NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 773 of 2013

- Divakar Sori, S/o Krishna Sori, Aged About 42 Years, By Gond, R/o Village Halba, Tah. Charama, Distt. Kanker, Chhattisgarh

---- Appellant/Claimant

Versus

1. Virendra Singh Rajput, S/o Damru Singh Rajput, Aged About 35 Years R/o village Machandur, Thana- Charama, Distt. Kanker, Chhattisgarh (Driver)
2. Hemulal Sahu, S/o Dular Sahu, R/o village Machandur, Thana- Charama, District : Kanker, Chhattisgarh (Owner)
3. Bajaj Alliance General Insu. Co.Ltd. L.T. Head Office And Regd. Off. G.E. Plaza, Airport Road, Adavada, Pune, Maharastra, District : Pune (Insurer)

----Respondents

For Appellant	:	Shri Parag Kotecha, Advocate
For Respondents-1 and 2	:	None appears
For Respondent- 3/Insurance Company	:	Shri Abhishek Sinha, 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.
10.08.2020

1. Appellant/Claimant has filed this appeal under Section 173 of the Motor Vehicle Act, 1988 challenging the impugned award dated 19.03.2013 passed in Claim Case No.55 of 2010 by Motor Accident Claims Tribunal, North Bastar, Kanker (for Short, 'Claims Tribunal') wherein learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.70,000/- as compensation in a death case.

2. Facts in a nutshell are that on 29.12.2009, when Smt Kacharabai Shori (since deceased) was going to village market, she was dashed by Mahendra Tractor 207 DE 475 with no registration number (hereafter

referred to as 'offending vehicle'). Offending vehicle was driven by NA1. In the aforementioned accident, she suffered grievous injuries over her head, face and other parts of the body and succumbed to injuries on the spot.

3. Appellant/claimant, who is son of the deceased filed claim application under Section 166 of the Motor Vehicle Act, 1988 seeking compensation of Rs.12,18,400/- mentioning therein that the deceased was member of Krishi Mandi and also doing agriculture work and earning Rs.5,000/- per month and he was dependant on her.

4. NA-1 and 2, Driver and Owner of offending vehicle submitted reply to the claim application pleading therein that the accident was on account of negligence on the part of deceased herself as she crossed the road running; the amount of compensation is highly exaggerated; driver of offending vehicle was having valid and effective driving license; and offending vehicle was insured with Insurance Company/NA3.

5. NA3/Insurance Company submitted reply to the claim application denying the pleadings made therein, as also income of deceased as Rs.5,000/- per month. It is also pleaded that application filed by the claimant is not maintainable as he was not dependant on the deceased. The deceased was aged lady and appellant himself might be taking care of her. There was no valid and effective driving license with driver of offending vehicle.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record held that NA1, driver of offending vehicle due to rash

and negligent driving of the offending vehicle, caused accident to the deceased, in which deceased Kacharabai died; income of the deceased has been assessed as Rs.3,000/- per month; breach of conditions of Insurance Policy on account of not having valid and effective driving license with NA1 was not found to be proved; claimant was not dependant on the deceased and awarded a sum of Rs.70,000/- including Rs.50,000/- towards 'no fault liability', Rs.10,000/- towards loss of estate, Rs.5,000/- towards love and affection and Rs.5,000/- towards funeral expenses.

7. Learned counsel for the appellant submits that learned Claims Tribunal has not taken into consideration the facts pleaded in the claim application in its entirety. He submits that there is specific pleading and evidence placed on record by the appellant, that the deceased was residing with him and she was earning Rs.5,000/- per month from agriculture work and by selling vegetables. Learned counsel submits that deceased was mother of appellant, and she being elder member of the family, was giving her earning to her son, which is used as her share for expenditure towards family members. He further submits that as the deceased was residing and giving her income for helping the family, the appellant, to some extent, is dependant upon her income, whereas, learned Claims Tribunal has erroneously arrived at a finding that appellant is not dependant upon the deceased and not awarded any amount on such head.

8. Learned counsel for the respondent/Insurance Company submits that looking to the age of the deceased, it cannot be said that appellant was dependant on her. He further submits that as pleaded and argued by

learned counsel for the appellant that the deceased was doing agriculture work and also selling vegetables and earning Rs.5,000/- per month is rightly not considered by the learned Claims Tribunal. In alternate, he submits that even if there is some agriculture land on which the deceased was doing agriculture work, will remain with the appellant who is son of the deceased and therefore, there is no loss of income to him. He also argued that even if any amount of compensation is to be awarded to the appellant/claimant, this in view of the judgement passed by Hon'ble Supreme Court in the case of **New India Assurance Company Ltd Vs Charlie and another** reported in 2005 AIR SCW 1801, only the last multiplier as provided under the Schedule is to be applied.

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

10. Fact of accident and the insurance of the offending vehicle by the respondent/Insurance Company is not in dispute. Finding recorded by learned Claims Tribunal with regard to breach of conditions of Insurance Policy to be not proved was not challenged by the respondent-Insurance Company.

11. In view of above, liability to satisfy the amount of compensation upon the Insurance Company is also not in dispute.

12. The only question which arises for consideration is, what will be the amount of compensation to be awarded to the appellant/claimant and whether the appellant can be said to be dependant upon the deceased.

13. Learned counsel for respondent/Insurance Company has not disputed with regard to the entitlement of filing claim application under Section 166 of Motor Vehicles Act, 1988 of the appellant/claimant. His only argument is that the appellant being married son, he cannot be held to be dependant upon the deceased.

14. Dependence of a major son and his family members cannot be said to be restricted with regard to the financial help directly but the help which is extended by the elder family member in household affairs by doing house hold work like, by helping the family members in doing the house hold work, taking care of children in absence of family members, cooking and serving food to family members, cannot be ruled out. For above mentioned works, family members normally depend upon the elder members.

15. Considering the above aspect of help extended by elder family members in the day-to-day work in a family, it cannot be said that the appellant or his family members in any manner, are not dependant on the deceased.

16. Looking to the deceased being an elderly lady of the family residing with the appellant, she might be doing such work as discussed above along with selling of vegetables. In absence of such member of the family, definitely the other family members are required to make some alternate arrangement. In view of above, as the deceased being mother of the appellant and elder member of the family, we are of the view that the

appellant is dependant upon the deceased for some household works as detailed above.

17. The work and help which might be extended during the life time of the deceased can be assessed in terms of money because, in absence of such elder person, there can be requirement to engage some other person to perform those works and activities which the elder person in between age group of 55-60 of a family is required to do.

18. Apart from the above, the claimant, who is son of deceased has specifically pleaded that the deceased was earning Rs.5,000/- per month from her work as mentioned in the claim application, residing with him. The deceased, who was aged about 55-60 years, after earning from the work of agriculture and sale of vegetables definitely be extending the financial help to her son with whom she was living and therefore, the claimant cannot be said to have not dependant upon the deceased in any manner.

19. The issue with regard to the claim of compensation against the death of parent of a married son was considered by Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs Birender and others** reported in AIR 2020 SC 434 and held thus:

> "15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned

> legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/ and Rs.1,50,000/ per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years."

20. If the facts of present case are considered in light of the law laid down by Hon'ble Supreme Court in case of **Birender** (supra), it is apparent that as per the pleading in claim application, the deceased was residing with her married son at the time of accident. It has not been proved that the claimant is a person of high income society. From the pleadings it is proved that even after attaining age of 55 years, the deceased was working and doing agriculture work and selling vegetables. This itself shows that every member of the family is required to work to maintain the family for their survival.

21. In view of above, we are of the view that learned Claims Tribunal erred in not awarding the amount of compensation by applying multiplier method but only towards no fault liability and conventional head. The said finding of learned Claims Tribunal is liable to be and it is hereby set aside.

22. So far as the argument raised by learned counsel for the appellant that age of the deceased is wrongly assessed by learned Claims Tribunal as 60 years. We have perused the record which shows that in post-mortem report, the age of deceased was shown as 55 years, whereas,

taking into consideration the evidence available on record, learned Claims Tribunal accepted the age of the deceased as 60 years.

23. In view of above, we are of the view that age of the deceased can be taken for the purpose of calculation of amount of compensation by applying multiplier, to be a person in between age group of 55-60 years.

24. For the foregoing reasons, the amount of compensation to be awarded to the appellant/claimant requires re-calculation/re-computation, which is as under:

(a) Income of the deceased is taken as Rs.3,000/- per month and Rs.36,000/- per annum as assessed by learned Claims Tribunal.

(b) There will be deduction of $1/3^{rd}$ of her income towards personal and living expenses. Now, yearly dependency of the claimant comes to Rs.24,000/- {36000 – (36000 x1/3)}.

(c) Age of the deceased has been assessed by learned Claims Tribunal as 60 years whereas, in post-mortem report, it is recorded as 55 years. Therefore, appropriate multiplier is 9 as per the law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt) and Others Vs Delhi Transport Corporation and Another** reported in **(2009) 6 Supreme Court Cases 121**. By applying multiplier of 9 to the yearly dependency, total loss of dependency comes to Rs.2,16,000/- (24000 x 9).

(d) Apart from the above, claimant will further be entitled to Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- for parental consortium as held in the matter of **Mangala Ram Vs Oriental Insurance Company Limited and others** reported in (2018) 5 SCC 656.

25. Now, appellant/claimant will be entitled for a total compensation of **Rs.2,86,000/-** instead of Rs.70,000/-. This amount shall carry interest @ 6% per annum from the date of filing of claim application till its realisation. Other conditions imposed by the learned Claims Tribunal shall remain intact.

26. In the result, appeal is allowed in part. The impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma