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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1397 of 2015

- Ghanshyam Prasad, S/o Shri Krishna Agrawal, aged about 52 years R/o Station Road, Sakti, District Janjgir Champa (CG)

---- Appellant

Versus

1. Smt. Renu W/o Late Rupesh Agrawal, aged about 32 years
2. Minor Kritika D/o Late Rupesh Agrawal, aged about 12 years
3. Minor Krishna S/o Late Rupesh Agrawal, Aged about 10 years
4. Minor Mohan @ Tanmay S/o Late Rupesh Agrawal, aged about 5 years

   No.2 to 4 all minor through their natural guardian/Mother Smt. Renu, W/o Late Rupesh Agrawal, aged about 32 years

5. Smt. Chhoti Bai W/o Late Ramniwas Agrawal, aged about 74 years

   All R/o Village Milupara, Tahsil Charghoda, District Raigarh (CG)

6. Azad Ali S/o Haider Ali, aged about 22 years, Occupation Driver, R/o Village Majouna, P.S. Manjhi, District Chhapra Bihar.......Presently R/o Jagatpur, Behind Sagrika Hotel, in the house of Mo. Rafiq, Dhimrapura, Raigarh (CG)
7. The New India Insurance Company Limited, SADA Complex, Transport Nagar, Korba (CG) through the Branch Manager, The New India Insurance Co. Ltd. Branch Office Sattigudi Chowk, Raigarh (CG)

---- Respondents

For Appellant	;	Mr. Ravindra Agrawal, Advocate
For Respondent No.1 to 5	:	Mr. Anuroop Panda, Advocate
For Respondent No.7	:	Mr. Arjun Singraul, Advocate under the authority of Mr. Raj Awasthi, Advocate.

SB: Hon'ble Shri Justice Parth Prateem Sahu

Order On Board

27/10/2020

1. Appellant-owner has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the award dated 24.8.2015 passed in Claim Case No.154/12 whereby the learned Motor Accident Claims Tribunal, Raigarh (for short 'the Claims Tribunal') has partly allowed application filed by claimants under Section 166 of the Act of 1988, awarded Rs.19,54,500/- as compensation in a death case and while exonerating insurance company from its liability, held appellant-owner liable to satisfy the award.

2. Facts of the case, in brief, are that on 28.8.2012 Rupesh Kumar Agrawal along with his friend Rajkumar Chouhan was returning his village Milupara from Raigarh on motorcycle. When they reached near Rahul Dhaba, Hunkaradeepa, Village Kunjemura, one trailer bearing registration number CG11-AB-3611 (for short 'the offending vehicle'), driven by non-applicant No.1 rashly and negligently, dashed their motorcycle and caused accident. In the aforementioned accident, Rupesh Kumar suffered grievous injuries on his head, chest & stomach, whereas Rajkumar suffered injuries on his left hand, right leg. Both of them were taken to Jindal Hospital, Raigarh from where Rupesh was referred to Medishine Hospital, Raipur. During the course of treatment Rupesh Kumar died on 8.9.2012. Accident was reported to concerned police station upon which crime

bearing No.148/12 was registered against non-applicant No.1.

3. Claimants, who are widow and children of deceased, filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking compensation of Rs.8,35,53,290/- under various heads. It was pleaded in the application that on the date of accident, deceased was engaged in the business of running grocery shop and earning Rs.12,992/- per month (Rs.1,55,900/- per annum).

4. Non-applicant No.1-driver of offending vehicle, submitted reply to claimants' application denying the pleadings made therein. It was pleaded that accident did not occur due to his negligence, the deceased along with his friend was travelling on motorcycle carrying goods in excessive quantity due to which he lost control over motorcycle and dashed against rear wheel of offending vehicle, as a result, they fell down on road along with goods and sustained injuries. It was further pleaded that at the time of accident, the deceased was neither engaged in the business of grain trading nor earning income as pleaded in claim application. The claimants have filed claim application on false, concocted & imaginary grounds. The compensation claimed is highly exaggerated. It was also pleaded that at the time of accident, the offending vehicle was insured with non-applicant No.3-Insurance Company, the offending vehicle was not plied in breach of any of the conditions of insurance policy, hence, the insurance company is liable to indemnify insured-owner in case any compensation is awarded by the Claims

Tribunal.

5. Non-applicant No.2/appellant herein filed his reply to claim application on the lines similar to that of reply filed by non-applicant No.1-driver, and denied the pleadings made in claim application.

6. Non-applicant No.3 Insurance Company filed its reply to claim application denying the pleadings made therein. It was pleaded that death of Rupesh Kumar Agrawal was not on account of injuries sustained by him in a motor vehicular accident. Income from grocery shop was also denied. On the date of accident, non-applicant No.1 was not possessed with valid and effective driving license, as such, there was breach of policy conditions, hence insurance company is not liable to indemnify the insured.

7. Upon appreciation of pleadings and evidence placed on record by the respective parties, the Claims Tribunal held that non-applicant No.1 drove offending vehicle in rash & negligent manner and caused accident resulting in death of deceased; accident was not found to be outcome of negligence on the part of deceased and accordingly awarded Rs.19,54,500/- as compensation to claimants.

8. Mr. Ravindra Agrawal, learned counsel representing appellant-owner of offending vehicle, submits that the Claims Tribunal erred in not considering that deceased himself was contributory negligent to the accident. He submits that due to negligence of deceased, his motorcycle came into contact with rear wheel of offending vehicle, this fact has been duly admitted by Rajkumar

Chouhan, pillion rider of motorcycle, in his evidence recorded before the Claims Tribunal. He further submits that non-applicant No.1-driver of offending vehicle, on the date of accident was having valid and effective driving license, but the Claims Tribunal ignoring the said fact has erroneously exonerated insurance company by holding that non-applicant No.1 was not having valid and effective driving license to drive offending vehicle. This finding of the Claims Tribunal being contrary to evidence and material available on record is liable to be set aside. He also submits that total amount of Rs.3,50,000/- awarded by the Claims Tribunal under other conventional heads is not in accordance with decision in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** wherein the Hon'ble Supreme Court has laid down that there are only three conventional heads namely loss of estate, loss of consortium & funeral expenses and also fixed the amount to be awarded under these heads i.e. Rs.40,000/-, Rs.15,000/- & Rs.15,000/- respectively. Thus, the total amount under conventional heads could not exceed Rs.70,000/-. In support of submissions, learned counsel places his reliance on the decision rendered in **(2008) 17 SCC 56**.

9. Mr. Panda, learned counsel appearing on behalf of respondents No.1 to 5-claimants submits that the Claims Tribunal taking into consideration the pleadings, evidence and materials available on record has arrived at a just conclusion

that death of deceased was on account of injuries suffered by him in a road accident occurred due to rash and negligent driving of offending vehicle by its driver. He submits that the Claims Tribunal has not awarded any amount towards future prospects, therefore, if the amount awarded under other conventional heads is little bit on higher side, it cannot be said that the compensation awarded by the Claims Tribunal is on higher side or bonanza to claimants. The amount of compensation awarded by the Claims Tribunal is just and proper and the same does not call for any interference.

10. Mr. Singraul, learned counsel appearing for respondent Insurance Company supports the impugned award.

11. I have heard learned counsel for appellant and perused the record of the Claims Tribunal.

12. The claimants in support of their case have filed copy of FIR as Ex.P-1 and copy of final report as Ex.P-2. Perusal of these documents reveal that police have registered FIR against respondent No.6-Azad Ali, driver of offending vehicle, and on completion of investigation, submitted final report before the Court of jurisdictional Magistrate against respondent No.6. These documents would show that the police after completion of investigation arrived at a *prima facie* conclusion that accident took place on account of rash and negligent driving of offending vehicle by non-applicant No.1/respondent No.6 herein.

13. Claimants/respondents No.1 to 5 in support of their pleadings have examined Renu Agrawal (AW-1), widow of deceased,

Rajkumar Chouhan (AW-2), pillion of motorcycle, Mukti Prakash Kerketta (AW-3), Inspector, Income Tax Department.

14. Rajkumar Chouhan (AW-3), who was travelling as pillion rider on the motorcycle at the time of accident, has stated that accident was caused by offending vehicle due to negligence of its driver. He has stated that offending vehicle came to their side i.e. wrong side of road, and caused accident. He has denied the suggestion given by learned counsel for non-applicant No.1 that deceased himself dashed rear wheel of offending vehicle.

15. Non-applicant No.1/respondent No.6, driver of offending vehicle, has stated in his statement that motorcycle dashed with rear wheel of truck. Witness examined on behalf of appellant have stated that place where accident took place was a turning point which remained uncontroverted. Looking to the place of accident, which is a turn, the vehicle involved in accident i.e. trailer having long body, it cannot be ignored that while turning offending vehicle, the driver could not have taken proper precaution and has negligently caused the accident.

16. So far as submission made by learned counsel for appellant that claimants have not placed on record copy of spot map to prove that place of accident is a turn, is concerned, this argument goes against the appellant himself as he being represented by an advocate before the Claims Tribunal and spot map is a public document available in the record of criminal case, the appellant could have produced the same in

support of his defence, but he failed to bring the same on record. Hence, the appellant cannot take any benefit of non-availability of spot map on record.

