

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 72 of 2016

1. Smt. Rajkishori Kujur, W/o Late Sushil Kumar Tigga, Aged About 34 Years
2. Minor Prateek S/o Dinesh Kujur, Aged About 6 Years Through His Next Friend Applicant No. 1, Smt. Rajkishori Kujur

Both R/o Basant Vihar Colony, Jashpurnagar, District Civil And Revenue
District Jashpur Chhattisgarh.....Claimants **---- Appellants**

Versus

1. Seema Devi Gupta, D/o Brijmohan Prasad Sahu, R/o C/o Shivnath Travels, Pandri Raipur, Tahsil And District Raipur Chhattisgarh
2. The Oriental Insurance Company Limited Branch Office Patthalgaon, District Jashpur Chhattisgarh **---- Respondents**

For Appellants	: Shri Ak Prasad, Advocate
For Respondent- 1	: Shti Satyendra Shrivastava, Advocate
For Respondent-2	: Shri Deepak Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

14.09.2021

1. Challenge in this appeal is to the award dated 05.05.2014 passed by the Motor Accident Claims Tribunal, Jashpur (for short, 'Claims Tribunal') in Claim Case- 55 of 2014, whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded Rs.8,37,505/- as compensation with interest @ 9% per annum from the date of filing of application till its realisation.

2. Facts relevant for disposal of this appeal are that, on 15.07.2014 at about 6.30 pm, Sushil Tigga (since deceased) while driving Bus bearing No.JH08 B-8571 (hereafter, referred to as 'offending vehicle') from Ranchi to Raipur, reached near Chidrapara at about 1.15 am (midnight), bus turned turtle and met with an accident. In the accident, Sushil Tigga died on the spot.

3. Appellants/ claimants, who are widow and nephew of deceased filed an application under Section 166 of the act of 1988 pleading therein that on the date of accident, deceased was working as Driver of Bus and earning salary of Rs.12,000/- per month and Rs.200/- as daily allowance, thereby, earning Rs.21,000/- per month. Accident was on account of negligence on the part of owner of offending vehicle because of not maintaining the vehicle properly. Accident took place because of failure of its steering. Claimants were dependant upon income of deceased and claimed total compensation of Rs.34,25,000/- on different heads.

4. NA1 Owner of offending vehicle submitted reply to claim application, denying claim of appellants with regard to maintenance of Bus to be not proper. It was pleaded that as the distance which is to be covered by Bus from Ranchi to Raipur, there are 2-3 Drivers. Offending vehicle was insured with NA2, Insurance Company, and liability, if any, to satisfy compensation is upon NA2.

5. NA2 / Insurance Company of offending vehicle submitted its separate reply denying the facts pleaded in claim application and also the pleading of non-maintenance of vehicle properly by its Owner. Offending vehicle was being plied in breach of policy conditions and pleaded that Insurance Company may be exonerated from its liability.

6. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that late Sushil Kumar Tigga died while using offending vehicle, awarded total sum of Rs.8,37,505/- as compensation and fastened liability upon NA 1 and 2 jointly and severally.

7. Shri AK Prasad, learned counsel for the appellants would submit that learned Tribunal erred in calculating amount of compensation based on mode of compensation under Workmen Compensation Act, 1923 (for short, 'Act of 1923'). He submits that appellants have filed application for grant of compensation under the Act of 1988 then Tribunal ought to have computed the amount of compensation applying multiplier system as held by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121. It is further contended that deceased was in a permanent employment, being Driver of private passenger Bus. Tribunal erred in not awarding any amount of compensation towards future prospects, not awarding any amount towards funeral expenses, and not awarding proper compensation on other conventional heads. He submits that amount of compensation be enhanced suitably.

8. Shri Satyendra Sahu, learned counsel for respondent- 1 submits that amount of compensation awarded by learned Claims Tribunal in the facts and circumstances of the case, is just and proper, which does not call for any interference. He submits that learned Claims Tribunal on appreciation of evidence, held that accident was result of self negligence of deceased himself and therefore, Tribunal has calculated amount of compensation treating the deceased to be a Workman.

9. Shri Deepak Gupta, learned counsel for respondent-2 / Insurance Company submits that amount of compensation awarded to the appellants/claimants cannot be said to be on lower side, where learned

Claims Tribunal has calculated amount of compensation treating deceased to be a Workman.

10. I have heard learned counsel for the parties and also perused the record of the claim case.

11. Perusal of record of claim case would show that in pleadings, appellants have stated that deceased while driving offending vehicle, met with an accident due to failure of steering of Bus. There was no involvement of any other vehicle in the accident. Negligence on the part of Owner is pleaded of not maintaining offending vehicle properly and not repairing the Bus in time. Learned Tribunal in Paragraphs- 16 to 19 of impugned award has considered the pleadings in claim application with regard to negligence on the part of Owner of Bus in not maintaining it properly. Learned Tribunal has come to a conclusion that accident was result of self negligence on the part of deceased himself. This finding of Claims Tribunal is not challenged by claimants in this appeal, but they simply filed this appeal seeking enhancement of amount of compensation. Learned Claims Tribunal even after recording a finding that there was no involvement of any other motor vehicle in accident, no negligence on the part of Owner and accident was result of own negligence of deceased himself, calculated amount of compensation by applying the method for calculating amount of compensation under the Act of 1923.

12. For maintaining an application filed under Section 166 of the Act of 1988, claimants have to prove that accident was a result of negligence on the part of others or there is involvement of any other vehicle in motor accident. In absence of proof of accident on account of negligence of

others, application filed under Section 166 of the Act of 1988 would not be maintainable. Learned Claims Tribunal, showing its generous approach, calculated amount of compensation applying method of Workmen Compensation and calculated total sum of Rs.8,37,505/- as compensation.

13. In the facts and circumstances of the case, where Claims Tribunal has recorded a finding that deceased himself was negligent for causing accident and pleading with regard to negligence on the part of Owner of offending vehicle was not found to be proved, submission made by learned counsel for the appellants that amount of compensation be enhanced, calculating the amount of compensation by applying multiplier system under provision of Section 166 of Act of 1988, is not sustainable.

14. In view of finding recorded by learned Claims Tribunal that accident is a result of own negligence of deceased himself, and application for grant of compensation is filed under Section 166 of the Act of 1988, I do not find any good ground to interfere with impugned award passed by Tribunal in appeal filed by claimants seeking enhancement of amount of compensation.

15. This Court in this appeal, has considered the plea of appellants/claimants seeking enhancement of amount of compensation only.

Sd/-
(Parth Prateem Sahu)
JUDGE