NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 591 of 2014

1. Ramroop, S/o Late Bigan Ram, Aged About 53 Years
2. Smt. Radha, W/o Ramroop, Aged About 45 Years

Both are R/o village Duwari, P.S. Chalgali, Distt. Balrampur-Ramanujganj Chhattisgarh

---- Appellants/Claimants

Versus

1. Jumman Ram, S/o Ramsukh Aged About 32 Years, R/o village Badkagaon, P.S. Chalgali, Distt. Balrampur-Ramanujganj, Chhattisgarh .....**Driver of the Vehicle**
2. Vinod Kumar Garg S/o Ramnivas Garg Aged About 50 Years R/o Batouli, P.S. Batouli, Distt. Surguja, Chhattisgarh.....**Owner of the Vehicle**
3. The Branch Manager, United India Insu.Co.Ltd., Branch Office At Brahma Road, Ambikapur, Distt. Surguja, Chhattisgarh …..**Insurer of the Vehicle**

-----Respondents

For Appellants	:	Shri VK Pandey, Advocate
For Respondents- 1 and 2	:	None appears
For Respondent- 3/Insurance Company	:	Shri Sudhir Agrawal, 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
20.07.2020

1. Appellants, who are parents of deceased Manoj filed this appeal challenging the award dated 14.03.2014 passed in Claim Case-09 of 2012 by the Additional Motor Accidents Claims Tribunal, Ramanujganj, Dist-Balrampur (for short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.2,94,000/- as compensation, fastening liability upon the Driver, Owner and Insurance company of the offending vehicle in a death case.

2. Facts in brief relevant for disposal of this appeal are that on 24.6.2010 at about 6.00AM Manoj (since deceased) was travelling on a Truck bearing No.CG 15A-3115 (hereafter referred to as 'offending vehicle') loaded with bricks. The offending vehicle met with an accident due to rash and negligent driving of its driver,NA-1, and in the said accident, Manoj suffered grievous injuries over his person. He was taken to the District Hospital, Ambikapur, from where, he was referred to SS Hospital, BHU, Varanasi, looking to his grievous injuries, where he succumbed to the injuries. The accident was reported to concerned Police Station, based upon which Crime No.37 of 2010 was registered for committing offences under Sections 279, 337, 304A of IPC.

3. Appellants/claimants, parents of the deceased filed claim application under Section 166 Motor Vehicles Act seeking compensation of Rs.10,95,000/- mentioning therein that on the date of accident deceased was 19 years of age and earning Rs.6,000/- per month from agriculture and labour work.

4. NA-1 & 2, who are driver and owner of offending vehicle submitted reply to the claim application while denying the entire pleadings made by the claimants. It was pleaded that deceased himself was negligent and liable to the accident. No loss was suffered by the claimants on account of death of the deceased. They have also pleaded that on the date of accident offending truck was insured with NA-3 Insurance Company and there was valid and effective driving license with NA-1, Driver of offending vehicle. There was valid fitness, registration and permit. Hence, liability if

any, will arise to pay the amount of compensation, then it will be of NA-3/ Insurance company.

5. NA-3/Insurance company submitted its reply to claim application and denied entire pleadings made therein. It is pleaded that as per the contents of FIR, four other labourers were also travelling on the offending vehicle along with the deceased. The offending vehicle was insured as Goods vehicle and insured for a period of one year i.e. from 21.12.2009 to 20.12.2010. Deceased and other labourers who were travelling on the Goods vehicle come within the category of gratuitous passengers and not in the category of 3rd party and therefore, Insurance Company is not liable for satisfying the amount of compensation. There was no valid and effective driving license with the driver of offending vehicle and also no valid fitness and permit for the offending vehicle at the time of accident. There was breach of conditions of Insurance Policy and income of the deceased as well as medical expenses incurred by the claimants was also denied.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by respective parties, held that deceased-Manoj suffered motor accidental injuries on account of rash and negligent driving by NA-1, resulting in his death. Breach of conditions of Insurance Policy could not be proved, and awarded Rs.2,94,000/- as compensation to the appellants / claimants.

7. Learned counsel for the appellants submits that learned Claims Tribunal erred in assessing income of the deceased as Rs.3,000/- per

month which is on lower side and no amount is awarded towards loss of future prospectus and further, only Rs.10,000/- awarded on other conventional heads which is also on lower side. He prays for suitable enhancement of amount of compensation.

8. Shri Sudheer Agrawal, learned counsel for the Insurance Company submits that learned Claims Tribunal awarded just amount of compensation which do not call for any interference. He further submits that Insurance Company also challenged the impugned award by filing cross-objection, raising a ground that it is not having any liability to satisfy amount of compensation of a gratuitous passenger travelling on Goods vehicle. He further submits that the cross-objection is supported by an application filed under section 5 of the Limitation Act and Insurance Company has given satisfactory reason for not filing the cross-objection within the prescribed period of limitation. He prays that application for condonation of delay may kindly be allowed and cross-objection be admitted for hearing.

9. Learned counsel for the appellants submits that the Insurance Company has admitted the liability to pay amount of compensation and they have deposited entire amount of compensation in pursuance of the award passed by learned Claims Tribunal on 29.05.2014, which is apparent from the copy of application submitted by respondent Insurance Company before learned Claims Tribunal along with copy of cheque which is placed on record in this appeal to show that they have made the mandatory deposit as required under section 173 (ii) of the Motor Vehicles Act, 1988.

10. So far as the appeal for enhancement of amount of compensation filed by the learned counsel for the appellants is concerned learned Claims Tribunal has assessed income of the deceased as Rs.3,000/- per month and Rs.36,000/- per annum. Date of accident is on 24.06.2010. The income of the deceased in a case of like nature where claimants failed to prove the income by placing cogent and reliable piece of evidence, then, it is for the Tribunal to assess his income on notional basis.

11. In the case at hand, claimants have pleaded income of the deceased as Rs.6,000/- per month, but failed to prove the same by placing any admissible piece of evidence before learned Claims Tribunal. For calculating the amount of income on the basis notional income, it is required to consider the price index, wage structure and also the nature of engagement of the deceased at the time of accident. Looking to the date of accident i..e. 24.06.2010 we are of the view that the income of the deceased can be assessed at Rs.4000/- per month and it is ordered accordingly.

12. Learned Claims Tribunal has not awarded any amount towards future prospects. Hon'ble Supreme court in the matter of **National Insurance Company Limited Vs Pranay Sethi and others** reported in **2017 16 SCC 680** has held that for assessment of total income of the deceased, some percentage is required to be added to the established income of the deceased, considering his age group. In the instant case, age of the deceased has been shown as 19 years and therefore, there will

be addition of 40% of the established income towards future prospects, while assessing the total income of the deceased.

13. Learned Claims Tribunal has rightly deducted 50% of the yearly income towards personal and living expenses of the deceased as on the date of accident deceased was a bachelor.

14. Learned Claims Tribunal erred in applying multiplier of 13 considering the age of appellants / claimants.

15. The issue with regard to application of multiplier in case of bachelor has been discussed and decided by Hon'ble Supreme Court in the matter of **Sube Singh and another Vs Shyam Singh (dead) and others** reported in **2018 (3) SCC 18** and Hon'ble Supreme Court observed as under:

> "4. On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of **Ashvinbhai Jayantilal Modi Vs Ramkaran Ramchandra Sharma**[1] held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more *res integra*. In the case of **Munna Lal Jain Vs Vipin Kumar Sharma**[2] decided by a three-Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants. We may usefully refer to the exposition in paragraph Nos. 11 & 12 of the reported decision, which read thus:

[1] (2015) 2 SCC 180
[2] (2015) 6 SCC 347

"11. The remaining question is only on multiplier. The High Court following **Santosh Devi Vs National Insurance Company Limited**[3], has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in **Reshma Kumari Vs Madan Mohan**[4]. It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote : (Reshma Kumari (*supra*) para 36)

"36.In Sarla Verma Vs DTC[5] this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma (*supra*) that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma (*supra)*."

12. In Sarla Verma (*supra*), at paragraph-19 a two- Judge Bench dealt with this aspect in Step 2. To quote (SCC p133):

"19.xxxx xxxxxx xxxx Step 2 (ascertaining the multiplier)
Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with

[3] (2012) 6 SCC 421
[4] (2013) 9 SCC 65
[5] (2009) 6 SCC 121

reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased."

5. Considering the aforementioned principle expounded in Sarla Verma (supra), which has been affirmed by the Constitution Bench of this Court in **National Insu. Comp. Ltd. Vs Pranay Sethi and Ors**[6], the appellants are justified in insisting for applying multiplier 18.

16. In above ruling, Hon'ble Supreme Court has categorically held that in death case of a bachelor consideration of application of multiplier would be age of deceased and not the age of his dependants.

17. Learned Claims Tribunal has awarded Rs.10,000/- towards other conventional heads i.e. Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of estate, which is on lower side as per law laid down in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited Vs Nanu Ram** reported in 2018 ACJ 2782, followed by order passed in Civil Appeal No.2705 of 2020 in **United India Insurance Company Vs. Satinder Kaur @ Satwinder Kaur and others**.

18. In view of the above, amount of compensation to be awarded to the claimants required recalculation and re-computation which is as under:

a) Income of the deceased is assessed as Rs.4,000/- per month and Rs.48,000/- per annum.

b) By adding 40% to the established income of the deceased towards his future prospects, total yearly income of the deceased will come to Rs.67,200/- {48000 + (48000 x 40/100)}.

[6] (2017) 16 SCC 680

c) Deceased was a bachelor on the date of accident, therefore, there will be 50% deduction towards his personal and living expenses, which makes the yearly loss of dependency as Rs.33,600/- (67200/2).

d) As the deceased on the date of accident was only 19 years of age, therefore, appropriate multiplier will be 18. By multiplying yearly loss of dependency with multiplier of 18, total loss of dependency will come to Rs.6,04,800/- (33600 x 18).

e) Apart from the above total loss of dependency, claimants being parents of deceased, they are further entitled for Rs.40,000/- towards filial consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

19. Now, appellants / claimants are entitled for a sum of **Rs.6,74,800/-** instead of Rs.2,94,000/-. This amount of compensation will carry interest @ 6% per annum from the date of filing of claim application till its realisation. Other conditions imposed by learned Claims Tribunal will remain intact.

20. So far as the cross appeal filed by the Insurance Company is concerned, the cross appeal has been filed on 17.10.2019 challenging the impugned award dated 14.03.2104. Insurance company has filed application for condonation of delay under Section 5 of the Limitation Act, pleading therein that Insurance Company is not in a position to decide as to how the matter may be settled and it waited enabling the possibility of getting natural justice. It is further pleaded that in absence of proper opinion of the counsel of the appellant / Insurance Company, they could not decide as to what steps are required to be taken against the impugned

award and filed cross objection with a delay of 224 days. Further, it is pleaded in cross appeal that in absence of proper legal opinion, cross objection was not filed within 30 days, as prescribed under the law. The main ground taken by the Insurance Company seeking condonation of delay of 224 days is only with regard to the absence of proper legal opinion.

21. Considering the fact that the respondent/Insurance Company is a Government Company, money to be paid is a public money and further taking into consideration that the company has taken a ground of breach of policy condition and admittedly deceased was travelling on goods vehicle, we allow the application for condonation of delay in filing cross-objection.

22. The Insurance Company has taken a ground that there was breach of conditions of Insurance Policy as the deceased was travelling on goods vehicle and there was no coverage of the gratuitous passenger. The law in this regard is well settled by Hon'ble Supreme Court in cases of **New India Assurance Company Limited Vs Asha Rani** reported in **2003 (2) 223** and **National Insurance Company Limited Vs Baljeet Kaur** reported in **2004 (2) SCC 1.**

23. In view of the above settled law which applies to the fact of the case with full force, the finding recorded by Tribunal that there was no breach of conditions of Insurance Policy is set aside. We hold that there was breach of conditions of Insurance Policy and the deceased was also not covered

under the policy, being so, the Insurance Company is exonerated from the liability to satisfy the amount of compensation.

24. Now the liability to satisfy the amount of compensation will be upon the respondents-1 and 2 Driver and Owner of offending vehicle.

25. As per statement of learned counsel for the Insurance Company by referring to the receipt enclosed along with the cross-objection stated that the amount of compensation awarded by the Tribunal has been deposited by the company before the learned Claims Tribunal and liberty may be given for recovery of the amount deposited by it from owner and driver of the offending vehicle.

26. In view of the above facts of the case, it is directed that the enhanced amount of compensation will be deposited by respondents-1 and 2 jointly and severally with interest.

27. In the result:

1) Appeal for enhancement is allowed in part, claimants/appellants will be entitled for Rs.6,74,800/- as total compensation, instead Rs.2,94,000/-. Amount of compensation will carry interest @ 6% from the date of filing claim application till its realisation. Other conditions will remain intact.

2) The cross-objection is allowed in part. The Insurance Company is exonerated from its liability. Now, respondents-1 and 2 are held liable to satisfy the amount of compensation. The Insurance Company will be at liberty to recover the amount so deposited by it from owner and driver.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma