NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 160 of 2015

1. Rukhmani Devi @ Rukma Devi, Wd/o Late Shri Gopaldas Agrawal Aged About 51 Years
2. Minor Harsh S/o Ajay Agrawal, Aged About 5 Years Thru- Grand Mother Smt. Rukhmani Agrawal

   Both R/o Math Mandir Chowk, Dhamtari, Thana And Tahsil-Dhamtari, Civil And Revenue, District : Dhamtari, Chhattisgarh

---- Appellants/Claimants

Versus

1. Sanjeet Singh, S/o Sampurana Singh Aged About 24 Years
2. Sampurna Singh S/o Trilok Singh, Aged about 55 years

   Both R/o Mahesh Nagar Rajnandgaon, Thana-Kotwali, Civil And Revenue Distt. -Rajnandgaon, Chhattisgarh
3. Amit S/o Lalita Prasad Sharma, Aged About 24 Years
4. Ashok Kumar S/o Balaram Agrawal Aged About 31 Years

   Both R/o Village-Than Khamhariya, P.S.-Khamhariya, Civil And Revenue Distt.-Durg, Chhattisgarh
5. The New India Insurance Company Limited, Thakkar Bhawan G.E. Road Bhilai, District : Durg,

----Respondents

For Appellants	:	Shri Sumit Shrivastava, Advocate
For Respondents- 1 and 2	:	Shri Abhishek Sharma, Advocate
For Respondents- 3 and 4	:	None appears
For Respodent-5	:	Shri Azad Siddiqui, Advocate

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

Per Parth Prateem Sahu, J.
04.02.2021

1. Challenge in this appeal is to the award dated 29.01.2015 passed by the Additional Motor Accident Claims Tribunal, Dhamtari (FTC) (for short, 'Claims Tribunal') in Claim Case- 134 of 2013, whereby learned Tribunal allowed the application under Section 166 of the Motor Vehicle Act, 1988 in part and awarded total sum of Rs.1,55,000/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 16.09.2002 Gopal Das Agrawal (since deceased) along with others were travelling on Tata Sumo bearing No.CG 04 B 1046 (hereafter, referred to as 'Tata Sumo vehicle') and going to Dhamtari from Gondiya. When they reached near village Kohka, NA1 while driving other vehicle Tata Siyara bearing No.MH 31-9575 (hereafter, referred to as 'Tata Siyara vehicle') rashly and negligently, dashed Tata Sumo vehicle. In the said accident, Gopal Das Agrawal suffered grievous injuries on his person and died on the spot.

3. Appellants/Claimants, who are widow and grand son of the deceased filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.49,50,000/- pleading therein that deceased was earning Rs.1,55,000/- per annum from his business and further earning Rs.70,000/- from his agriculture property.

4. Respondents- 1, 2, 3 and 4 did not appear before the Claims Tribunal and were proceeded *ex-parte.*

5. Respondent-5/NA5 submitted its reply denying the entire pleading of claim application. It was further pleaded that NA4/respondent-4 was not possessed with valid and effective driving license. There was no negligence on the part of NA4. Even the insurance of the vehicle Tata Sumo was denied.

6. The learned Claims Tribunal upon appreciation of pleadings and evidence brought on record by the respective parties, held that Gopal Das Agrawal, occupant of Tata Sumo vehicle died due to rash and negligent driving of Tata Siyara vehicle No.MH31-9575 by NA1, awarded Rs.1,55,000/- as compensation

and fastened liability upon NA1, driver of Tata Seiara vehicle to satisfy the amount of compensation.

7. When the matter was taken up for consideration on 22.01.21, taking into consideration the facts and circumstances of the case, evidence and other material available on record, we directed learned counsel for respondent-5 to produce copy of policy, which was produced today along with an application for taking the document on record. Based on the said document, he submits that on the date of accident, respondent-5 /Insurance Company issued Policy for Tata Sumo vehicle and the said policy was comprehensive policy.

8. Shri Sumit Shrivastava, learned counsel for the appellants submits that learned Claims Tribunal erred in awarding meagre amount of compensation. He submits that Tribunal even after arriving at a finding that the deceased was aged within the group of 60-65 years, applied multiplier of 5 instead of 7, as per the ruling of Hon'ble Supreme Court in case of **Sarla Verma and others Vs Delhi Transport Corporation and another,** (2009) 6 SCC 121. He further contended that learned Tribunal has awarded only Rs.35,000/- on other conventional heads, which is also on lower side.

9. He places his reliance on the judgments passed by Hon'ble Supreme Court in cases of **National Insurance Company Limited Vs Pranay Sethi and others,** (2017) 16 SCC 680 and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others,** (2018) 18 SCC 130 in support of his contention.

10. Lastly, he contended that the Tribunal erred in exonerating respondent-5 /Insurance Company erroneously, by recording a finding that there was no negligence on the part of vehicle in which deceased was travelling ie Tata Sumo vehicle. He submits that this finding is perverse.

11. Shri Abhishek Sharma, learned counsel for respondents- 1 and 2 supports the impugned award passed by the Tribunal.

12. Shri Azad Siddiqui, learned counsel for respondent-5/ Insurance Company while opposing the submissions made by learned counsel for the appellant, further submits that learned Claims Tribunal taking into consideration the facts and circumstances of the case had awarded just amount of compensation which does not call for any interference. He further pointed out that learned Claims Tribunal had clearly recorded a finding that there was no negligence on the part of driver of Tata Sumo vehicle, hence no liability can be fastened upon respondent-5 Insurance Company, who is insurer of Tata Sumo vehicle. Application is filed under Section 166 of the Act of 1988 hence, unless and until negligence on the part of driver of Tata Sumo vehicle is proved, respondent-5/Insurance Company cannot be held liable for payment of any amount of compensation.

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

14. So far as the submission made by learned counsel for the appellants regarding enhancement of amount of compensation, he has raised two grounds before us for consideration ie application of multiplier to be erroneous, award of

amount of compensation on other conventional heads to be on lower side and secondly the exoneration of respondent-5, Insurance Company of the vehicle in which deceased was occupant.

15. To appreciate the 1st submission made by learned counsel for the appellants with regard to the application of wrong multiplier of 5 is concerned, application of multiplier has been well settled by Hon'ble Supreme Court in case of **Sarla Verma** (supra) wherein, it is held that appropriate application of multiplier for the victim in between the age group of 60-65 years to be 7. The multiplier of 5 is to be applied where the victim is above 65 years of age.

16. In the case at hand, Tribunal based on other documents available on record, has arrived at a finding that the deceased was in between 60-65 years., hence, we are of the considered view that the Tribunal erred in applying multiplier of 5 instead of 7. In the facts and circumstances of the case, appropriate multiplier shall be 7 and not 5, it is ordered accordingly.

17. So far as the submission made by learned counsel for the appellant with regard to award of meagre amount of compensation on other conventional heads is concerned, award of compensation under other conventional heads is now well settled in case of **Pranay Sethi** (supra) and **Nanu Ram** (supra), wherein Hon'ble Supreme Court has held that amount of compensation under other conventional heads is to be awarded under the heads of loss of consortium, loss of estate and funeral expenses. Amount of compensation has also been quantified in the above ruling of Hon'ble Supreme Court.

18. In the case at hand, claimants are widow and grand son. Hence, appellants are entitled for Rs.40,000/- towards loss of spousal consortium , Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

19. In view of above, we find it appropriate to re-calculate the amount of compensation, which is as under:

a) Yearly income of the deceased is Rs.36,000/- (3000 x 12) as assessed by the Tribunal.

b) After deducting 1/3rd towards personal and living expenses, yearly loss of dependency comes to Rs.24,000/- {36000 – (36000 x 1/3)}.

c) Upon applying multiplier of 7, total loss of dependency comes to Rs.1,68,000/- (24000 x 7).

d) Apart from the above, claimants are also entitled for Rs.70,000/- on other conventional heads ie loss of spousal consortium, loss of estate and funeral expenses.

20. Now, appellants/claimants are entitled for **Rs.2,38,000/-** (168000 + 70000) as total compensation.

21. Aforementioned total amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realisation. Other conditions imposed by the Tribunal shall remain intact.

22. Now, we will consider the submission made by learned counsel for the appellants with regard to the finding of exoneration of Insurance Company, insurer of Tata Sumo vehicle on which the deceased was travelling.

23. There is no dispute of the fact that the accident was between two motor vehicles ie Tata Sumo and Tata Sierra. Place of accident is National Highway Road. Though there is pleading in the application that accident was result of rash and negligent driving of NA1, driver of Tata Sierra vehicle, but in evidence, it is very specifically stated that accident was result of rash and negligent driving of drivers of both the vehicles.

24. Appellant-1 in Para1 of her evidence has categorically stated that accident was due to negligence of drivers of both the vehicles. AW2 Ashok Kumar Bindal, who is also one of the occupants of Tata Sumo vehicle in his evidence denied the suggestion given to him that accident was a result of sole negligence of driver of Tata Sierra and he further clarified that accident took place on account of negligence of drivers of both the vehicles. Driver and owner of both the vehicles (NA1 to NA4) did not appear before the Claims Tribunal and were proceeded *ex parte*. They have not filed reply nor led any evidence.

25. In view of aforementioned categorical statement/evidence available on record, we are of the view that Tribunal has not considered the entire material available on record and has only considered the pleading made in the claim application. The finding recorded by the Tribunal that the non-applicant No.1 is sole negligent in the accident is not sustainable.

26. Further, the Hon'ble Supreme Court in the case of **TO Anthony Vs Karvarnan and others,** 2008(3) SCC 748, decided the issue with respect to composite and contributory negligence. Hon'ble Supreme Court also considered in the said judgment with respect to the status of occupant of one of the vehicle within the two which involved in the accident and held as under:

> “6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.”

27. Recently, Hon'ble Supreme Court has again considered the issue of negligence to be composite or contributory for the occupant of the vehicle in case of **Khenyei Vs New India Insurance Company and others,** 2015 9 SCC 273 and held thus:

> “15.There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the extent cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but the outcome of combination of negligence of two or more other persons. This Court in T.O. Anthony v. Karvarnan & Ors. [2008 (3) SCC 748] has held that in case of contributory negligence, injured need not establish the extent of responsibility of each wrong doer separately, nor is it necessary for the court to determine the extent of liability of each wrong doer separately. It is only in the case of contributory negligence that the injured himself has contributed by his negligence in the accident. Extent of his negligence is required to be determined as damages recoverable by him in respect of the

injuries have to be reduced in proportion to his contributory negligence. The relevant portion is extracted hereunder :

“6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong- doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.”

The decision in T.O. Anthony v. Karvarnan & Ors. (supra) has been relied upon in Andhra Pradesh State Road Transport Corpn. & Anr. v. K Hemlatha & Ors. [2008 (6) SCC 767].

28. Taking into consideration the entire facts and circumstances of the case, place where the accident took place ie the National Highway road, the deceased being occupant of Tata Sumo vehicle , the evidence of witnesses examined on behalf of applicants and considering the aforementioned law laid down by Hon'ble Supreme Court, we are of the view that so far it relates to the claim against death of occupant of vehicle the claimant can sue any of the joint tort feasors or all of them for recovery of entire amount of compensation. In the case at hand, the claimants have impleaded driver and owner of both the vehicles and insurer of Tata Sumo vehicle in which deceased was travelling. There is evidence on record that there was negligence of drivers of both vehicles. The policy issued for Tata Sumo vehicle on which deceased was travelling is a comprehensive policy as stated by learned counsel for the respondent Insurance Company.

29. In view of above, we hold that drivers of both the vehicles were contributory negligent to the extent of 50% each.

30. The claimants in the facts of the case, can recover the amount of compensation from both or either of vehicles. As driver and owner of both the vehicles and Insurance Company of Tata Sumo vehicles are in party array, we hold that respondent No.1 & 2 are liable to pay 50% of the amount of compensation and 50% of the amount of compensation to be paid by respondent No.3, 4 & 5, jointly and severally. First liability of 50% falling upon respondent No.3 to 5 shall be upon respondent No.5. In the facts and circumstances of the case, we direct respondent-5 Insurance Company of Tata Sumo vehicle to first deposit entire amount of compensation along with interest before learned Tribunal and thereafter, Insurance Company will be at liberty to recover 50% of amount of

compensation from respondents-1 and 2, **driver and owner of Tata Sierra vehicle (offending vehicle)**.

31. For the foregoing reasons, appeal is allowed in part and the impugned award is modified to the extent as indicated herein above

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma