NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 160 of 2012

1. Dharmendra Sidhuja (dead) S/o Kanihya Lal
   1.a) Monika Sidhuja widow of late Dharmendra Sidhuja, aged about 34 years
   1.b) Ku. Barbie Sidhuja D/o late Dharmendra Sidhuja, aged about 09 years, through her natural guardina mother Monika Sidhuja
   Both are resident of Plot No. 1, Mutha Nagar, Street No. 07, Telibandha, Raipur C.G.

------Appellants

VERSUS

1. Lalji Yadav S/o Bhukan Yadav aged about 45 years, R/o Dodekala Near Water Tank Police Station-Dharsiwa District Raipur C.G.

   -------Driver

2. Kisan Chand Athwani S/o Prahlad Rai Athwani aged about 45 years, R/o Lakhe Nagar, Raipur C.G. **------Owner**

3. National Insurance Company through its Regional Office G.E. Road, Raipur C.G.

----Respondents

For Appellants	:	Mr. Vipin Punjabi, Advocate.
For Respondent No. 1 & 2	:	Mr. A.D. Kuldeep, Advocate.
For Respondent No. 3	:	Mr. Dashrath Gupta, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, J.

24/08/2020

1. Challenge in this appeal is to the award dated 22-02-2011 passed by learned 14th Additional Motor Accident Claims Tribunal (F.T.C.), Raipur in claim case no. 79/2009 whereby learned Claims Tribunal allowed the claim application in part and awarded Rs. 31,16,792/- as compensation in a 100% permanent disability case which includes Rs. 24,49,792/- towards medical expenses.

2. Facts relevant for disposal of this appeal are that on 13-10-2007 at about 1:00 p.m. when Dharmendra Sidhuja was traveling on his Activa two-

wheeler bearing registration no. CG 04 CC 2127 to his shop situated at Jawahar Nagar Raipur from his house after taking lunch, at that relevant time, one dumper truck bearing registration number CG 04 ZC 4290 (hereinafter referred to as "offending vehicle") driven by Respondent 1/ Non-applicant 1 rashly and negligently dashed the Activa two-wheeler. In the said accident, Dharmendra suffered grievous injuries over his person including head injury. He was taken to Ambedkar hospital Raipur from where he was shifted to Ramkrishna Hospital. Looking to the nature of injury and its grievousness, injured Dharmendra was shifted to Apollo Hospital, Delhi where he took treatment for months continuously. On the date of filing of the claim application, he was in coma. Even after making all the efforts by the family members of the injured Dharmendra, they did not get any fruitful result of it. Application under Section 166 of the Motor Vehicles Act, 1988 (for short, M.V. Act) was filed by Dharmendra through his wife seeking compensation of Rs. 47,00,000/- on 24-11-2008. In the claim application, it was pleaded that on the date of accident, injured Dharmendra was having the income of Rs. 15,000/- per month from electronics business but due to the accidental injuries suffered by him, he remained in coma and became permanently disabled and bed ridden.

3. Non-applicant 1 and 2/ Respondent 1 and 2 submitted their reply to the claim application and denied the pleadings made therein. It was further pleaded that the owner and the Insurance Company of the Activa two-wheeler have not been arrayed as party thereby there is non-joinder of the necessary parties. On the date of accident, the offending vehicle was insured with Non-applicant 3/ Respondent 3, there was valid and effective driving licence with the driver of the offending vehicle, hence, the liability if any, would be upon the Insurance Company.

4. Non-applicant 3/ Respondent 3-Insurance Company has also denied the

pleadings made in the claim application. Pleaded of non-impleadment of owner and insurer of the Activa two-wheeler, there was contributory negligence on the part of claimant (Dharmendra Sidhuja). The accident was intimated after eleven-days of the accident, there was no valid and effective driving licence with Respondent 1/ Non-applicant 1, the amount claimed as compensation is highly exaggerated, there was breach of conditions of insurance policy, hence, the Insurance Company is not having any liability.

5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that Respondent 1/ non-applicant 1 while driving the offending vehicle rashly and negligently dashed the Activa two-wheeler of Dharmendra Sidhuja. There was no negligence on the part of the injured Dharmendra, the injured claimant has gone in coma due to grievous head injury suffered by him and awarded Rs. 31,16,792/- held breach of conditions of insurance policy could not be proved.

6. Mr. Vipin Punjabi learned counsel for the appellants submits that learned Claims Tribunal erred in assessing the income of the injured only Rs. 3,000/- per month ignoring the pleadings and evidence on behalf of the claimants that the income of the injured on the date of accident was Rs. 15,000/- per month from his business of electronics. He further argued that the application under Order 41 Rule 27 of CPC for taking additional evidence on record was also filed on 12-03-2018 which is the income tax return of the year 2005 of injured Dharmendra in which the income of the injured Dharmendra has been shown as Rs. 1,00,340/- copy of which was obtained under the RTI Act on 04-06-2010. He also argued that one more application under Order 41 Rule 27 was filed on 14-08-2019 for taking the death certificate of Dharmendra Sidhuja along with copy of post mortem report dated 30-05-2013 who died on 30-05-2013. It is also argued that

the claimants have also placed on record the medical bills as Ext. A-6 and further that the learned Claims Tribunal has not awarded any amount towards future prospects and other non-pecuniary damages in the facts and circumstances of the case and the law laid down by the Supreme Court in case of ***R.D. Hattangadi v. Pest Control India Ltd.*** reported in **1995 (1) SCC 551** and ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680.** He submits that the amount of compensation be enhanced suitably. He also argued that all the expenditure have been incurred by the parents of the wife of injured and now after the death of injured Dharmendra, during the pendency of this appeal, late Dharmendra Sidhuja was survived by his wife and minor daughter Barbie aged about 10 years. Newly added respondent no. 4 by name Smt. Radha Sidhuja who is mother of late Dharmendra is living along with her three other sons and her husband and, therefore, no amount of compensation to be awarded to the claimants to be given in her share.

7. Mr. Dashrath Gupta, learned counsel for the Respondent-Insurance Company submits that the learned Claims Tribunal, in absense of any admissible evidence of income of deceased Dharmendra Sidhuja, has rightly assessed the income on notional basis. He further submitted that the income tax return filed along with the application under Order 41 Rule 27 of CPC, after obtaining the same under RTI Act vide information dated 04-06-2010 showing the total income of deceased Dharmendra to Rs. 1,00,340/- cannot be taken into consideration as the said document has not been placed before the learned Claims Tribunal even when the document under RTI Act was received on 04-06-2010. He also points out that this document, if considered as it is, appears to of the assessment year 2005-06 and was submitted in the year 2006 as appearing from the seal of the concerned department on the document, but in the next

assessment year of 2006-07, deceased Dharmendra had not deposited the income tax return, otherwise the said return could have also been placed on record, if the income tax return of 2005-06 has been placed on record along with the application under Order 41 Rule 27 of CPC. He submits that the income tax return cannot be taken into consideration for assessing the income of deceased Dharmendra Sidhuja.

8. Mr. A.D. Kuldeep learned counsel for the Respondent 1 and 2 supports the impugned award.

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

10. The subject matter of this appeal is with regard to quantum of compensation awarded by learned Claims Tribunal. The liability of satisfying the amount of compensation upon the Insurance Company is not in dispute. The crux of argument of the learned counsel for the appellants with regard to income is that the Claims Tribunal has not considered the income pleaded and proved in evidence by the claimants witness as Rs. 15,000/- per month

11. To appreciate the submission of the learned counsel for the appellants that the Claims Tribunal erred in assessing the income of the deceased Dharmendra on the date of accident, we have perused the pleadings as well as the evidence placed on record of Monika Sidhuja AW-1 and Dileep Makhija (father-in-law of deceased) AW-2 who in their evidence have stated that deceased Dharmendra was engaged in wholesale electronics business but no document was placed on record of any nature showing the business of deceased Dharmendra or his income.

12. The present appellants who were substituted in place of deceased Dharmendra have filed an application under Order 41 Rule 27 of CPC for adducing additional evidence on record i.e. information supplied by office

of income tax officer-1(2), Raipur on 04-06-2010 mentioning therein that they were supplying copy of income tax return in the name of Dharmendra Sidhuja. This information supplied to Monica (appellant 1) under RTI Act which is income tax return issued by the department of Income Tax of 2005-06 is placed on record showing the income of deceased as Rs. 1,00,342/-. Respondent-Insurance Company has not filed reply to the application under Order 41 Rule 27 CPC of taking additional evidence before this Court. The document sought to be produce as additional evidence is issued by the Income Tax Department. In absence of any reply submitted by the Insurance Company and other respondents objecting its genuineness and veracity. The facts and circumstances of the case and the photographs of the year 2011 enclosed along with the reply to the application under Order 1 Rule 10 of CPC showing the nature of care required to be taken by wife of deceased Dharmendra itself is sufficient to accept the reason mentioned in application under Order 41 Rule 27 CPC. The reason assigned in the application under Order 41 Rule 27 CPC that the information given by the income tax department under RTI has been misplaced in her house is having some justification. The application under Order 41 Rule 27 CPC is allowed in the facts and circumstances of the case. The appellant has also filed one another application under Order 41 Rule 27 CPC for taking on record the death certificate and post mortem report of the injured. Looking to the facts that the documents are relating to the subsequent events taken place, the same is allowed.

13. As we have allowed the application filed under Order 41 Rule 27 CPC for taking additional evidence on record which is the copy of the income tax return in the name of Dharmendra Sidhuja and further taking into consideration that the claimants have further filed another application under Order 41 Rule 27 CPC, the documents to be taken on record i.e.

the death certificate and post mortem report. The document of income tax return is required to be proved by the appellants by placing the original document and further examining any witness in this regard.

14. In the aforementioned facts of the case, we find it appropriate to remit the case back to the learned Claims Tribunal for re-computation of the amount of compensation after taking into consideration the additional evidence, further oral evidence, if any, to be placed on record by the respective parties.

15. For the foregoing reasons the appeal is allowed in part. The case is **remitted back** to the concerned Claims Tribunal for re-computing the amount of compensation on the basis of the additional evidence. The parties will be at liberty to lead further evidence in support of their claim. The claimants will be at liberty to raise all other grounds available to them for enhancement of compensation. The Tribunal will pass the award afresh after providing opportunity of hearing to all the respective parties.

16. Records of the case be sent back without any further delay along with the copy of the application filed under Order 41 Rule 27 CPC dated 12-03-2018 and 14-08-2019.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Pawan