NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.1410 of 2015

Reserved on 23.11.2020
Pronounced on 02.12.2020

Branch Manager, National Insurance Company Limited, G.E. Road, Near Indian Coffee House, Raipur, District Raipur, Chhattisgarh, (Insurer of Vehicle No. CG-07-MB-0919) Through Authorized Authority Divisional Manager, Divisional Office B-1, Taha Complex, 1st Floor, Ring Road (Vyapar Vihar), Priyadarshini Nagar, Bilaspur, District Bilaspur, Chhattisgarh (Non-Applicant No. 3).

---- Appellant

Versus

1. Smt. Khairun Begum, Wd/o Late Moh. Basir Khan, Aged About 37 Years, R/o Ward No. 19, Hariom Nagar Mandir Hasaud, Raipur, Hall Mukam Ward No.04, Nayapara, Mahasamund, District Mahasamund, Chhattisgarh (Applicant No.1).

2. Jameer Khan, S/o Late Moh. Basir Khan, Aged About 19 Years, R/o Ward No. 19, Hariom Nagar Mandir Hasaud, Raipur, Hall Mukam Ward No.04, Nayapara, Mahasamund, District Mahasamund, Chhattisgarh (Applicant No.2).

3. Sultana Bano, D/o Late Moh. Basir Khan, Aged About 18 Years, R/o Ward No. 19, Hariom Nagar Mandir Hasaud, Raipur, Hall Mukam Ward No.04, Nayapara, Mahasamund, District Mahasamund, Chhattisgarh (Applicant No.3).

4. Puran Vishwakarma, S/o Makhanlal Vishwakarma, Aged About 29 Years, R/o Sanjay Nagar, Kumharpara, Supela, P.S. Supela, District Durg, Chhattisgarh (Driver of Vehicle No. CG-07-MB-0919) (Non Applicant No.1).

5. Jitendra Singh, S/o Chandra Shekhar Singh, Aged About 31 Years, R/o Housing Board, Kailash Nagar, Bhilai, P.S. Jamul, District Durg, Chhattisgarh (Registered Owner of Vehicle No. CG-07-MB-0919 (Non Applicant No. 2).

---- Respondents

For Appellant	:	Mr. Dashrath Gupta, Advocate.
For Respondents	:	None, though served.

<u>Hon'ble Shri Justice Sanjay S. Agrawal, J</u>

<u>CAV Award/Order</u>

1. The National Insurance Company Limited has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') questioning the legality and propriety of the award dated 30.06.2015 passed in Claim Case No.H-200/2014, whereby the learned Tribunal while fastening the liability upon the insurance company, has awarded the total amount of compensation to the tune of Rs.15,73,000/- with 6% interest per annum from the date of filing of the claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 21.09.2014, the deceased Mohammad Basir Khan was returning from Abhanpur along with his son by his *'Auto-rickshaw'* and as soon as he reached near the turning of Mana Airport, he was dashed vehemently from his back side by the offending vehicle *'Indica Car'* bearing Registration No.CG-07-MB-0919, which was being driven in a rash and negligent manner by its driver namely Puran Vishwakarma/Non-Applicant No.1. The alleged offending vehicle was owned by Non-Applicant No.2/Jitendra Singh and insured with Non-Applicant No.3/National Insurance Company Limited. Owing to the alleged accident, the deceased was injured badly and succumbed to the injuries on 25.09.2014 during the course of his treatment.

3. On account of the aforesaid accident, the legal representatives of

the deceased Mohammad Basir Khan, who are wife and children of him, instituted a claim petition enumerated under Section 166 of the Act of 1988 by submitting *inter alia* that the deceased, a 39 years old, was an *'Auto-rickshaw Driver'* and used to earn Rs.400/- per day, and, thus, total amount of compensation to the tune of Rs.34,80,000/- has been claimed under various heads.

4. The Non-Applicants have contested the aforesaid claim. According to the driver and owner of the alleged offending vehicle, the deceased himself was responsible for the alleged accident and pleaded further that since the vehicle in question was insured with the National Insurance Company Limited, therefore, in case of any liability being fastened, the same could be indemnified by the said company. While, the insurer of it contested the claim on the ground that the vehicle in question was being used in violation of the policy as it was being used without any permit and fitness certificate by a driver, who was even not possessing the effective and valid driving license, as such, no liability could be fastened upon it. It is pleaded further that the amount of compensation as claimed is extremely on higher side.

5. After considering the evidence led by the claimants, the Tribunal arrived at a conclusion that the alleged accident occurred on 21.09.2014 due to rash and negligent driving by the driver of the alleged offending vehicle, resulting into the sad demise of Mohammad Basir Khan, who was 45 years old at the relevant time. It held further that the vehicle in question was not being used in violation of the policy and that by considering the monthly income of

the deceased to the tune of Rs.8,000/- awarded total amount of compensation as mentioned hereinabove, while fastening the liability upon the insurance company.

6. According to Shri Dashrath Gupta, learned counsel appearing for the Appellant/Insurance Company, the monthly income of the deceased as presumed by the Tribunal to the tune of Rs.8,000/- even in absence of its proof is unjustified. It is contended further that the multiplier of 15 as applied while assessing the total amount of dependency instead of 14, looking to the age of the deceased, who was found to be 45 years old, is contrary to the principles laid down by the Supreme Court in the matter of ***Sarla Verma (Smt) and Others Versus Delhi Transport Corporation and Another,*** reported in **(2009) 6 SCC 121.** Further contention of him is that the amount of compensation as awarded towards the conventional heads by placing its reliance upon the decision rendered in the matter of ***Rajesh and Others Versus Rajbir Singh and Others,*** reported in **(2013) 9 SCC 54** is extremely on higher side and deserves to be reduced to the extent as indicated in the light of the principles laid down by the Constitutional Bench of the Supreme Court in the matter of ***National Insurance Company Limited Versus Pranay Sethi and Others,*** reported in **(2017) 16 SCC 680,** as the principles laid down in the said matter of **Rajesh and others** (supra) has been held to be not a binding precedent.

7. No one appears on behalf of the Respondents despite service of notice of this appeal.

8. I have heard learned counsel for the Appellant/insurance company

and perused the entire record carefully.

9. From perusal of the record, it appears that the deceased Mohammad Basir Khan was an Auto-rickshaw driver, and therefore, while considering the nature of his job, the Tribunal has rightly assessed his monthly income to the tune of Rs.8,000/- and I do not find any infirmity in the same. It, however, appears that while determining the amount of compensation by applying the multiplier of 15 despite holding the age of the deceased as 45, is not in consonance with the dictum laid down by the Supreme Court in the matter of **Sarla Verma (Smt) and Others Versus Delhi Transport Corporation and Another** (supra) as it was held therein that the multiplier of 14 would be applicable with regard to the age group of 41 to 45. Besides, the amount of compensation as awarded under the conventional heads while placing its reliance upon the decision rendered by the Supreme Court in the matter of **Rajesh and Others Versus Rajbir Singh and Others** (supra) appears to be on higher side as during the pendency of this appeal, the principles laid down in the said matter has been held to be not a binding precedent in the said matter of **Pranay Sethi and Others** (supra).

10. Considering the facts and circumstances of the case and in view of the principles laid down by the Supreme Court in the above referred matter, the amount of compensation as determined by the Tribunal deserves to be reduced accordingly. Since the monthly income of the deceased was Rs.8,000/-, yearly Rs.96,000/-, and therefore, while determining his actual income, an addition of 25% of it, i.e., Rs.24,000/- towards future prospects of his income is to be made in

the light of the principles laid down in the said matter of **Pranay Sethi** (supra). It would, thus, come to Rs.1,20,000/- (Rs.96,000/- + Rs.24,000/-) and that by looking to the number of dependants upon him, who are three, deduction of 1/3rd of it, i.e., Rs.40,000/- towards his personal and living expenses, as also held by the Tribunal, would be appropriate and yearly dependency would, thus, come to Rs.80,000/- (Rs.1,20,000/- - Rs.40,000/-). As the age of the deceased at the time of the accident was 45, the multiplier applicable would be 14, instead of 15 as applied by the Tribunal, in the light of the principles laid down by the Supreme Court in the said matter of **Sarla Verma** (supra). Therefore, the total dependency would come to Rs.11,20,000/- (Rs.80,000 x 14).

11. Besides, the wife and children of the deceased are entitled to be awarded loss of consortium under the head of spousal and parental consortium as held in the matter of ***Magma General Insurance Company Limited Versus Nanu Ram Alias Chuhru Ram and Others***, reported in **(2018) 18 SCC 130** at the rate as held in the said matter of **Pranay Sethi** (supra). Consequently, the claimants are entitled to the following amounts under the conventional heads:-

Sl.No.	**Modes of Compensation**	**Amount (In Rs.)**
1.	For loss of consortium to wife	40,000/-
2.	For loss of parental consortium to children.	40,000/-
3.	For funeral expenses	15,000/-
4.	For loss of estate	15,000/-
	Total	**Rs.1,10,000/-**

And, it is to be increased by 10%, in view of the dictum of the Constitution Bench of the Supreme Court as laid down in para 59.8 in the said matter of **Pranay Sethi** (supra). Therefore, the claimants are entitled to a sum of Rs.1,21,000/- (Rs.1,10,000/- + 10% of it) under the conventional heads instead of Rs.3,25,000/-, as awarded by the Tribunal.

12. The Claimants would, thus, be entitled to a total amount of compensation to the tune of Rs.12,41,000/- (Rs.11,20,000/- + Rs.1,21,000/-) with 6% interest per annum from the date of filing of claim petition till the date of actual payment, instead of Rs.15,73,000/- as held by the Tribunal.

13. In view of the above, the appeal is allowed in part to the extent indicated hereinabove. Rest of the observations as made by the Tribunal shall remain intact. No order as to costs.

Sd/-

(**Sanjay S. Agrawal**)
Judge

Deepti Jha