NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A(C) No.1305 of 2015

Reserved on 13.04.2021
Pronounced on 09.06.2021

1. Madhusudan Sahu S/o Shri Raghav Sahu, Aged About 50 Years R/o Village-Ranai, Tahsil- Baikunthpur, Distt. Koria, Chhattisgarh (Owner Of Vehicle Truck No. C G-16 A-1777)
2. Shivkumar Sahu S/o Shri Rambadan Sahu, Aged About 45 Years R/o Village-Ranai, Tahsil- Baikunthpur, Distt. Koria, Chhattisgarh (Driver Of Vehicle Truck No. C G-16 A-1777)

---- Appellants

Versus

1. Ramadevi Wd/o Late Mangla Khutia, Aged About 48 Years Caste- Belma, R/o Charcha Colliery, Tahsil- Baikunthpur, Distt. Koria, Chhattisgarh
2. Shivram S/o Late Mangla Khutia, Aged About 27 Years Caste- Belma, R/o Charcha Colliery, Tahsil- Baikunthpur, Distt. Koria, Chhattisgarh, District : Koriya (Baikunthpur)
3. Niranjan S/o Late Mangla Khutia, Aged About 23 Years Caste- Belma, R/o Charcha Colliery, Tahsil- Baikunthpur, Distt. Koria, Chhattisgarh ....Claimants
4. Manager, I.C.I.C.I. Lombard General Insurance Company Ltd. Registered Office At I.C.I.C.I. Bank Tower, Bandra-Kurla Complex, Mumbai, 400 051, India. (Insurer Of Vehicle Truck No. C G-16 A-1777)
5. Bala Ji Reddy S/o Shri Ram Reddy, Aged About 26 Years R/o Pashimi Nepal Gate, Charcha Colliery, Tahsil- Baikunthpur, Distt. Koria, Chhattisgarh (Owner Of The Motorcycle)
6. Manager, United India Insurance Company Ltd. Branch Office At Brahma Road, Ambikapur, Distt. Surguja, Chhattisgarh (Insurer Of The Motorcycle)

---- Respondents

For Appellants:	Shri Raj Kumar Pali, Advocate.
Respondents No.1 to 3:	Shri Pravin Kumar Dhurandhar, Advocate.
For Respondents No.4 & 5:	None, though served.
For Respondent No.6:	Shri Dashrath Gupta, Advocate

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J

C A V Award

1. This Miscellaneous Appeal has been preferred by the owner-Madhusudan Sahu and driver-Shiv Kumar Sahu under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award impugned dated 13.07.2015 passed in Claim Case No.53/2013, whereby the Motor Accidents Claims Tribunal, Baikunthpur, District Koria (CG) (for short 'the Claims Tribunal'), while exonerating the Insurance Company from its liability, has awarded the total amount of compensation payable to the Claimants to the tune of Rs.6,00,000/- along with its interest @ 6% per annum from the date of filing of the Claim Petition till the date of actual payment, while the claimants have preferred the cross-appeal seeking for its enhancement. The parties of this appeal shall be referred hereinafter as per their description before the Claims Tribunal.

2. Briefly stated the facts of the case are that on 03.07.2012, at 10.00 a.m, deceased Lingraj Khutia was going along with his brother Shivram Khutia by a motorcycle as a pillion rider from his village Charcha to Baikunthpur and as soon as they reached near “Odgi Naka new petrol pump”, it was dashed vehemently from its opposite side by the offending vehicle “truck” bearing its registration No.CG 16-A/1777 owing to rash and negligent driving by its driver namely Shiv Kumar Sahu, Non-applicant No.1. The alleged offending vehicle was owned by Non-Applicant No.2-Madhusudan Sahu, which was insured with Non-applicant No.3-I.C.I.C.I. Lombard General Insurance Company Ltd.

3. On account of the aforesaid accident, deceased Lingraj Khutia died during the course of his treatment, while his brother Shivram Khutia, who was driving the alleged motorcycle, sustained grievous injuries, giving rise to the institution of the claim Petition by the Claimants, who are the mother and

brothers of the deceased by submitting, inter alia, that the deceased, a 25 years old, was a Computer Operator in the Office of Deputy Director, Agriculture at Koria District and used to earn Rs.182/- per day, monthly Rs.5,460/- and have claimed total amount of compensation to the tune of Rs.21,40,800/-.

4. The aforesaid claim has been contested by the Non-applicants. According to Non-applicants No.1 & 2, the alleged accident occurred due to rash and negligent driving by the deceased's brother – Shivram Khutia and pleaded further that since the alleged offending vehicle “truck” was insured with the I.C.I.C.I. Lombard General Insurance Company Ltd., therefore, in case of any liability being fastened, it could be indemnified by the said Company. While, the said Insurance Company contested the claim mainly on the ground that since the alleged offending vehicle was insured as “Goods Carrying Vehicle”, but was being used without any permit and fitness certificate by a driver, who was not even holding the valid and effective driving license, therefore, no liability could be fastened upon it.

5. Non-applicant No.5-United India Insurance Company Ltd has contested the claim mainly on the ground that as the alleged accident occurred due to rash and negligent driving of alleged truck, no liability as such could therefore, be fastened upon it.

6. After considering the evidence led by the parties, it was held by the Claims Tribunal that the alleged accident occurred due to rash and negligent driving by the driver of the alleged offending vehicle “truck” resulting into the sad demise of Lingraj Khutia, while his brother sustained grievous injuries. It held further that the driver of the alleged offending vehicle was not

holding a valid and effective driving license on the date of occurrence of the alleged accident, i.e., 03.07.2012. It accordingly exonerated the said Insurance Company from its liability by awarding total amount of compensation payable to the Claimants along with its interest as mentioned herein above.

7. Shri Raj Kumar Pali, learned counsel appearing for the Appellants submits that the finding of the Tribunal holding that the driver of the alleged offending vehicle was not possessing valid and effective driving license on the date of the alleged accident is apparently contrary to law and the materials available on record. According to him, since the investigator of the Insurance Company namely Santosh through whom, the alleged driving license (being Driving License No.H-1182 issued in the name of said driver) got verified from the Regional Transport Office, Secunderabad was not examined, therefore, no reliance could have been placed upon the report (Ex.D-3C) furnished by the said Regional Transport Office in arriving at a conclusion that the driver of it was not holding the valid and effective driving license and has placed his reliance upon the decision rendered by the Supreme Court in the matter of "*National Insurance Ltd. vs. Swaran Singh and others*" reported in **(2004) 3 SCC 297.** It is contended further that the amount of compensation as determined by the Tribunal is on higher side, and therefore, deserves to be modified.

8. On the other hand, Shri PK Dhurandhar, learned counsel appearing for the claimants in his cross-appeal submits that while determining the amount of compensation, the Tribunal ought to have taken into consideration not only the future prospects of the income of the deceased, but ought to have awarded

the appropriate amount of compensation towards conventional heads as well. In support, he placed his reliance upon the decisions rendered in the matters of *National Insurance Company Limited vs. Pranay Sethi And Others* and *Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and Others* reported in **(2017) 16 SCC 680** and **(2018) 18 SCC 130** respectively.

9. Shri Dashrath Gupta, learned Counsel appearing for Non-applicant No.5-United India Insurance Company Ltd has supported the award impugned as passed by the Tribunal.

10. I have heard learned Counsel for the parties and perused the entire record carefully.

11. Ex.D-3C is the information furnished by the Regional Transport Officer, Secunderabad under Right to Information Act to the surveyor of the Insurance Company namely Santosh regarding the verification of the Driving License Number H-1182. According to it, the alleged driving license which appears to be in the name of the driver of the offending vehicle namley Shiv Kumar Sahu was neither issued from the said Office nor any endorsement was made therein. Ex.D-4C is the particulars of the driving license of the said driver Shiv Kumar Sahu issued from the Licensing Authority, Ambikapur, District Surguja which was duly established by the employee of the said Office namely Pawan Kumar Sahu. He was examined on behalf of the owner and driver of the alleged offending vehicle. A bare perusal of his statement would show that the driving license of the said driver was renewed with effect from 04.07.2012 to 03.07.2015 i.e. after the date of its expiry, which was expired on 15.12.2011. It is, thus, apparent that the driving license of the said driver was not in

existence from 16.12.2011 up to 03.07.2012 as it was renewed only with effect from 04.07.2012. The driver of the alleged offending vehicle was, therefore, authorized to drive the same only with effect from 04.07.2012 and was certainly not authorized to drive the same when the alleged accident occurred on 03.07.2012. It appears further that no driving license was issued from the Regional Transport Office, Ambikapur as reflected from the testimony of the said witness Pawan Kumar and it appears further from his evidence that prior to issuance of renewal of his license (Ex.D-5), it was not verified, though was required to be verified, as his license was issued for the first time from a different State i.e. Secunderabad (Government of Telangana). That apart, he himself has admitted at paragraph-3 of his evidence that the driver - Shiv Kumar Sahu was not holding the valid and effective driving license on 03.07.2012.

12. In view of the aforesaid evidence, both oral and documentary, it is evident that the driver of the alleged offending vehicle namely Shiv Kumar Sahu was not possessing the valid and effective driving license on the fateful day and I.C.I.C.I. Lombard General Insurance Company Ltd has therefore, rightly been exonerated from its liability and the finding of the Claims Tribunal in this regard deserves to be and is hereby affirmed. In so far as the reliance of the learned counsel for the Appellants as placed upon the decision rendered in the matter of **National Insurance Ltd. vs. Swaran Singh and others** (supra) is concerned, the same is, however, noted to be distinguishable from the facts involved herein as the Appellants are relying upon the renewal of the alleged driving license, which was, however, found to be renewed with effect from 4th July,, 2012, i.e., after the occurrence of the alleged accident, which

took place on 03.07.2012.

13. In so far as the Cross Appeal preferred by the Claimants seeking enhancement of the amount of compensation is concerned, it appears that the Claims Tribunal, while determining the amount of compensation, has failed to consider the future prospects of the income of the deceased in order to provide just and proper compensation payable to the Claimants. The award impugned determining the amount of compensation is, therefore, liable to be re-assessed in the light of the principles laid down by the Supreme Court in the matters of *National Insurance Company Limited vs. Pranay Sethi And Others* and *Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and Others* reported in **(2017) 16 SCC 680** and **(2018) 18 SCC 130** respectively.

14. Considering the monthly income of the deceased to the tune of Rs.5,460/-, yearly Rs.65,520/- as observed by the Claims Tribunal based upon the pay certificate (Ex.P-7) issued by the Deputy Director of Agriculture, District Koria, an addition of 40% of it, i.e. Rs.26,208/- towards future prospects of his annual income is to be made in the light of the principles laid down in the matter of National Insurance Company Limited vs. Pranay Sethi And Others (supra). It would accordingly come to Rs.91,728/- (Rs.65,520/- + Rs.26,208/-). Since the deceased was unmarried, deduction of half of it i.e. Rs.45,864/- towards his personal and living expenses would be appropriate. The annual dependency would thus come to Rs.45,864/- (Rs.91,728/- - Rs.45,864/-). As the deceased was found to be 25 years old at the time of the accident, multiplier applicable would be 18. Thus, total dependency would come to Rs.8,25,552/- (Rs.45,864/- x 18).

15. Besides, mother (Claimant No.1) is entitled to be awarded loss of consortium under the head of parental consortium as held by the Supreme Court in the matter of Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and Others (supra) at the rate as held in the matter of Pranay Sethi (supra). Consequently, in addition, Claimant No.1-mother is entitled to the following amounts towards conventional heads:-

Mode of compensation	**Amount Rs.**
(i) Loss of parental consortium	- 40,000/-
(ii) Funeral expenses	- 15,000/-
(iii) Loss of estate	- 15,000/-
Total	**- Rs.70,000/-** ==============

16. Consequently, the Claimant-mother would be entitled to a total amount of compensation to the tune of Rs.8,95,552/- (Rs.8,25,552/- + Rs.70,000/-) with 6% interest per annum from the date of the filing of the claim petition till the date of actual payment.

17. Although, as observed hereinabove that I.C.I.C.I. Lombard General Insurance Company Ltd. has been exonerated from its liability, but the policy (Ex.D-2) was admittedly found to be in existence. Therefore, by applying the principles laid down in the matters of *National Insurance Co. Ltd. vs. Swaran Singh and Others* and *Manager, National Insurance Company Limited vs. Saju P. Paul and another* reported in **(2004) 3 SCC 297** and **(2013) 2 SCC 41** respectively, I accordingly issue a direction to the said Company to first pay the awarded sum to the Claimant-mother and then to recover the amount of compensation paid by it from the owner and driver of the alleged offending vehicle "truck" in execution proceedings arising in this very case.

18. With the aforesaid observations, the appeal preferred by the owner and driver is hereby dismissed while the Cross Appeal preferred by the Claimants is allowed in part. Rest of the observations as made by the Claims Tribunal shall remain in tact. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
Judge

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