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HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 959 of 2016

1. Geeta Shrivas W/o Late Vishnu Shrivas, Aged About 45 Years,
2. Ku. Khushbu, D/o Late Vishnu Shrivas, Aged About 22 Years,
Both resident of Ward No. 02, Kailash Nagar, Kawardha, Police Station and Tahsil Kawardha, District Kabirdham, Chhattisgarh.

---- Appellants

Versus

1. Sohan Lal Sahu S/o Banshi Lal Sahu, Aged About 22 Years, R/o Village Rajauli, Police Station Ranchirai, Tahsil Gunderdehi, District Balod, Chhattisgarh.
2. Bafna Earth Movers Limited, 5 Malviya Nagar, Bhilai, District Durg, Chhattisgarh.
3. Branch Manager, The Oriental Insurance Company Limited, Station Road, Near L.I.C. Office, Rajnandgaon, District Rajnandgaon, Chhattisgarh.

---- Respondents

For Appellants : Shri Devesh Chandra Verma, Advocate
For Respondents 1 & 2 : None
For Respondent No.3 : Shri Goutam Khetrapal, Advocate

(Proceedings through Video Conferencing)
Hon'ble Shri Parth Prateem Sahu, Judge
Judgment on Board

27.07.2021

1. Challenge in this appeal filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') is to the impugned award dated 02.04.2016 passed by the Motor Accident Claims Tribunal, Kabirdham (Kawardha), Chhattisgarh (hereinafter referred to as 'Tribunal') in Motor Accident Claim Case No.22 of 2015 whereby learned Tribunal allowed the application filed under Section 166 of

the M.V. Act in part, while exonerating the Insurance Company from its liability, awarded Rs.3,74,000/- as total compensation in a death case to be paid by non-applicants No. 1 and 2.

2. Brief facts relevant for disposal of this appeal are that, on 08.12.2014, Sonu @ Kamalkant Shriwas was returning on a motorcycle bearing No.CG/04/KB/3028 from Raipur to Kawardha via Dhamdha along with his friend Yogesh Sharma and Mangal Nirmalkar. When they reached near Gandai Square in Dhamdha, one Hywa Truck bearing No.CG/07/C/8701 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1, rashly and negligently, dashed the motorcycle from its rear side. In the said accident, Sonu @ Kamalkant Shriwas suffered grievous injuries and died on spot. Other two riders of motorcycle also suffered injuries and they also died during the course of their treatment. The accident was reported to concerned Police Station, based upon which, crime was registered against the driver of offending vehicle.

3. Appellants, who are mother and unmarred sister of deceased filed an application under Section 166 of the M.V. Act seeking compensation of Rs.58,84,000/- pleading therein that deceased was an able bodied person, aged about 24 years, working as Barber in his own Salon and was

earning Rs.400/- per day i.e. Rs.12,000/- per month; adding that, they were dependent upon the income of the deceased.

4. Non-applicants No.1 and 2 submitted reply to claim application and denied the facts pleaded therein except admitted facts. It was pleaded that three persons were travelling on motorcycle, which was driven rashly and negligently. Due to high speed, motorcycle became uncontrolled and dashed with offending vehicle. There was no negligence on the part of non-applicant No.1. Deceased was in intoxicated condition. The amount of compensation claimed is highly exaggerated. Offending vehicle was insured with non-applicant No.3, as such, claimants are not entitled for compensation from non-applicants No.1 and 2.

5. Non-applicant No.3/Insurance Company has denied the pleadings made in claim application for want of documents. As per report of Investigator, there was head on collusion between motorcycle and offending vehicle, as such, there was contributory negligence of driver of both the vehicles. Driving licence of driver of motorcycle is not placed on record. As on the date of accident, three persons were travelling, prima facie, contributory negligence of rider of motorcycle is apparent. On the date of accident, offending vehicle was not having valid permit, as such, there was breach of the policy condition.

6. Learned Tribunal on appreciation of pleadings and evidence placed on record by respective parties held that Sonu @ Kamalkant Shriwas died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No.1; contributory negligence on the part of deceased was not found to be proved; offending vehicle was being driven in breach of policy condition; while exonerating the Insurance Company, learned Tribunal awarded Rs.3,74,000/- as total compensation in favour of appellants and fastened liability upon non-applicants No. 1 and 2 to satisfy the amount of compensation.

7. Shri Devesh Chandra Verma, learned counsel for the appellants submits that learned Tribunal awarded very meagre amount of compensation, income of deceased has been assessed on lower side of Rs.3000/- per month only overlooking the specific pleadings and evidence with regard to occupation of deceased as Barber and future prospect is not awarded even though on the date of accident, age of deceased was only 24 years. He further submits that learned Tribunal erred in awarding Rs.50,000/- towards other conventional heads, which is contrary to the ruling of Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**. It is contended that Insurance Company has been exonerated on

the ground that offending vehicle was not having valid permit on the date of accident, which was Goods Vehicle. Respondent No.3/Insurance Company had issued policy covering risk of deceased, who was third party and further insurance policy was valid and effective on the date of accident. It is further contended that though there was breach of policy condition and Insurance Company is exonerated from its liability, but to protect the interest of appellants/claimants, a direction be issued to Insurance Company to first pay the entire amount of compensation and thereafter, to recover the same from owner and driver of offending vehicle.

8. Per contra, Shri Goutam Khetrapal, learned counsel for respondent No.3/Insurance Company opposing the submissions made by learned counsel for the appellants would submit that amount of compensation awarded to appellants is just and proper. He further submits that once there is categorical finding recorded by Tribunal that on the date of accident, offending vehicle was not possessed with valid permit as required under Section 66 of the M.V. Act, learned Tribunal has rightly been exonerated respondent No.3/Insurance Company from its liability. He also submits that the award under challenge is just and proper, which does not call for any interference.

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

10. So far as the ground raised by learned counsel for the appellants with regard to meagre award of compensation is concerned, perusal of record would show that accident was of 08.12.2014, appellants in their pleadings and evidence have categorically stated the nature of occupation of deceased to be Barbar, who is running his own Salon. In support of their plea of occupation, appellants have placed on record the hand-written certificate issued by Salon Business Association of Kabirdham signed by President and Secretary of the Salon Association as Ex.A/7. They have also placed on record the notice issued by Office of Municipal Council, Kawardha on 04.07.2013 and 31.07.2013 showing that deceased was allotted one Shop No.13 under Chief Minister Self Employment Scheme as Exs.A/8 and A/9 respectively. Receipts towards payment of rent is placed on record as Ex.A/10 and payment of amount of premium of Rs.5,000/- as Ex.A/12 and payment of rent as Ex.A/11.

11. Appellants in support of their pleadings have examined Geeta Shriwas, mother of the deceased as AW-1, Manoj Shriwas, cousin brother as AW-2 and Parmeshwar Jhariya as AW-3, who in their statements, very categorically stated that on the date of accident, deceased was doing the work of

Barber. The Tribunal though has taken into consideration the evidence and documents placed on record in paragraphs No.27 and 28, but disbelieved the income and evidence pleaded and stated in their evidence by appellants only on the ground that they have failed to prove income by placing any document with regard to income of deceased. In case of an application for grant of compensation under M.V. Act strict proof as required under civil suit is not required. Upon filing of an application for compensation under the M.V. Act, inquiry is to be conducted by Tribunal based upon the materials available on record. Even otherwise, in the facts of the case and evidence placed on record would show that deceased was doing the work of Barber in small Salon. The documents showing the income like income tax return may not be possible for the appellants where deceased was doing small business of running Salon.

12. In view of oral and documentary evidence brought on record, in the opinion of this Court, Tribunal has erred in not considering other documents for the purpose of arriving at a finding that deceased was working as Barber in his own Salon and to calculate appropriate income, hence, finding with regard to assessment of income by Tribunal as Rs.3,000/- per month and Rs.36,000/- per annum in December 2014 is not sustainable and it is hereby set aside.

13. Taking into considering the nature of evidence brought on record by appellants and nature of occupation of deceased, I find it appropriate to assess the income of deceased as Rs.6,000/- per month and Rs.72,000/- per annum.

14. Other submission made by learned counsel for the appellants that Tribunal has not awarded any amount towards future prospects, Hon'ble Supreme Court has settled the issue of awarding future prospects where deceased was Government servant, under private employment or self-employed person under various age category in the case of **Pranay Sethi** (supra). Hon'ble Supreme Court has held that if deceased was below 40 years of age and is self-employed or not having fixed income, then there shall be addition of 40% of established income for assessing the total income of deceased on the date of accident, hence, in the case at hand where age of deceased was less than 40 years, there shall be an addition of 40% in income of deceased. Hon'ble Supreme Court has further fixed the amount and heads, on which, compensation to be awarded towards other conventional heads. Appellants shall be entitled for the compensation as per ruling of the 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**, towards other conventional heads.

15. In view of above, amount of compensation awarded by learned Tribunal requires re-consideration and re-computation, which is as under :

As discussed above, the income of deceased is taken as Rs.6,000/- per month i.e. Rs.72,000/- per annum. By adding 40% of the income towards future prospects, the total annual income of deceased will come to Rs. 1,00,800/- (72,000 x 40% = 28,800 and 72,000 + 28,800). On the date of accident, deceased was unmarried, hence, there shall be deduction of 50% towards personal and living expenses, which makes yearly loss of dependency of claimants to Rs.50,400/- (1,00,800 / 2 = 50,400). By applying the multiplier of 18, amount of compensation will come to Rs.9,07,200/- (50,400 x 18). Apart from above, the claimants will be further entitled for a sum of Rs.40,000/- towards filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

16. Now, the appellants/claimants are entitled for total compensation of Rs.9,77,200/- (9,07,200 + 40,000 + 15,000 + 15,000) instead of Rs.3,74,000/- as awarded by learned Tribunal. This amount of compensation shall carry interest at the rate of 7% per annum from the date of filing of claim

application till its realization. The other conditions of award passed by learned Tribunal shall remain intact.

17. Learned counsel for the appellants has made a prayer for issuance of a direction to respondent No.3/Insurance Company to first pay the amount of compensation and thereafter, to recover the same from the respondents No. 1 and 2.

18. Perusal of impugned award would show that insurance of offending vehicle is not in dispute. Insurance company was exonerated on the ground that on the date of accident i.e. 08.12.2014, offending vehicle was not having valid permit as held in paragraph 22.

19. The Hon'ble Supreme Court in case of **Manuara Khatun and Others v. Rajesh Kumar Singh and Others** reported in **(2017) 4 SCC 796** taking note of the earlier judgments passed by Hon'ble Supreme Court on the issue of pay and recover when it is found that there is violation of conditions of insurance policy has held thus :

> "21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd. (Respondent 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance

Co. Ltd. Respondent 3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo) Respondent 1 in execution proceedings arising in this very case as per the law laid down in Para 26 of *National Insurance Co. Ltd. v. Saju P. Paul* (2013) 2 SCC 41.

22. Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that Respondent 3 United India Insurance Co. Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter, Respondent 3 United India Insurance Co. Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo) Respondent 1 in these very proceedings by filing execution application against the insured."

20. Recently, in case of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others** reported in **(2018) 7 SCC 558**, Hon'ble Supreme Court while dealing with similar issue has held thus :

"24..........We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of

> vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in **National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297** and **Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100** in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in **Swaran Singh** (supra) and other cases pertaining to pay and recover principle.”

21. Considering the ratio laid down by Hon'ble Supreme Court in above decisions and further the object of M.V. Act to be beneficial, in the larger interest of justice, I find it appropriate to direct respondent No.3/Insurance Company to first

deposit the entire compensation before the Tribunal to be paid to the claimants and thereafter, to recover the amount of compensation paid by it from the insured i.e. owner of the offending vehicle in accordance with law.

22. For the foregoing reasons, appeal is allowed in part and impugned award passed by learned Tribunal is modified to the above extent. Appellants shall be entitled for total sum of Rs.9,77,200/- with interest at the rate of 7% per annum from the date of filing of claim application till its realization. Keeping in mind the beneficial object of the M.V. Act as also dictum of Hon'ble Supreme Court in above referred cases, this Court directs insurer of offending vehicle i.e. respondent No.3 herein, to first deposit entire compensation to be paid to the claimants and have the said sum recovered from the insured i.e. owner of offending vehicle in accordance with law.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh