

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1230 of 2015

1. Smt. Sumita Mali Wd/o Late Shyamal Mali, ged about 41 years.
2. Sourabh Mali S/o Late Shyamal Mali, Aged About 23 Years
3. Shomen Mali S/o Late Shyamal Mali, Aged About 24 Years

R/o 57/22/ E, S. P. Mukharjee, Sarani, Shrirampur, District Hugli West Bengal.

---- Appellants (Claimants)

Versus

1. Rajendra Prasad S/o Shri Ramdayal Yadav, aged about 27 years, R/o Dhurwasin, Kotmi, Police Station Bhalumada, District Anuppur [M.P] at present Bandhamuda, Gourela, Tahsil Pendra Road, District Bilaspur (CG) (Driver)
2. Hemlal Yadav S/o Awadh Narayan Yadav, aged about y3 Years R/o Darri, Police Station Gourela, Tahsil Pendrroad, District- Bilaspur (CG) (Owner)
3. Manager, The Oriental Insurance Company Limited, Rama Trade Centre, Near Bus Stand, Oriental House A-25/27 Office Ali Road, New Delhi- 110002 (Insurer)

---- Respondents

For Appellants	:	Shri Yogendra Chaturvedi, Advocate
For Respondent No.3	:	Shri Anumeh Shrivastava, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order On Board

02/08/2021

1. Claimants/appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for brevity 'the Act of 1988') seeking enhancement in compensation awarded by the learned Additional Motor Accident Claims Tribunal, Pendra

Road vide award dated 27.6.2015 in Claim Case No.15/2014 thereby allowing claim application in part and awarding sum of Rs.4,22,000/- as compensation to claimants in a fatal accident with interest @ 6% p.a. from the date of accident.

2. Facts of the case, in brief, are that on 27.11.2013 at about 6:00 p.m. Shyamal Mali was travelling on his motorcycle bearing registration number WB16-Y-8190, when he reached near village Harratola, one tractor bearing registration number CG10-DA-1680, driven by non-applicant No.1 rashly and negligently, dashed his motorcycle and caused injuries. In the aforementioned accident, Shyamal Mali suffered grievous injuries and died on spot.
3. Claimants-appellants, who are widow and children of deceased Shyamal Mali, filed an application under Section 166 of the Act of 1988 claiming total amount of Rs.97,45,000/- as compensation. It was pleaded that on the date of accident, deceased was working as Trackman-3 with South East Central Railways, Bilaspur and getting salary of Rs.20,532/- per month. Apart from this, deceased being ex-serviceman was also getting pension of Rs.9,200/- per month.
4. Non-applicant No.1 & 2, driver & owner of offending vehicle, have submitted reply to claim application denying the facts pleaded therein. It was pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3 and non-applicant No.1-driver of offending vehicle was possessed with valid and effective driving license. Amount of

compensation claimed is highly exaggerated. If any compensation is awarded to claimants, the liability to pay the same would be of non-applicant Insurance Company.

5. Non-applicant No.3-Insurance Company also submitted its reply to claim application and denied the facts pleaded therein. It was pleaded that on the date of accident, deceased was not possessed with valid and effective driving license to drive motorcycle. In the night, deceased fell down from motorcycle on account of his own negligence and met with accident. Non-applicant No.1-driver of offending vehicle was not possessed with valid and effective driving license on the date of accident. Since there was breach of essential conditions of insurance policy, the insurance company is not liable to indemnify the insured.
6. The Claims Tribunal upon considering the pleadings and evidence brought on record by respective parties, has held that deceased Shyamal Mali died on account of motor accidental injuries suffered by him in an accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1-driver; contributory negligence and breach of policy condition is not found to be proved. Hence, the Claims Tribunal allowed claim application in part, awarded total sum of Rs.4,22,000/- as compensation and fastened liability upon non-applicant Insurance Company to pay amount of compensation.
7. Shri Yogendra Chaturvedi, learned counsel for appellants

would submit that the Claims Tribunal erred in assessing income of deceased at Rs.3,000/- per month, ignoring the documents produced by claimants/appellants, which are issued by employer of deceased i.e. SECR, Bilaspur, clearly reflecting income of deceased. He submits that claimants/appellants have not only filed salary slip but also Form No.-16 issued by the Assistant Personnel Officer, SECR, Bilaspur. Perusal of documents issued by the SECR, Bilaspur would show that deceased was working on the post of Track-man-3, at the pay-scale of Rs.5200/-, Grade Pay Rs.1800/-, and by adding other heads, drawing total salary of Rs.20,532/- per month. Aforementioned documents were issued by an institution of the Central Government, as such, the same comes within the purview of public document, therefore, the Claims Tribunal ought to have taken into consideration the same for assessing income of the deceased. In alternate, learned counsel submits that as per provisions of the Act of 1988 and the rules made thereunder i.e. CG Motor Vehicles Rules, 1994 (henceforth 'the Rules of 1994'), the Claims Tribunal ought to have called for details with respect to income of deceased from the employer, if it concluded that the appellants have not proved the documents placed on record in accordance with law. He submits that there is vast difference in between the income of deceased on the date of accident and the income assessed by the Claims Tribunal and if this Court reaches to the conclusion that documents issued by the SECR, Bilaspur are not acceptable without examining

concerned employees of the department, then the case may be remitted back to the Claims Tribunal for providing opportunity to appellants to prove income of deceased. He further submits that the Claims Tribunal has not awarded any amount towards future prospects and the amount awarded under other conventional heads is also on lower side. He placed reliance on the judgment passed by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680**.

8. Shri Anumeh Shrivastava, learned counsel for respondent No.3 Insurance Company would submit that in absence of examination of concerned employees of department/author of documents to prove the documents placed on record by claimants allegedly showing income of deceased, the Claims Tribunal is justified in not considering the same for assessing income of deceased. In absence of admissible piece of evidence the Claims Tribunal is justified in assessing income on notional basis. He further submits that amount of compensation awarded by the Claims Tribunal in the given facts and circumstances of case is just and proper and it does not call for any interference.
9. I have heard learned counsel for the parties and perused the record to appreciate submissions made by learned counsel for the parties with respect to assessment of income of deceased by the Claims Tribunal.
10. Perusal of the record would show that appellants-claimants

have placed on record documents Ex.P-3 & Ex.P-4, which are particulars of deductions towards income tax and Form No.16. Both these documents were issued on printed paper of SECR, Bilaspur and they also contain seal and signature of the Assistant Personnel Officer, SECR, Bilaspur. Appellants have also placed on record certified copy of salary slip of deceased for the months of April & March, 2013; railway identity card, privilege ticket order, which they have obtained from the Civil Court, Pendra Road. Perusal of Ex.P-3 & Ex.P-4 would show that deceased was working as Trackman-3 in SECR, Bilaspur and posted in the office of Pathway Engineering. If the Claims Tribunal was of the view that documents placed on record by claimants i.e. Ex.P-3, P-4 & P-5, do not deserve consideration for assessing income of deceased, the Claims Tribunal could have exercised its power under Rule 226 of the Rules of 1994. The Act of 1988 is a beneficial piece of legislation, it casts a duty upon the Claims Tribunal to conduct an enquiry, as contemplated under Section 168 of the Act of 1988 and the Rules of 1994, in order to award just compensation.

11. Taking into consideration nature of documents placed on record by claimants/appellants i.e. Ex.P-2 to Ex.P-4 to prove income and employment of deceased as Trackman-3 with SECR, Bilaspur, and further considering the provisions of Section 168 of the Act of 1988 read with Rule 226 of Rules of 1994, which cast a duty upon the Claims Tribunal to hold an enquiry into the claim, the Claims Tribunal should have conducted proper enquiry, as contemplated under the Act of

1988 and the Rules of 1994, for determining just amount of compensation. Hence, this Court is of the opinion that the matter requires reconsideration at the end of Claims Tribunal.

12. For the foregoing reasons, the appeal is allowed, impugned award is set aside and the matter is remitted back to the Claims Tribunal for deciding claim case afresh in accordance with law, after affording opportunity to the parties to adduce additional oral and documentary evidence in support of their respective case. The claim case was filed in the year 2015 in respect of accident dated 27.11.2013, therefore, the Claims Tribunal is expected to decide the matter expeditiously, preferably within a period of five months from the date of production of copy of this order.

13. Record of claim case be sent back forthwith.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-