NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1489 of 2015

1. Nand Kumar S/o Lakhan Lal Dhruw, Aged About 39 Years,
2. Dulaurin Bai W/o Nandkumar Dhruw, Aged About 38 Years, Both R/o Village Chandi, Post Office Suhela, District Balodabazar, Chhattisgarh.

---- Appellants

Versus

1. Sudhir S/o Dev Prasad Verma, R/o Aadarsh Chowk, House No. 155, Sundar Nagar Raipur. P. O. Sundar Nagar Thana, D.D. Nagar, Raipur Chhattisgarh, Tahsil and District Durg Chhattisgarh.
2. Bajaj Allianz General Insurance Company Limited, Through Presiding Officer, Bajaj Allianz General Insurance Co. Ltd. Shiv Mohan Bhawan Pandri, Raipur, Thana Pandri, District Raipur Chhattisgarh.

---- Respondents

For Appellants	: Shri Akash Shrivastava, Advocate on behalf of Shri Anumeh Shrivastava, Advocate
For Respondent No.1	: None though served.
For Respondent No. 2	: Shri Sangeet Kushwaha, Advocate on behalf of Shri Sachin Singh Rajput, Advocate

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Hon'ble Shri Parth Prateem Sahu, Judge
Judgment on Board

15.09.2021

1. Challenge in this appeal is to the impugned award dated 24.04.2015 passed by the Chief Motor Accident Claims Tribunal, Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.66 of 2012 whereby learned Claims Tribunal allowed an application filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') in part, awarded Rs.1,72,000/- as total compensation with interest on it @ 6% per annum from the date of filing of claim application till its realization in a fatal accident case.

2. Brief facts relevant for disposal of this appeal, are that, on 15.02.2012, at about 4.30 P.M., Khumesh Dhruw was driving Tractor bearing No.CG-04/DM/4117 and Trolley attached to it bearing No.CG-04/DM/4118 (hereinafter referred to as 'offending vehicle') and going to stone mine. While so, one of front wheel of Tractor bursted, due to which, offending vehicle turned turtled. In the said accident, Khumesh Dhruw suffered grievous injuries and died.

3. Appellants/claimants, who are parents of the deceased filed an application under Section 163-A of M.V. Act seeking compensation of Rs.4,97,000/- pleading therein that on the date of accident, deceased was aged about 20 years and earning Rs.40,000/- per annum as Driver. It was further pleaded that they were dependent upon the income of deceased.

4. Non-applicant No.1/owner of offending vehicle submitted reply to claim application denying the fact pleaded in claim application. The accident itself was denied. It was further pleaded that on the date of accident, offending vehicle was insured with non-applicant No.2/Insurance Company, as such, liability, if any, to satisfy the amount of compensation would be upon non-applicant No.2/Insurance Company.

5. Non-applicant No.2/Insurance Company submitted reply to claim application, denying the facts pleaded therein. It was further pleaded that accident was result of negligence on the part of deceased himself, as such, application for grant of compensation is not maintainable. It was also pleaded that

deceased was not paid driver, nor third party. The policy issued for offending vehicle was under 'Farmer's Package Policy', whereas on the date of accident, offending vehicle was being used for commercial purpose for transporting stone ballasts and thereby, there was breach of policy conditions, hence, Insurance Company is not liable to indemnify the insured.

6. On appreciation of pleadings, oral and documentary evidence brought on record by the respective parties, learned Claims Tribunal held that Khumesh Dhruw died while driving the offending vehicle as it turned turtled due to busting of one of the tyre of offending vehicle; there was no valid and effective driving licence with the driver of offending vehicle; calculated and awarded Rs.1,72,000/- as total compensation and fastened liability upon respondent No.1/owner of offending vehicle to satisfy the amount of compensation.

7. Shri Akash Shrivastava, learned counsel for the appellants/claimants would submit that learned Claims Tribunal though recorded that breach of policy conditions was not found to be proved, but even then, exonerated the Insurance Company from its liability, which is erroneous. He further submits that Tribunal erred in awarding meagre sum of compensation in the facts of the case. Claimants in their claim application have specifically pleaded that deceased met with an accident while driving the Tractor, he was working as Driver and earning Rs.40,000/- per annum, but Claims Tribunal overlooking the pleadings and oral statement of appellants,

assessed income of deceased as Rs.15,000/- per annum only. It is contended that even if deceased is to be taken as ordinary manual labourer, then also his earnings could have more than what is assessed by Claims Tribunal in February 2012. It is further contended that Claims Tribunal not awarded appropriate amount of compensation on other conventional heads nor awarded any compensation towards future prospects.

8. Per contra, Shri Sangeet Kushwaha, learned counsel for respondent No.2 would submit that Tribunal rightly exonerated the Insurance Company from its liability recording a specific finding that on the date of accident, deceased who was driving the offending vehicle, without valid and effective driving licence. The finding reflecting corresponding to issue No.3 is erroneous. Once Claims Tribunal came to the conclusion that deceased was driving the offending vehicle without valid and effective driving licence itself is sufficient to hold that there was breach of policy conditions. It is contended that appellants have failed to prove income by placing admissible piece of evidence, hence, learned Claims Tribunal justified in assessing income of deceased on notional basis.

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

10. So far as the submission made by learned counsel for the appellants that Insurance Company has wrongly been exonerated from its liability is concerned, claimants in their claim application have pleaded that deceased was working as

Driver. On the date of accident, he was driving the offending vehicle and met with an accident. Appellant No.1-Nand Kumar Dhruw examined himself as AW-1. In cross-examination, he stated that deceased submitted documents for licence one week prior to the accident. He is not aware of the name of the person to whom the documents were given for preparation of licence. Grandfather of deceased has given documents for preparation of licence. He admitted that till the date of accident, licence was not received.

11. From the evidence of Nand Kumar Dhruw (AW-1), it is apparent that till the date of accident, deceased was not having licence with him. He died while driving the offending vehicle. Copy of policy is placed on record as Ex.D/1. In the copy of policy, there is specific clause mentioning that driver/person driving the vehicle insured should possess valid and effective driving licence.

12. In view of aforementioned oral evidence of Nand Kumar Dhruw (AW-1) and documentary evidence (Ex.D/1) copy of policy, it is apparent that there was breach of policy conditions as driver of offending vehicle (deceased) was not possessed with valid and effective driving licence.

13. Learned Claims Tribunal further recorded that non-applicant No.1/owner of offending vehicle has admitted the guilt for offence under Section 5/181 of the M.V. Act. In view of aforementioned evidence available on record, in the opinion of this Court, Claims Tribunal erred in recording a finding that

breach of policy conditions is not found to be proved, which is not sustainable and it is hereby set aside.

14. The submission made by learned counsel for the appellants with regard to issuance of direction to Insurance Company to pay and recover, in the facts and circumstances of the case, is also not sustainable because respondent No.1/non-applicant No.1/owner of offending vehicle having the knowledge that deceased (driver of offending vehicle) was not possessed with valid and effective driving licence has handed over him the offending vehicle to drive. In the facts of the case, where deceased himself was driving the vehicle without licence, direction of pay and recover cannot be issued. Hence, the prayer made by learned counsel for the appellants is repelled.

15. So far as the submission made by learned counsel for the appellants with regard to enhancement of income of deceased is concerned, taking into consideration the date of accident i.e. 15.02.2012, even if, occupation of deceased is considered as manual labourer, aged about 20 years, income would be much more than what is assessed by the Tribunal. Hence, I find it appropriate to assess the income of deceased as Rs.3,300/- per month and Rs.39,600/- per annum instead of Rs.15,000/- per annum as assessed by learned Claims Tribunal.

16. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the claimants requires re-consideration and re-computation, which is as under :

Income of deceased is assessed as Rs.3,300/- per month and Rs.39,600/- per annum. After deducting $1/3^{rd}$ towards personal and living expenses, annual loss of dependency of claimants will be Rs.26,400/- (39,600 / 3 = 13,200 and 39,600 – 13,200). After applying the multiplier of 17 (as provided under Second Schedule of M.V. Act) to annual loss of dependency, total loss of dependency of claimants will come to Rs.4,48,800/- (26,400 x 17). Apart from above amount of compensation towards loss of dependency, claimants are further entitled for a sum of Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses.

17. Now, appellants/claimants will be entitled for total compensation of Rs.4,53,300/- (4,48,800 + 2,500 + 2,000) instead of Rs.1,72,000/- as awarded by Claims Tribunal. Amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. Liability to satisfy the amount of compensation would be upon non-applicant No.1/respondent No.1/owner of offending vehicle. Other conditions of the impugned award shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh