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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 521 of 2015

Shri Ram General Insurance Com. Ltd. E-8 Ricco Industrial Area, Sitapura Jaipur, (Rajsthan).
(Insurer of Metador No.C.G. 05 B 3463).

---- Appellant

Versus

1. Smt. Lalita Bai Koshma W/o late Daulal Koshma, Aged About 43 Years, R/o Bijalipara Charama Tahsil Charama, Distt.- North Baster Kanker, Chhattisgarh.
2. Radhashyam Sinha S/o Fakir Ram, Aged About 33 Years, caste Kalar, R/o Dhanapuri Thana Guruar District Balod, Chhattisgarh.
   (Owner & Driver of Metador No.C.G. 05 B 3463).
3. Elabuddien Khan S/o Jamaludein Khan, R/o Chandani Chouk Bajarpara Charama District- North Baster Kanker, Chhattisgrh.
   (Owner of Motorcycle C.G. 07-AP-2320)
4. United India Insurance Com. Ltd., Branch Office Bathena Chouk Sinha Complex Raipur Road Dhamtari Distt.- Dhamtari, Chhattisgarh.
   (Insurer of Motorcycle C.G. 07-AP-2320)

---- Respondents

For Appellant	:	Shri Deepak Gupta, Advocate
For Respondent No.1	:	Shri Pravin Kumar Tulsyan, Advocate
For Respondent No.2	:	Shri Aman Yadav, Advocate on behalf of Shri B.P. Singh, Advocate
For Respondent No.3	:	None
For Respondent No.4	:	Shri H.B. Agrawal Senior Advocate with Shri Pankaj Agrawal, Advocate

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Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

29.10.2020

1. Appellant/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 04.02.2015 passed by the Additional Motor Accident Claims Tribunal, North Bastar, Kanker, Chhattisgarh (hereinafter

referred to as 'Claims Tribunal') in Claim Case No.05 of 2014 whereby learned Claims Tribunal allowed the claim application filed under Section 166(1) and Section 140(1) of the M.V. Act in part and awarded Rs.8,54,000/- as compensation in a death case.

2. Facts of the case in nutshell, are that, on 22.02.2014, at about 6.00 PM, Rajesh Kumar Kosma was travelling with Raj Kumar on motorcycle bearing No.CG-07/AP/2320 and going to Charama from Dhamtari. The Motorcycle was being driven by Rajesh Kumar Kosma. On the way, near Rajarao Patharon National Highway No.30 Road, one Matador bearing No.CG-05/B/3463 (hereinafter referred to as 'offending vehicle') coming from opposite direction i.e. Charama driven by non-applicant No.1 rashly and negligently, dashed motorcycle of Rajesh Kumar Kosma. In the said accident, both the riders of motorcycle fell down. Rajesh Kumar Kosma suffered grievous injuries and died on spot. The accident was reported to concerned Police Station, based upon which, Crime No.37/2014 was registered against non-applicant No.1.

3. Claimant, who is widow mother of deceased filed claim application under Section 166(1) and Section 140(1) of the M.V. Act before learned Claims Tribunal seeking compensation of Rs.9,80,000/- on account of motor accidental death of her son pleading therein that on the date

of accident, deceased was working as Motorcycle Mechanic and earning Rs.8000/- per month.

4. Non-applicant No.1 submitted reply to claim application and denied the pleadings made therein. It was pleaded that he is driver and owner of offending vehicle, offending vehicle was being insured with non-applicant No.2. It was further pleaded that offending vehicle was being plied within the terms and conditions of insurance police as there was valid and effective driving licence, fitness and permit with the driver of offending vehicle. There was head on collision between two motor vehicles, hence, there was contributory negligence on the part of deceased also. The income and occupation of deceased was denied.

5. Non-applicant No.2/Insurance Company submitted reply to claim application denying the pleadings made in claim application and pleaded that deceased driver of motorcycle was solely negligent for the accident; offending vehicle was being driven in breach of policy conditions as there was no valid and effective driving licence with non-applicant No.1 as well as there was no valid permit and fitness of offending vehicle. It was further pleaded that there was contributory negligence on the part of deceased driver of the motorcycle.

6. Non-applicant No.3 submitted reply to claim application, while denying the pleadings made in claim application,

pleaded that on the date of accident, Rajesh Kumar Kosma while travelling on motorcycle along with his friend Raj Kumar was driving his vehicle cautiously, but offending vehicle driven by non-applicant No.1 rashly and negligently dashed the motorcycle of deceased. It was further pleaded that on the date of accident, deceased was having valid and effective driving licence and motorcycle was insured with non-applicant No.4/Insurance Company.

7. Non-applicant No.4/Insurance Company of motorcycle submitted reply to claim application and denied the pleadings made therein. It was pleaded that accident was on account of rash and negligent driving of offending vehicle by non-applicant No.1; motorcycle was being driven in breach of policy conditions as there was no valid and effective driving licence with deceased driver of motorcycle.

8. On appreciation of pleadings, evidence and material placed on record by respective parties, learned Claims Tribunal held that Rajesh Kumar Kosma, aged about 25 years died on account of motor accidental injures suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1; negligence on the part of deceased Rajesh Kumar Kosma was not found to be proved; breach of policy conditions of offending vehicle was not found to be proved; breach of policy conditions of motorcycle was also not found to be proved and awarded Rs.8,54,000/- as compensation.

9. Shri Deepak Gupta, learned counsel for the appellant submits that learned Claims Tribunal erred in awarding higher amount of compensation. He further submits that learned Claims Tribunal without any proof of income has assessed the income of deceased as Rs.4,500/- per month. Learned Claims Tribunal for assessing the total income of deceased, has added 50% towards future prospects overlooking the fact that deceased was not in permanent employment, which is on higher side in view of law laid down by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**. It is contended that learned Claims Tribunal has awarded Rs.1,25,000/- towards other conventional heads i.e. Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses, which is also on higher side. It is further contended that learned Claims Tribunal has not taken into account that accident was on account of head on collision and there was contributory negligence on the part of deceased driver of motorcycle also.

10. Per contra, Shri Pravin Kumar Tulsyan, learned counsel for respondent No.1/claimant vehemently opposes the submission made by learned counsel for the appellant and submits that learned Claims Tribunal while assessing the income of deceased has taken into consideration the nature of occupation of deceased as Motorcycle Mechanic and

further taken note of date of accident which is of February 2014. He further submits that income of deceased assessed by learned Claims Tribunal cannot be said to be on higher side. It is contended that Insurance Company has not led any evidence to prove the pleadings of contributory negligence and in absence of any specific evidence, contributory negligence cannot be proved only on the basis of presumption and surmises. It is further contended that learned Claims Tribunal has awarded just amount of compensation in the facts and circumstances of the case, which does not call for any interference. He places his reliance on the judgment passed by Hon'ble Supreme Court in case of **Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Others** reported in **(2013) 10 SCC 695** and **Jiju Kuruvila and Others v. Kunjujamma Mohan and Others** reported in **(2013) 9 SCC 166** to buttress his submission.

11. I have heard learned counsel for the respective parties and perused the record carefully.

12. The appellant has not challenged insurance policy of offending vehicle and liability of appellant to pay the amount of compensation. The ground raised in this appeal is only with regard to quantum of amount of compensation and non-consideration of plea of contributory negligence on the part of deceased driver of motorcycle.

13. To appreciate the submission made by learned counsel for the appellant, I have perused the grounds raised in memo of appeal as well as record of claim case. The date of accident is 22.02.2014, claimant/respondent No.1 except pleading and oral statement made before learned Claims Tribunal has not placed any material on record to prove the occupation of deceased to be Motorcycle Mechanic and his earning to be Rs.8,000/- per month. Learned Claims Tribunal has not accepted the income as pleaded by the claimant in claim application, but considering him to be unskilled labour and taking note of notification issued by State Government under the Minimum Wages Act, in which, monthly income of unskilled labour has been mentioned as Rs.4468.90/-, assessed the income as Rs.4,500/-.

14. In the considered opinion of this Court, income assessed by learned Claims Tribunal considering the deceased to be unskilled labour cannot be said to be on higher side when Claims Tribunal has taken note of the notification of State Government under Minimum Wages Act for unskilled labour.

15. So far as the submission made by learned counsel for the appellant with regard to addition of future prospects to the established income of deceased is concerned, learned Claims Tribunal has added 50% in established income of deceased towards future prospects considering the age of deceased as 25 years. The law with regard to award of

future prospects is now well settled by Hon'ble Supreme Court in case of **Pranay Sethi** (supra). The Hon'ble Supreme Court in uncertain terms has held that where the deceased or injured was below 40 years of age and is not in permanent employment or self-employed, there will be an addition of 40% of the established income towards future prospects. In the case at hand, deceased was aged about 25 years on the date of accident and is a self-employed person, hence, there will be an addition of 40% of the established income and not 50% as held by learned Claims Tribunal. Addition of 50% towards future prospects in the established income of deceased is not sustainable and is hereby set aside. I hold that there will an addition of 40% of the established income towards future prospects.

16. Other submission made by learned counsel for the appellant that learned Claims Tribunal erred in awarding higher amount towards other conventional heads appears to be correct. Learned Claims Tribunal has awarded Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses, which in the opinion of this Court, is on the higher side in view of the dictum of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**, which requires to be scaled down.

17. So far as the submission of learned counsel for the appellant with regard to contributory negligence of the deceased, except pleading of one line in reply appellant has not placed on record any material or evidence before the Claims Tribunal to prove the plea of contributory negligence. Plea of contributory negligence is a fact requires to be proved by placing cogent and acceptable piece of evidence. Merely on the basis of head on collision of two motor vehicles, inference cannot be drawn that the injured or deceased to be contributory negligent in accident as held by Hon'ble Supreme Court in case of **Minu Rout** (supra) and **Jiju Kuruvila** (supra).

18. For the foregoing reason, the submission of learned counsel for the appellant that there was contributory negligence on the part of deceased is not sustainable and is hereby repelled.

19. To appreciate the submission made by learned counsel for the appellant with regard to excessive amount of compensation on other conventional heads requires consideration, hence to award just amount of compensation, impugned award requires re-consideration and re-computation, which is as under :

The monthly income of deceased is taken as Rs.4,500/- per month and Rs.54,000/- per annum as assessed by learned Claims Tribunal. On the date of accident, deceased was shown to be 25 years of age i.e. less than 40 years, hence, in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra), there will be an addition of 40% of the income towards future prospects. By adding 40% of the income towards future prospects, makes the total annual income of deceased to Rs.75,600/- (54,000 x 40% = 21,600 and 54,000 + 21,600). On the date of accident, the deceased was a bachelor, hence there will be a deduction of 50% towards personal and living expenses, which makes the yearly loss of dependency as Rs.37,800/- (75,600 / 2). Learned Claims Tribunal has taken the age of deceased to be 25 years, appropriate multiplier would be 18 in view of law laid down by Hon'ble Supreme Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121.** By applying multiplier of 18, amount of compensation towards loss of dependency will come to Rs.6,80,400/- (37,800 x 18). Apart from above amount of compensation towards loss of dependency, claimant will be further entitled for a sum of Rs.40,000/- towards filial consortium to widowed mother, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

20. Now, the claimants are entitled for total compensation of Rs.7,50,400/- (6,80,400 + 40,000 + 15,000 + 15,000) instead of Rs.8,54,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 7.5% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

21. In the result, the appeal is allowed in part and impugned award is modified to the extent indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh