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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 698 of 2015

1. Smt. Duj Bai Vishwakarma, aged about 45 years, W/o Prabhuram Vishwakarma, Chhattisgarh
2. Prabhu Ram Vishwakarma, S/o late Vishal Ram Vishwakarma

All R/o village Kodo Batar, Thana-Gariyabandh, Tahsil Distt. Raipur Chhattisgarh

---Appellants

VERSUS

1. Dhanesh Vishwakarma S/o Mohit Vishwakarma aged about 25 years R/o village Kodo Batar Thana Gariabandh, Tahsil Distt. Raipur Chhattisgarh **------Driver**
2. Moh. Shafiq Khan S/o Hamid Khan occupation Vehicle owner R/o village Maalgaon, Thana Gariyabnadh, Raipur, Tahsil and Distt. Gariyabandh Chhattisgarh **-----Owner**
3. Iffco Tokiyo General Insurance Company Limited, through Branch Manager Branch Office 3rd Mala 345-347 Lalganga Shoping Mall G.E. Road, Raipur Tahsil & District Raipur Chhattisgarh.

----Respondents

For Appellants : Mr. AL Singroul, Advocate
For Respondent 3 : Mr. Tessy Abraham, Adv. On behalf of Mr. Amrito Das, Advocate

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(*proceedings through Video Conferencing)*

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

12/08/2021

1. Challenge in this appeal is to the award dated 06.05.2015 passed by learned Chief Motor Accident Claims Tribunal, Raipur, C.G. (for short “Claims Tribunal”) in claim case no. 118/2012, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 (for short Act of 1988”) in part, awarded Rs. 3,43,000/- as total compensation in

an injury case.

2. Facts relevant for disposal of this appeal are, that on 02.07.2012, Motiram @ Golu was travelling from Fingeshwar to Gariyabandh on tata pickup vehicle bearing registration no. CG04 JB 6260 (henceforth “offending vehicle”) as conductor/ helper. When they reached near Sarkanda petrol pump at about 09:00 pm, non-applicant 1/ Respondent 1 drove the offending vehicle rashly and negligently and dashed it with standing tree on roadside. In the said accident Motiram @ Golu suffered grievous injuries and died on spot. Appellants-claimants who are parents of the deceased filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident deceased was aged about 25 years, working as conductor/ helper. He was being paid Rs. 3500/- per month as wages and claimed Rs. 35,50,000/- as total compensation.

3. Non-applicant 1/ Respondent 1 driver of the offending vehicle did not appear before the Claims Tribunal and was proceeded ex parte.

4. Non-applicant 2/ Respondent 2 owner of the offending vehicle submitted reply to the claim application, denying the facts pleaded therein, it was further pleaded that on the date of accident non-applicant 1 was possessed with valid and effective driving licence, offending vehicle was insured with non-applicant 3, as such, liability to pay amount of compensation, if any, would be upon non-applicant 3-Insurance Company.

5. Non-applicant 3/ Insurance Company submitted its separate reply,

denying the facts pleaded in the claim application, it was further pleaded that on the date of accident, non-applicant 1 was not possessed with valid and effective driving licence, as such, there was breach of policy conditions and insurance company be exonerated from its liability. Carrying conductor in the offending vehicle being a goods vehicle is breach of conditions of insurance policy.

6. Learned Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties has held that Motiram @ Golu, while travelling as conductor in the offending vehicle, died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant 1. Not having of valid and effective driving licence by non-applicant 1 was not proved, awarded Rs. 3,43,000/- as compensation and fastened liability upon non-applicants 1 and 2 to satisfy the amount of compensation on the ground that as per policy 'no premium for other employee except driver is paid'.

7. Mr. A.L. Singroul, learned counsel for the appellants-claimants would submit that the Claims Tribunal erred in awarding meagre amount of compensation, tribunal has not awarded any amount towards loss of future prospects and applied multiplier of 13 only overlooking the age of deceased on the date of accident. He further contended that Tribunal erred in exonerating the insurance Company from its liability. He submits that the offending vehicle was goods vehicle, deceased was working as conductor/ cleaner/ helper was an employee of owner of the vehicle, hence the risk of employee of the vehicle is covered under the insurance policy,

even if, the insurance company has not charged any premium for covering risk of said employee. In support of his contentions, he places reliance upon the order passed by division bench of this Court in MAC No. 676/2014. He further submits that the Tribunal erred in applying multiplier of 13 considering the age of parents of deceased and not of the deceased. Even if the deceased was unmarried then also the multiplier is to be applied considering the age of deceased. In support of his contention, he places reliance upon the judgment passed by Hon'ble Supreme Court in case of ***Amrit Bhanushali and others v. National Insurance Company limited and others*** reported in **(2012) 11 SCC 738** and ***Sube Singh v. Shyam Singh*** reported in **(2018) 3 SCC 18.** In support of his arguments that the Tribunal erred in awarding meagre amount of compensation on other conventional heads, he further places reliance upon the judgment passed by Supreme Court in case of ***National Insurance Company Ltd. v. Pranay Sethi*** reported in **(2017) 16 SCC 680,** ***Magma General Insurance Company v. Nanu Ram alias Chuhuru Ram and others*** reported in **(2018) 18 SCC 130** and ***United India Insurance Co. Ltd. v. Satinder Kaur and others*** reported in **2020 SCC OnLine 410.**

8. Mr. Tessy Abraham, learned counsel for Respondent 3-Insurance Company would submit that the Tribunal taking into consideration the entire facts and circumstances of the case has awarded just amount of compensation which does not call for any interference. He submits that the Tribunal has rightly fastened liability upon non-applicants 1 and 2, as Respondent 2/ owner of the offending vehicle has not paid any premium for covering risk of any other

employee except driver. Fastening of liability upon non-applicants 1 and 2 is not challenged by the owner of offending vehicle.

9. I have heard learned counsel for the respective parties and also perused the record of claim case.

10. Sofar as, the submission of learned counsel for the appellants with regard to quantum of compensation calculated by Tribunal to be on lower side, perusal of the award would show that the Tribunal assessed income of deceased as Rs. 3500/- per month, deducted 50% towards personal and living expenses, applied multiplier of 13 and further awarding Rs. 70,000/- on other conventional heads awarded total sum of Rs. 3,43,000/-. Tribunal accepted the income as pleaded by the claimants as Rs. 3500/- per month ie. Rs.42,000/- per annum. Claims Tribunal has not awarded any amount of compensation towards future prospects as held by Hon'ble Supreme Court in case of ***Sarla Verma & others v. Delhi Transport Corp. & anr*** reported in ***(2009) 6 SCC 121*** and ***Pranay Sethi (supra).*** Hon'ble Supreme Court in case of *Pranay Sethi (supra)* has held that where the deceased was below 40 years of age and not in permanent employment, there will be addition of 40% of the established income in the income of deceased for the purpose of calculating total income of the deceased on the date of accident, hence, there will be addition of 40% of the established income of the deceased. Tribunal has rightly deducted 50% towards personal and living expenses which does not call for any interference. Sofar the application of multiplier is concerned, Claims Tribunal erred in applying multiplier of 13 considering age of parents of deceased.

Hon'ble Supreme Court in case of **Sube Singh (supra)** has held that for the purpose of calculating the amount of compensation against the death of unmarried person also, age of deceased is required to be taken into consideration and not the age of parents/ dependents of deceased. Relevant part of the aforementioned judgment is extracted below for ready reference:

> “4. ...The legal position, however, is no more res integra. In *Munna Lal Jain, [(2015) 6 SCC 347]* decided by a three-Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependents. We may usefully refer to the exposition in paras 11 and 12 of the reported decision, which read thus: (*Munna Lal Jain case, SCC pp. 351-52)*
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> *“11.* The remaining question is only on multiplier. The High Court *(Munna Lal Jain v. Vipin Kumar Sharma, 2012 SCC OnLine Del 4540)* following *Santosh Devi,[Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421]* has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependents or that of the deceased, has been hanging fire for some time; but that has been given a quietus by another three-Judge Bench decision in *Reshma Kumari, [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65].* It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependents is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote: *(Reshma Kumari case, SCC p. 88, para 36)*
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> '*36.* In *Sarla Verma, (2009) 6 SCC 121*, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma case* that the claimants in case of death claim for the purposes of compensation must establish *(a)* age of the deceased (*b*) income of the

> deceased; and *(c)* the number of dependents. To arrive at the loss of dependency, the Tribunal must consider (*i)* additions/deductions to be made for arriving at the income; (*ii)* the deductions to be made towards the personal living expenses of the deceased; and (*iii)* the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma case.*'
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> 12. In *Sarla Verma case* at para 19 a two-Judge Bench dealt with this aspect in Step 2. To quote: (SCC p. 133)
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> *'19. … Step 2 (Ascertaining the multiplier)*
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> Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.' ”

11. In view of the aforementioned rulings of the Hon'ble Supreme Court, appropriate multiplier will be 18. It is ordered accordingly. Supreme Court has considered the award of compensation on other conventional heads. In case of **Pranay Sethi (supra)** Hon'ble Supreme Court has specified the heads on which the amount of compensation is to be awarded towards conventional heads ie. loss of consortium, loss of estate and funeral expenses. In case of **Nanu Ram alias Chuhuru Ram (supra),** Supreme Court has further explained the types of consortium ie. spousal consortium, parental consortium and filial consortium, hence, in the opinion of this Court, appellants-claimant shall be entitled for

amount of compensation as held by Hon'ble Supreme Court in aforementioned rulings.

12. For the foregoing reasons, amount of compensation to be awarded to the claimants requires re-computation, as under:

13. Income of deceased is assessed as Rs. 3500/- per month ie. Rs. 42,000/- per annum. By adding 40% towards future prospects, total annual income of the deceased will come to Rs. 58,800/- [Rs.42000+40% of Rs.42000]. Upon deducting 50% towards personal and living expenses of the deceased, annual loss of dependency will come to Rs.29,400 [50% of Rs.58800]. Upon applying multiplier of 18 to annual loss of dependency total loss of dependency will be Rs. 5,29,200/-[Rs.29400x18]. Appellants-claimants are parents of the deceased, hence, appellants will further be entitled for Rs. 40,000/- towards loss of filial consortium, Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses.

14. Now the appellants-claimant shall be entitled for total sum of **Rs.5,99,200/-** [Rs.529200+ Rs.40000+ Rs.15000+ Rs.15000] instead of Rs. 3,43,000/- as awarded by learned Claims Tribunal. The aforesaid amount of compensation shall carry interest @ 6% p.a. from the date of filing of application till its realization.

15. Sofar as, the submission made by learned counsel for the appellants that the Insurance Company has been erroneously exonerated from its liability and fastened liability upon non-applicants 1 and 2/ driver and owner of the offending vehicle to satisfy the amount of compensation is concerned, issuance of

insurance policy by Respondent 3/ Insurance Company is not in dispute. Copy of insurance policy is placed on record as Ext. D-1. One Navin Soni was examined as NAW-3-1 who has proved issuance of insurance policy but has stated that the insured has not paid any premium for covering risk of an employee. Claims Tribunal recorded a finding that deceased was an employee of non-applicant 2/ owner of offending vehicle as conductor/ cleaner. Under the insurance policy Ext. D-1 premium for basic third party PA owner/driver and legal liability to driver IMT28 is paid. Under Section 147 of the Act of 1988 requirement of policy and limits of liability is envisaged. Under proviso to sub-section 1 of Section 147, it is mentioned as liability to cover the risk of workman who suffered bodily injuries arising out of and during the course of his employment. Relevant portion of Section 147 is extracted below for ready reference.

> "**147 Requirements of policies and limits of liability.** —(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—
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> (a) is issued by a person who is an authorised insurer; and
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—
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> > (i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
> > (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a

public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

16. As the owner and driver has not challenged the liability to satisfy the amount of compensation fastened upon them by way of filing appeal but it is an appeal filed by the claimants seeking enhancement of amount of compensation, I find it appropriate to direct the Insurance Company to first deposit the entire amount of compensation along with interest and thereafter to recover the same from driver and owner of offending vehicle in accordance with law.

17. Other conditions of the impugned award passed by Claims Tribunal shall remain intact.

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

Sd/-

(Parth Prateem Sahu)

Judge

Pawan