant No.1 was neither having valid and effective driving license to drive offending vehicle nor was there having valid permit or fitness certificate in respect of offending vehicle.

6. Upon appreciation of pleadings and evidence placed on record by the respective parties the Tribunal held that Vishal Yadav died on account of injuries suffered by him in a road accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1. Offending vehicle was not found to be plied on road in breach of any of the condition of Insurance Policy. The Tribunal allowed claim application in part, awarded total compensation of Rs.**7,82,500/-** along with interest @ 9% p.a and fastened liability to satisfy the amount of compensation upon non-applicants, jointly and severally.

7. Learned counsel for appellant -Insurance Company submits that the Tribunal erred in holding that Insurance Company failed to prove that license of non-applicant No.1 -driver of offending vehicle, to be a fake license and as such there was no breach of condition of Insurance Policy. He further submits that Tribunal awarded excessive amount of compensation on other conventional heads ignoring the fact that application was filed under Section 163 (A) of the Act of 1988, erred in applying multiplier of 17 instead of 16 and awarding conditional interest at the rate of 12% p.a., if amount of compensation awarded is not deposited within a period of one month.

8. Learned counsel for respondent Nos.1 to 4/claimants submits that the Tribunal, after taking into consideration the entire facts and circumstances of this case and considering the law laid down by the Hon'ble Supreme Court in case o**f Rajesh vs. Rajbir Singh & Ors** reported in **2013 9 SCC 54,** has awarded just and proper amount compensation, which does not call for any interference.

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

10. So far as first submission that license possessed by non-applicant No.1 is fake, Insurance Company in support of its pleadings has placed on record

verification report (Ex.D-1) wherein it is mentioned that license bearing No. R/811/R/03 dated 13.011.2003 in the name of Ram Kumar Kewat was not issued by the office of Licensing Authority ie Regional Transport Office, Raipur. To prove Ex-D-1, Insurance Company has examined one Rajesh Kumar Bhargav as NAW- 3 (1), who stated that since 2011 he is posted as License Clerk in License Renewal Branch of Regional Transport Officer Raipur, certificate Ex.D-1 was issued from his office, which bears signature of one Vijay Nikunj, Transportat Inspector and according to which, license bearing No.R/811/R/03 was not issued from his office. This witness has not stated that certificate Ex.D-1 has been prepared by him, rather he has stated that Ex.D-1 has been issued by his office and it bears signature of Vijay Nikunj, who did not appear as a witness to prove the said document. In cross-examination, this witness admitted that he has not brought that documents based on which Ex.D-1 has been issued. He has not even brought the register of license number mentioned in Ex.D-1. He further admitted that he cannot tell as to in whose name license bearing No.R/811/R/03 has been issued. Apart from Ex.-D-1 and evidence of NAW -3 (1), Insurance Company has not placed on record any other materials or evidence. If any certificate issued by any officer is placed on record before the Tribunal/Court, the same is required to be proved in accordance with law. Certificate Ex.D-1 is not photocopy of any register or photocopy of any Government document, in fact it is a hand-prepared document in prescribed format by an employee of Regional Transport Office, Raipur. In these circumstances, if not the author of document was examined but then the other employee could have proved the same by producing the relevant record on the basis of which, Ex.D-1 was issued. As discussed above the employee of RTO examined as witness to prove Ex.D-1 has not brought the records.

11. In view of above facts and evidence of the case, contents of the documents Ex.D-1 cannot be said to be proved and accepted as evidence to disbelieve the documents ie photocopy of license available on record. Burden is always upon Insurance Company to prove by placing cogent and reliable piece of evidence before the Tribunal, the fact that license placed on record is not a valid and effective driving license. As NAW 3 -1 could not able to prove under law by placing register maintained by the department for issuance of license that license bearing No. R/811/R/03 dated 13.11.2003 has not been issued in the name of Ram Kumar Kewat, therefore, we are of the considered opinion that the Tribunal has correctly arrived at a finding that Insurance Company failed to prove that license issued in name of Ram Kumar Kewat is not a valid and effective driving license. Hence, first submission made by learned counsel for Insurance Company with regard to license of non-applicant No.1 -driver of offending vehicle is not sustainable and it is hereby repelled.

12. Coming to second submission of learned counsel for the appellant that the Tribunal has awarded excessive amount of compensation under other conventional heads. Since, claim application was filed under Section 163(A) of the Act of 1988 for which amount of compensation to be awarded under other conventional heads is to be calculated strictly as per structural formula provided under Second Schedule of the Act of 1988. In Second Schedule, multiplier of 17 is prescribed for the age group of 30-35. In case at hand, the Tribunal has held the deceased to be of 32 years, and accordingly, applied multiplier of 17. The Tribunal has deducted ¼th towards personal and living expenses of deceased, whereas Second Schedule prescribes 1/3rd deduction towards personal and living expenses. Further, in Second Schedule there is no mention that deduction of amount towards personal and living expenses to be applied on the basis of number of dependants. Hence, the Tribunal erred in deducting

¼th towards personal and living expenses instead of 1/3rd. Further, the Tribunal awarded Rs.25,000/- towards funeral expenses, Rs.1,00,000/- to each claimant towards loss of consortium and pains & suffering etc ie Rs.4,00,000/-. In clause (3) of the Second Schedule, amount of compensation to be awarded under other conventional heads has been specially prescribed ie Rs.2,000/- for funeral expenses, Rs.5,000/- for loss of consortium to spouse & Rs.2,500/- for loss of estate.

13. The Tribunal has assessed income of deceased as Rs.2,500/- per month ignoring that income pleaded in application by claimants ie Rs.3,200/- per month. Though this appeal has been filed by Insurance Company challenging quantum of compensation, however, taking into consideration the object of the Act of 1988 which is to award just amount of compensation to the claimants, particularly in a case where they have lost their bread winner and further that the quantum of amount of compensation awarded by the Tribunal requires interference, we find it appropriate to recompute the amount of compensation by assessing income of deceased as Rs.3,200/- per month as pleaded in application and stated by claimants in their evidence taking into consideration the date of accident and other factors. The Tribunal has accepted occupation of deceased as 'labourer', but even then took 25 days as working days in a month, which in the considered opinion of this Court is not correct. The labourers do not enjoy weekly holidays, hence, income of deceased, as pleaded by claimants ie Rs.3,200/- per month is to be taken for the purpose of calculating amount of compensation.

14. So far as other submission with regard to award of conditional interest at the rate of 12% p.a is concerned, award of interest is provided under Section 171 of the Act of 1988, but there is no provision under this Act prescribing award of conditional/default interest. Hence, award of 12% p.a conditional

interest/default interest by the Tribunal is not sustainable and it is hereby set aside.

15. For the foregoing reasons, we propose to recompute the amount of compensation awarded by the Tribunal.

16. Income of deceased is taken as Rs.3,200/- per month and Rs.38,400/- per annum (3200X12). After deducting 1/3rd towards personal and living expenses annual loss of dependency comes to Rs.25,600/- (34400 – 1/3). By applying multiplier of 17, as applied by the Tribunal, total loss of dependency will come to Rs.4,35,200/- (25600 X 17). Apart from this, claimants are also entitled for a sum of Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate. Now claimants will be entitled only sum of **Rs.4,44,700/- (**Rs.4,35,200 + Rs.2,000 + Rs.5,000 + Rs.25,00/) instead of **Rs. Rs.7,82,500/-** as awarded by the Tribunal. This amount of compensation shall carry interest @ 9% p.a. from the date of filing application till its realization. Rest of the condition of impugned award shall remain intact.

17. In the result, appeal is allowed in part and impugned award stands modified to the extent as indicated herein-above.

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

Jamal/-