17. In view of above discussions, submission made by learned counsel for the appellant that accident took place on account of negligence of deceased himself is not sustainable and it is hereby repelled.

18. So far as second ground raised by learned counsel for the appellant with regard to exoneration of insurance company is concerned, the Claims Tribunal in Para-13 of the impugned award has discussed regarding driving license of non-applicant No.1 and arrived at a conclusion that non-applicant No.1 was having license with endorsement to drive 'heavy goods vehicle' / 'transport vehicle' from 17.11.2012 to 16.11.2015, whereas date of accident is 28.8.2012. Thus, the date of accident is prior to date of endorsement on license of non-applicant No.1 authorizing him to drive transport vehicles. This clearly shows that on the date of accident, non-applicant No.1 was not having authorization to drive transport vehicle, but admittedly on the date of accident non-applicant No.1 was driving offending vehicle which comes within the category of 'heavy goods vehicle'. In these circumstances, the Claims Tribunal has rightly held that there was breach of condition of insurance policy entitling insurance company to be exonerated of its liability to pay amount of compensation.

19. So far as the submission of learned counsel for appellant that

amount of compensation awarded is on higher side is concerned, the Claims Tribunal has reckoned income of deceased as Rs.9000/- p.m. at the rate of Rs.300/- per day from the business of grocery. To prove income of deceased the claimants have examined Income Tax Officer as AW-3 who in his evidence has proved the returns filed by deceased for the year 2010-11 & 2011-12, which are available on record as Ex.P-105 & P-106. In the Income tax return of the year 2010-11 income of deceased is mentioned as Rs.1,55,900/-, whereas in return of the year 2011-12 it is mentioned as Rs.1,58,960/-. Hence, annual income of the deceased could have been fixed at Rs.1,55,900/-, however, the Claims Tribunal has assessed annual income of deceased as Rs.1,08,000/- only, which cannot be said to be on higher side in the given facts of case. This apart, the Claims Tribunal has not awarded any amount towards future prospects for which the claimants are otherwise entitled for.

20. It is the duty of Claims Tribunal and the Courts to ensure that compensation awarded to the claimants is just reasonable and not a bonanza. Learned counsel for appellant has raised a ground that the compensation awarded by the Claims Tribunal under other conventional heads is on higher side, but for assessing whether the amount of compensation awarded to claimants is just compensation for which they are entitled to in the facts and circumstances of the case and law laid down by Hon'ble Supreme Court, the amount of compensation awarded

by the Claims Tribunal requires re-computation. Accordingly, we propose to recompute the amount of compensation payable to claimants/respondents No.1 to 5 to award just compensation.

21. The income of deceased is taken as Rs.9,000/- per month, as assessed by the Claims Tribunal, and since at the time of accident the deceased was below the age of 50 years and was self-employed, in view of law laid down in the matter of **Pranay Sethi** (supra), the income of deceased is required to be increased by 25% towards future prospects, which comes to Rs.2,250/- (25% of 9000). Accordingly, the total monthly income of deceased for the purpose of calculating compensation comes to Rs.11,250/- (9000+2250) and annual income Rs.1,35,000/- (11250x12). Out of this amount, one-fourth is to be deducted towards personal & living expenses of the deceased and after deducting one-fourth, annual loss of dependency would come to Rs.1,01,250/- (135000- 33750). By applying multiplier of 15, as applied by the Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.15,18,750/- (101250x15). Besides this, respondent No.1, widow of deceased, is entitled for a sum of Rs.40,000/- towards spousal consortium and respondent Nos.2 & 3, minor children of deceased, are entitled for a sum of Rs.40,000/- towards parental consortium and respondent No.5, mother of deceased, is entitled for Rs.40,000/- towards filial consortium, as held by Hon'ble Supreme Court in the matters of Pranay

Sethi (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130**. In addition to aforesaid amount, respondents No.1 to 5 are also entitled to get a sum of Rs.15,000/- for funeral expenses; Rs.15,000/- for loss of estate. Apart from this, the claimants would also be entitled for Rs.5,25,000/- as awarded by the Claims Tribunal towards medical expenses. Thus, the total compensation comes to Rs.21,93,750/-, instead of Rs.19,54,500/- as awarded by the Claims Tribunal.

22. As this appeal is filed by the owner of offending vehicle and not by claimants, the amount of compensation cannot be enhanced. Though the learned Claims Tribunal awarded higher amount under other conventional heads, this Court taking into consideration the aforementioned re-calculation of the amount of compensation and the amount awarded to claimants, is not inclined to interfere with the impugned award.

23. The appeal fails and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-