NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 346 of 2015

- Nutan Sahu, Aged about 32 years, S/o:- Sundar Lal Sahu, R/o:- Post & Village – Rohansi, P.S. - Pallari, District – Baloda Bazar – Bhatapara, C.G.

(Registered Owner of Offending Tractor bearing No. C.G.-04/D.M./8556 & Trolly No. C.G.-04/D.T./435)

---- Appellant/NA2

Versus

1. Hemlal Nishad, Aged about 45 years, S/o:- Shivsingh Nishad,

(Applicant/Claimant)

2. Smt. Binda Bai, Aged about 43 years, W/o:- Hemlal Nishad,

(Applicant/Claimant)

Both were R/o:- Village & Post – Rohansi, P.S. & Tahsil – Pallari, District – Baloda-Bazar- Bhatapara, (C.G.)

3. Yashvant Kumar Sahu, Aged about 25 years, S/o:- Bhagwati Prasad Sahu, R/o:- Village – Purena Khapari, Post & P.S. - District – Baloda-Bazar, District – Baloda-Bazar- Bhatapara, C.G.

(Driver of Offending Tractor bearing No. C.G.-04/D.M./8556 & Trolly No. C.G.-04/D.T./435)

4. Bajaj Alliance General Insurance Co. LTD, Through :- Branch Manager, Add:- Shiv Mohan Bhawan, Vidhan-Shabha road, Pandari, Raipur, Branch – At Rajendra Park Chowk, Durg, District Durg (C.G.)

(Insurer of the offending vehicle)

----Respondents

For Appellant	:	Mr. Hemant Gupta, Advocate
For Respondents No. 1 & 2	:	Mr. Samir Singh, Advocate
For Respondent No. 4	:	Mr. Sangeet Kumar Kushwaha, Advocate on behalf of Mr. Sachin Singh Rajpur, Advocate.

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
25.01.2021

1. Appellant/owner of the offending vehicle i.e. Tractor & Trolley has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth "the Act of 1988") challenging the impugned award dated 22.12.2014 passed by the Third Motor Accident Claims Tribunal, Baloda Bazar (henceforth, 'the Claims Tribunal') in Claim Case No. 74 of 2013 whereby learned Claims Tribunal allowed the claim application under Section 166 of the Act of 1988, awarded Rs. 3,84,000/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 24.01.2013, Toshan Nishad alongwith other labourer went for doing the work of labourer on Tractor & Trolley bearing registration Nos. CG-04/D.M./8556 and CG-04/D.T./0435, respectively (offending vehicle) owned by the appellant, when they were returning from village Lariya at about 5 pm on the way non-applicant No. 1 – driver of the offending vehicle drove it rashly and negligently, due to which Toshan Nishad fell down from the offending vehicle and tractor- trolley ran over him. In the said accident, he suffered grievous injuries over his person, he was taken to the Government Hospital, Palari where he was declared brought dead.

3. Claimants, who are unfortunate parents of the deceased, filed a claim application seeking compensation of Rs. 14,00,000/- pleading therein that on the date of accident, deceased – Toshan Nishad was working as Labourer and earning Rs.9,000/- per month and they were dependent upon the income of the deceased.

4. Non-applicants No. 1 & 2, who are driver and owner of the offending vehicle, submitted reply to the claim application, denying the pleadings made therein. It was further pleaded that deceased met with an accident on account of his own negligence; on the date of accident non-applicant No. 1/driver was possessed with valid and effective driving licence and the offending vehicle was insured with non-applicant No. 3 – Bajaj Alliance General Insurance Co. Ltd.

5. Non-Applicant No. 3/Insurance Company submitted reply to claim application, while denying all the pleadings made therein further pleaded that non-applicant No. 1/driver was not possessed with valid and effective driving licence, offending vehicle was being used for carrying passengers, as such, the offending vehicle was being plied in breach of policy conditions. Deceased was travelling as a passenger in the offending vehicle.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence brought on record by the respective parties held that Toshan Nishad died on account of motor accidental injuries suffered by him due to rash and negligent driving of the offending vehicle by non-applicant No. 1/driver, claimants/parents were dependent upon the deceased; there was breach of policy conditions, upon assessing the income of the deceased as Rs.3,000/- per month, awarded Rs.3,84,000/- as total compensation. Liability to satisfy the award was fastened upon non-applicants No. 1 and 2 (owner and driver).

7. Shri Hemant Gupta, learned counsel appearing for the appellant/owner of the offending vehicle – Tractor & Trolley submits that the learned Claims Tribunal has

erred in exonerating the Insurance Company/non-applicant No. 3 from its liability to pay compensation to the claimants. The learned Claims Tribunal has further erred in disbelieving the evidence of the driver of the offending vehicle i.e. Yashwant Kumar (NAW-1) wherein he has categorically stated that the deceased while trying to board on the moving vehicle, slipped and came under the offending vehicle, which shows that deceased met with an accident on account of his own negligence. This witness (Yashwant Kumar) has further denied the suggestion given to him that the deceased was travelling on tractor's engine. He further contended that applicant No. 1/claimant was not dependent upon income of the deceased because in his evidence, he admitted that he was working with Ambuja Cement Factory. Medical expenses awarded by the Claims Tribunal is without there being any evidence in that regard. He further submits that the amount of compensation awarded by the Claims Tribunal to be reduced suitably and further the liability to satisfy the amount of compensation to be fastened upon the respondent No. 4 /Insurance Company as on the date of accident, offending vehicle was insured with respondent No. 4/Insurance Company.

8. Shri Samir Singh, learned counsel appearing for the respondents No. 1 & 2/claimants submits that deceased on the date of accident was 19 years of age, he was working as Labourer and on the date of accident he went to work as Labourer on the Tractor-Trolley owned by the appellant. He further pointed out that the learned Claims Tribunal assessed the monthly income of the deceased on lower side as Rs.3,000/- overlooking the date of accident i.e. 24.01.2013 and on that date, the income of the labourer was much more than what assessed by the Claims Tribunal. He further contended that the learned Claims Tribunal has not awarded any amount towards future prospect and awarded meagre amount of compensation on other

conventional heads. Hence, he has filed cross-objection seeking enhancement of the amount of compensation awarded by the Claims Tribunal.

9. Shri Sangeet Kumar Kushwaha, learned counsel appearing for respondent No. 4/Insurance Company, while opposing the submissions made by learned counsel for the appellant/owner, submits that on the date of accident the offending vehicle was insured for agricultural purposes. The offending vehicle was being used other than the agricultural purposes i.e. for commercial purposes. He further submits that the deceased was travelling in the tractor-trolley where there was no sitting capacity of any person in tractor-trolley and no sitting capacity of any person except driver in the tractor, the deceased was travelling on the offending vehicle as gratuitous passenger and the respondent No. 4/insurance company is neither statutory liable to cover the risk of gratuitous passenger sitting in the Tractor, as such, learned Claims Tribunal upon appreciation of entire facts and circumstances of the case as well as evidence placed on record have rightly arrived at a finding that on the date of accident, the offending vehicle was used in breach of policy conditions, which does not call for any interference.

10. We have heard learned counsel appearing for the respective parties and also perused the record of Claims Tribunal carefully.

11. To appreciate the submissions made by learned counsel appearing for the appellant/owner of the offending vehicle that the learned Claims Tribunal has erred in arriving at a finding that there was breach of policy conditions, we have perused the record of claim case. A careful perusal of the FIR placed on record as Ex.P-3 would

show that the date of accident was 24.01.2013 at about 5 pm and FIR was registered on 24.01.2013 by one Ramgopal Sahu, co-labourer and travelling on the offending vehicle along with deceased- Toshan Nishad. In the FIR (Ex.P-3), it is mentioned that they were returning on Tractor-Trolley from village Lariya. Deceased – Toshan Nishad was sitting beside the driver on Tractor's engine on the way, due to rash and negligent driving of non-applicant No. 1/driver, Toshan Nishad fell down from the Tractor's engine and came under its wheel. After completion of investigation, police submitted final report under Section 173 of the Cr.P.C., in which similar facts are mentioned.

12. Claimants/applicants No. 1 & 2, in support of their claim application, have examined claimant No. 1 – Hemlal as AW-1, though he was not present on spot of the accident but he has narrated the incident and has stated with regard to the nature of occupation and income of the deceased. He proved the documents of criminal case as Ex. A-1 to Ex.A-20.

13. Yashwant Kumar, driver of the offending vehicle was examined as NAW-1. Though, in examination- in- chief, he stated that when he reached near Lariya pond, deceased, who was standing there, has stopped the vehicle and tried to board the vehicle prior to its become stationary. In cross-examination, he admitted that the deceased alongwith other labourers went for doing the work of labourer on Tractor & Trolley owned by the appellant. On the date of accident also, he went to work. Having this evidence of the driver of the offending vehicle and further fact that the appellant failed to examine the complainant / lodger of the FIR (Ex.P-3), who is resident of the same village and was working as co-labourer in the offending vehicle

along with the deceased. We do not find any error in marshalling the evidence of the driver of the offending vehicle alongwith other evidence available on record by the Claims Tribunal and arriving at a finding that on the date of accident, deceased was travelling in the offending vehicle.

14. It was burden upon the appellant/owner in the facts & circumstances of the case to brought on record the best available evidence in his support, if that is there, in which he utterly failed in non-examining the other co-labourers or entering himself in the witness box.

15. For the foregoing reasons, we do not find any error in the findings recorded by the Claims Tribunal that on the date of accident, deceased was travelling on the offending vehicle.

16. The issue with regard to the liability of the Insurance Company of a person travelling on Tractor – Trolley has been considered by Hon'ble Supeme Court in the case of **Oriental Insurance Company Limited v. Brij Mohan and other**[1] *and* recently in case of **Shivraj v. Rajendra and another**[2] and held that the Insurance Coompany is not having any statutory liability to cover the risk of person travelling in Tractor-Trolley. In view of above, learned Claims Tribunal has rightly exonerated the Insurance Company from its liability and fastened liability upon the appellant/owner to satisfy the amount of compensation awarded by the Claims Tribunal.

17. Thus, appeal filed by the appellant/owner of the offending vehicle being devoid of substance, which is liable to be and is hereby dismissed.

[1] 2007 (3) TAC 20 SC
[2] 2018 (10) SCC 432

18. So far as the cross-objection filed by respondents No. 1 & 2/claimants seeking enhancement of the amount of compensation is concerned, learned Claims Tribunal has erred in assessing the monthly income of the deceased as Rs. 3,000/- only.

19. True it is that the claimants failed to prove income of the deceased by placing cogent and reliable piece of evidence on record but then it was the duty of the Claims Tribunal to assess the income of the deceased on notional basis considering the date of accident, wage structure, cost of living and price index as well as his occupation.

20. Taking into consideration the aforementioned factors and nature of occupation of the deceased, his age to be 19 years, we find it appropriate to assess the income of the deceased as Rs. 4,000/- per month. The deceased being less than 40 years of age, therefore, there shall be an addition of 40% of the established income towards future prospect as held by Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others[3].**

21. Learned Claims Tribunal has awarded Rs. 60,000/- on other conventional heads i.e. Rs. 50,000/- towards loss of love and affection and Rs. 10,000/- towards funeral expenses, which in the opinion of this Court, total award on other conventional heads appears to be on lower side, which deserves to be enhanced suitably. The amount of compensation on other conventional heads has been settled by Honble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and others[4].** In the aforesaid judgments, the Hon'ble Supreme Court has identified the heads on

[3] AIR 2017 SC 5157
[4] (2018) 18 SCC 130

which the amount of compensation on other conventional heads is to be awarded and further quantified the amount of compensation on those heads.

22. For the foregoing reasons, amount of compensation to be awarded to the claimants/respondents No. 1 & 2 requires reconsideration and re-computation, which is as under :-

The income of the deceased as assessed by this Court as Rs.4,000/- per month and Rs. 48,000/- per annum. By adding 40% of the established income, total income of the deceased will come to Rs.67,200/- (48,000+19,200). After deducting 50% towards personal and living expenses of the deceased, yearly loss of dependency will come to Rs. 33,600/- (Rs. 67,200 / 2). Upon applying the multiplier of 18 to the yearly loss of dependency, total loss of dependency will come to Rs.6,04,800/- (33,600 X 18).

23. Apart from the above loss of dependency, the claimants will be further entitled for a sum of Rs.40,000/- towards loss of filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Now, the claimants shall be entitled for total sum of Rs. 6,74,800/- as compensation instead of Rs. 3,84,000/- as awarded by the Claims Tribunal. The aforesaid amount of compensation shall carry interest @ 6% per annum from the date of filing the claim application, till its realization. The other conditions imposed by learned Claims Tribunal shall remain intact. Any amount already paid to claimants/ respondents No.1 to 2 as compensation shall be adjusted from the total amount of compensation as calculated above.

24. In the result:-

1. appeal preferred by appellant/ owner is dismissed.

2. cross-objection of respondents No.1 and 2 is allowed in part and impugned award of the Claims Tribunal is modified to the extent indicated hereinabove.

Sd/-	Sd/-
(PR Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Dubey/-