NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1287 of 2014

- Tata AIG General Insurance Company Limited, Second Floor, Lal Ganga Shopping Mall G.E. Road, Raipur, Tahsil and District Raipur C.G. through its Authorised Office Tata AIG General insurance Company Limited Kastantiya Office Complex Second floor 11 Dr. U.N. Bramchari Street Kolkakata W.B.

------Appellant

VERSUS

1. Smt. Laxmin Bai W/o Khagesh Sahu, aged about 42 years
2. Minor Nilima D/o Khagesh Sahu, aged 2-1/2 years throug her natural guardian Smt. Laxmin Bai W/o Khagesh Sahu
3. Smt. Narmada W/o Siya Lal, Aged 45 years, Occupation Housewife.
4. Ku. Lakeshwari D/o Late Siya Lal, aged 27 years, Occupation Housewife
5. Sudesh S/o Siya Lal aged about 18 years, Occupation Student

   Respondent 1 to 5 are by caste- Teli R/o Village Gopalpur, Tahsil Sarsinwa, District Baloda Bazar, Bhatapara C.G.
6. Amlesh Kumar S/o Babulal Sahu, aged 20 years, Occupation---- **Driver**
7. Babulal Sahu S/o Chinta Ram aged 40 years, Occupation Agriculturist.

–---Owner

Respondent 6 and 7 are caste-Teli, R/o Village Gopalpur, Tahsil Bhatgaon P.S. Sarsinwam, District Baloda Bazar C.G.

----Respondents

For Appellant	:	Mr. Abhishek Sinha, Advocate.
For Respondents	:	None.

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

Judgment on Board

Per Parth Prateem Sahu, J.

28/08/2020

1. This appeal is filed by the Insurance Company challenging the impugned award dated 11-09-2014 passed in claim case no. 52/2013 by learned 1st Additional Motor Accident Claims Tribunal, Baloda Bazar whereby learned Claims Tribunal allowed the claim application in part and awarded a total

sum of Rs. 8,75,000/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 12-12-2012 when Khagesh Sahu was traveling on a tractor trolley bearing Registration No. CG 04 DT 5056 (henceforth “offending vehicle”) along with four other persons and going to Odkakan after loading iron bars in the offending vehicle. On the way, Respondent 6/ Non-applicant 1 driver of the offending vehicle drove his vehicle rashly and negligently near village Jorapali Pond and caused accident. Trolley turned turtle and Khagesh Sahu came under the trolley loaded with iron bars, as a result, Khagesh Sahu died on spot. Claimants/ Respondent 1 to 5 who are widow, children, mother and siblings of the deceased filed an application under Section 166 of the Motor Vehicles Act, 1988 pleading therein that the deceased, on the date of accident, was working as Mason and earning Rs. 9,000/- per month and claimed Rs. 20,38,000/- as compensation.

3. Respondent 6 and 7/ Non-applicant 1 and 2 who are driver and owner of the offending vehicle submitted reply to the claim application denying the fact of accident and further pleaded that on the date of accident, offending vehicle was insured with Non-applicant 3 for a period from 30-03-2012 to 29-03-2013, Respondent 6/ Non-applicant 1 driver was possessing valid and effective driving licence.

4. Appellant/ Non-applicant 3 Insurance Company submitted its separate reply to the claim application and denied the pleadings made in the application. It was pleaded that offending vehicle was registered for agricultural purpose and not for commercial purpose. At the time of accident, offending vehicle was transporting iron bars which shows that the vehicle was used for commercial purpose and deceased was traveling on the engine of the tractor where there was no seating space except for driver, there was breach of conditions of insurance policy.

5. Learned Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties, held that the accident took place on account of rash and negligent driving of Respondent 6/ Non-applicant 1 driver of the offending vehicle, deceased Khagesh Sahu, on the date of accident, was traveling on trolley loaded with goods which turned turtle. Respondent 6/ Non-applicant 1 driver was possessing valid and effective driving licence to drive the offending vehicle as he was holding the licence authorising him to drive Light Motor Vehicle; appellant-Insurance Company failed to produce any document or oral evidence to prove that on the date of accident offending vehicle was being used for commercial purpose, there was no breach of conditions of insurance policy and awarded a sum of Rs. 8,75,000/- as compensation.

6. Learned counsel for the appellant-Insurance Company submits that the deceased was traveling on trolley loaded with iron bars, there was no seating space over the trolley for traveling either for labourer or the owner of the goods. He submits, that there is no statutory liability upon the Insurance Company of insuring the passengers traveling on the goods vehicle, premium of Rs. 25/- for the labourers was for loading and unloading of goods only. He further submits that as per the policy issued in favour of the owner of the tractor (offending vehicle), it clearly shows that vehicle to be used for agricultural and forestry purpose only and on the date of accident, undisputedly, the offending vehicle was being used for transporting iron bars (goods). Placing reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***Oriental Insurance Company Limited v. Brij Mohan and others*** reported in ***(2007) 7 SCC 56***, learned counsel submits that the Insurance Company cannot be held liable to satisfy the amount of compensation in the facts of the case. It is further argued that the Claims Tribunal has awarded excessive amount of Rs.

4,25,000/- on other conventional heads which is contrary to the law laid down by the Supreme Court in the case of ***National Insurance Company Ltd. v. Pranay Sethi*** reported in ***(2017) 16 SCC 680***. It is argued that the Insurance Company may be exonerated from the liability to satisfy the amount of compensation and further the amount of compensation to be scaled down suitably.

7. We have heard learned counsel for the appellant-Insurance Company at length and also perused the record.

8. Perusal of record would show that the Respondent 1 to 5/ Claimants have also filed cross-objection under Order 41 Rule 22 of CPC for enhancement of the impugned award mainly on the ground of income assessed by the Claims Tribunal to be on lower side. Sofar as, the award of compensation, apart from the income which is to be assessed by the Tribunal/ Court, considering the documentary proof or considering the nature of employment/ engagement, price index, cost of living etc. on notional basis. Application of multiplier, deduction and award of future prospects have been dealt with by the Hon'ble Supreme Court in the matters of ***Sarla Verma & others v. Delhi Transport Corp. & anr*** reported in ***(2009) 6 SCC 121*** and ***Pranay Sethi (supra)***.

9. Sofar as, the argument raised by the learned counsel for the appellant-Insurance Company is concerned. The person/ labourer traveling on the offending vehicle is concerned. The law in this regard has been well settled by the Hon'ble Supreme Court in the matter of ***Brij Mohan (supra)*** and recently in the case of ***Shivaraj and Rajendra and another*** reported in ***(2018) 10 SCC 432*****.** The Hon'ble Supreme Court in the case of ***Brij Mohan (supra)*** has held thus.

> “10. Furthermore, respondent was not the owner of the tractor. He was also not the driver thereof. He was merely a passenger travelling on the trolley attached to the tractor. His claim petition, therefore,

could not have been allowed in view of the decision of this Court in *New India Assurance Co. Ltd. v. Asha Rani & Ors.* [(2003) 2 SCC 223] wherein the earlier decision of this Court in *New India Assurance Co. v. Satpal Singh* [(2000) 1 SCC 237] was overruled. In *Asha Rani* (supra) it was, inter alia, held: (SCC p. 235, paras 25-27)

> "25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmens Compensation Act. It does not speak of any passenger in a "goods carriage".
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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 i.e. "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 vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.
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> 27. Furthermore, sub-clause (i) of clause (b) of sub- section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place."
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> [See also *National Insurance Co. Ltd. v. Bommithi Subbhayamma and Others* [(2005) 12 SCC 243 and *United India Insurance Co. Ltd., Shimla v. Tilak Singh and Ors.* [(2006) 4 SCC 404].

12. Interpretation of the contracts of insurance in terms of Sections 147 and 149 of the Motor Vehicles Act came up for consideration recently before a Division Bench of this Court in *National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700* wherein it was held: (SCC p. 714, paras 23-24)

'*23[24].* x x x x x x x

24[25]. x x x x x x x

It was further observed: (SCC pp. 718-19, paras 33-35)

33[36]. x x x x x x x

34[37]. Francis Bennion in his book *Statutory Interpretation* described 'purposive interpretation' as under:

'A purposive construction of an enactment is one which gives effect to the legislative purpose by–

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or

(b) applying a stained meaning where the literal meaning is not in accordance with the legislative purpose.'

35[38]. More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the courts should keep in mind the objectives or purpose for which statute has been enacted. Justice Frankfurter of US Supreme Court in an article titled as '*Some Reflections on the reading of Statutes' (*47 Columbia Law Review 527), observed that,

' legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statutes, as read in the light of other external manifestations of purpose.' ”

Further, in case of ***Shivaraj (supra)***, the Supreme Court has considered the issue where the accident met by a person traveling on a tractor and held thus:

“10. The High Court, however, found in favour of Respondent 2 (insurer) that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person, namely, the driver. As a result, the

> Insurance Company (Respondent 2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the present case.”

10. In view of the aforementioned law laid down by the Supreme Court and taking into consideration the policy Ext. D-1, Insurance Company cannot be held liable to satisfy the amount of compensation with regard to death of a person/ labourer traveling on tractor or trolley. Second submission of the learned counsel for the appellant-Insurance Company that even if the insurance policy mentioned about the coverage of labourer and payment of premium for them, it can be only for the labourers who are engaged for loading and unloading of goods in the tractor trolley and not for the labourers or persons traveling on it. If the facts of the case are taken into consideration in the light of the law laid down by the Supreme Court in the aforementioned two judgments, there was breach of policy conditions as the deceased was traveling on offending vehicle tractor-trolley loaded with goods. Risk of person traveling on goods vehicle is not covered under the policy.

11. In the aforementioned facts and circumstances of the case, the Insurance Company cannot be held liable to satisfy the amount of compensation and the Insurance Company is exonerated from the liability to satisfy the amount of compensation.

12. Sofar as, the other ground raised by the learned counsel for the appellant that the Claims Tribunal awarded excessive amount of Rs. 4,25,000/- on other conventional heads, the law in this regard has been settled by the Hon'ble Supreme Court in the case of ***Pranay Sethi (supra)*****.** In its judgment, the Supreme Court has held that the compensation on other conventional heads can be awarded only under three heads i.e. loss of consortium; loss of estate and; funeral expenses. The Hon'ble Supreme

Court has also fixed the amount of compensation to be awarded under the aforementioned three different heads and, therefore, the amount of compensation on other conventional heads only to be awarded in accordance with the dictum of Hon'ble Supreme Court. The award of compensation made by the learned Claims Tribunal to the extent of Rs. 4,25,000/- is excessive and is not sustainable. It is hereby set aside. The amount of compensation on the conventional heads requires re-computation.

13. Sofar as, the cross-objection filed by the claimants is concerned. They have raised the ground with regard to assessment of the income of the deceased on the date of accident. No documentary proof has been placed on record to prove the income of the deceased and, therefore, the income of the deceased is to be assessed taking into consideration the date of accident, wage structure at that relevant time, price index, and cost of living. Claimants, in their claim application have pleaded that on the date of accident, deceased was working as Mason which comes within the category of skilled labourer. Looking to the date of accident i.e. 12-12-2012, we find it appropriate to assess the income of the deceased as Rs. 5,000/- per month on notional basis. There will be an addition of 40% of the established income towards future prospects. Looking to the age of the deceased as 22 years, appropriate multiplier would be 18 and the deduction to be of 1/4th as the number of claimants/ legal representatives are more than three.

14. In view of the above, the amount of compensation to be awarded to the claimants requires re-computation which is as under.

15. Income of the deceased is assessed as Rs. 5,000/- per month i.e. Rs. 60,000/- per annum, by adding 40% of the established income towards future prospects, the income of the deceased will come to Rs. 84,000/- [Rs.60,000+40% of Rs.60,000/-]. After deducting 1/4th towards personal

and living expenses, yearly loss of dependency will come to Rs. 63,000/-; upon multiplying the yearly loss of dependency with multiplier of 18, total loss of dependency will come to Rs. 11,34,000/- [Rs.63,000x18]. Apart from the above, claimants will be further entitled for Rs. 40,000/- towards loss of spousal consortium, Rs. 40,000/- towards parental consortium, Rs. 40,000/- towards filial consortium, Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses. Now the claimants will be entitled for total amount of compensation as Rs. 12,84,000/- [Rs.11,34,000 + Rs.40,000 + Rs.40,000 + Rs.40,000 + Rs.15,000 + Rs.15,000] instead of Rs. 8,75,000/- as awarded by the learned Claims Tribunal. The aforesaid amount of compensation will carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.

16. For the foregoing reasons, the present appeal filed by the appellant-Insurance Company is allowed. The Insurance Company is exonerated from its liability to satisfy the amount of compensation. Now the liability to satisfy the amount of compensation will be upon Respondent 6 and 7/ Non-applicant 1 and 2 driver and owner of the offending vehicle. The cross-objection filed by the claimants/ Respondent 1 to 5 is allowed in part and now the claimants will be entitled for total sum of **Rs. 12,84,000/**- as compensation along with interest as mentioned above. The Insurance Company will be entitled to recover the amount, if any, deposited by it in pursuance of the impugned award from Respondent 6 and 7/ Non-applicant 1 and 2 driver and owner of the offending vehicle in accordance with law.

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

Sd/-
(Parth Prateem Sahu)
Judge

Pawan