NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.1330 of 2015

Reserved on 02.03.2021
Pronounced on 09.03.2021

1. Smt. Safira Kujur, W/o Late Dharam Sai Kujur, aged about 50 years,

2. Ku. Sulochana Kujur, D/o Late Dharam Sai Kujur, aged about 26 years, Occupation – Housewife.

3. Nilkamal Kujur, S/o Late Dharam Sai, aged about 24 years.

All are R/o Sarahapani (Banglatoli) P.S. & Tahsil – Kansabel, Distt. Jashpur (C.G.)

---- Appellants/Claimants

Versus

1. Nitish Kumar Gupta, S/o Kailash Prasad Gupta, Aged about 21 years, R/o Karoundha, P.S. Bhatgaon Distt – Surajpur (C.G.) (Driver of Vehicle No. C.G.-15/C K/9475)

2. Ajay Kumar Gupta, So Kailash Prasad Gupta, aged about 25 years, R/o Karoundha, P.S. Bhatgaon, Distt. Surajpur (C.G.) (Owner of Vehicle No. C.G.-15/C K/9475)

3. Branch Manager, United India Insurance Company Limited, Branch Office Braham Road, Ambikapur, Distt - Sarguja (C.G.)

---- Respondents

For Appellants	:	Shri A.N.Pandey, Advocate
For Respondents No.1 & 2	:	None, though served.
For Respondents No. 3	:	Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal

C.A.V.Order / Award

1. This miscellaneous appeal has been preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act, 1988) questioning the legality and propriety of the award dated 13.07.2015 passed by the Additional Motor Accident Claims Tribunal,

Pratappur, Dist. Surajpur in Claim Case No. 21/2013, whereby the Tribunal, while allowing the claim in part, awarded total amount of compensation to the tune of Rs.23,35,580/- with 5% interest per annum from the date of filing of the claim petition till passing of the said award and thereafter the amount of compensation shall carry 9% interest per annum till the date of its recovery, while fastening liability upon the insurance company. The parties to this appeal shall be referred hereinafter as per their description before the Tribunal.

2. Briefly stated the facts of the case are that the deceased Dharamdas Kujur was going along with his wife by his motorcycle from the village Rihand (Sonbhadra of U.P.) to village Sarahapani (Kansabel) and as soon as he reached the village Jarhi, his motorcycle was collided head on by another motorcycle bearing registration No.C.G./15/C.K./9475, owned by Non-applicant No.2 Ajay Kumar Gupta and insured with the United India Insurance Company Limited. At the relevant time, it was being driven in a rash and negligent manner by its driver, namely, Nitish Kumar Gupta, owing to which, the alleged accident occurred and the deceased was injured badly and succumbed to the injuries when he was being brought to the hospital. A report of the alleged accident was reported to the police station Bhatgaon, District Surajpur in connection with Crime No.183/2012 against the driver of it under Section 304-A of I.P.C. and the charge sheet was accordingly submitted before the Judicial Magistrate First Class, Pratappur.

3. On account of the aforesaid accident, a claim enumerated under Section 166 of the Act, 1988 has been made by the claimants, who are the widow, son and unmarried daughter of the deceased by submitting, inter alia, that he (deceased) was 53 years old and was working as a Sub-Engineer in N.T.P.C. and used to earn Rs.1,23,785/- per month and thus have claimed

total amount of compensation to the tune of Rs.1,16,52,764/- under various heads.

4. The Non-applicants have contested the aforesaid claim. According to the driver and owner of the alleged offending vehicle, the deceased himself was responsible for the alleged accident as he was driving his motorcycle in a rash and negligent manner in drunken condition. It is pleaded further that a false case has been registered against him (driver Nitish Kumar) by the concerned police station and pleaded further that since the vehicle in question was insured with the United India Insurance Company Limited, therefore, in case of any liability being fastened, the same could be indemnified by the said company. While, the insurer of it took a defence that since it was being driven by a driver without holding the effective and valid driving license in violation of the insurance policy, as such, no liability could be fastened upon it.

5. In support, the claimants have examined Smt. Safira Kujur (A.W.1), Vijay Kishore (A.W.2), Manager of the N.T.P.C. and Mukesh Talukdar (A.W.3), eye-witness of the alleged accident, while on behalf of the Non-applicants, Nitish Kumar (N.A.W.1), driver of the alleged offending vehicle and Mayank Shukla (N.A.W.2) Administrative Officer of the insurance company have entered into the witness box in rebuttal.

6. After considering the evidence led by the parties, it has been held by the Tribunal that since the alleged accident occurred due to head on collision between two motorcycles, therefore, both the drivers, i.e., deceased Dharam Das and Nitish Kumar, driver of the alleged offending vehicle are equally responsible to the accident at the ratio of 50% each, which led to the sad demise of Dharam Das Kujur, while the said Nitish Kumar has sustained

injuries. It held further that the driver of the alleged offending vehicle was possessing the valid and effective driving licence, and therefore, it cannot be said that it was being driven in violation of the policy and that by considering the annual income of the deceased at Rs.7,12,674/-, after deducting the tax amount, and by applying the multiplier of 10, assessed the total amount of compensation at Rs.45,11,160/- and by deducting half of it, owing to the contributory negligence of the deceased, awarded total amount of compensation along with the interest, as mentioned herein above.

7. Shri A.N.Pandey, learned counsel appearing for the appellants/claimants submits that the finding of the Tribunal holding that the deceased was equally responsible for the alleged accident is apparently contrary to the materials placed on record. It is contended further, while inviting attention to the evidence led by the widow Smt. Safira Kujur and the eye-witness of the alleged accident, namely, Mukesh Talukdar (A.W.3) and also of the filing of charge-sheet against the driver Nitish Kumar, that he (Nitish Kumar) alone was responsible for the same. Further contention of Shri Pandey is that the Tribunal ought to have determined the amount of compensation while considering the monthly income of the deceased at Rs.1,23,785/- instead of Rs.66,985/- per month. It is contended further that the Tribunal has failed to consider the future prospects of the income of the deceased and erred further in applying the improper multiplier of 10. In support, he placed his reliance upon the principles laid down by the Supreme Court in the matter of ***National Insurance Company Limited -v- Pranay Sethi, Magma General Insurance Company Limited*** vs. ***Nanu Ram @ Chuhru Ram and others*** and ***Sarla Verma (Smt.) and Others*** vs. ***Delhi Transport Corporation and another,*** reported in **(2017) 16 SCC 680, (2018) 18 SCC 130** and **(2009) 6 SCC 121** respectively.

8. On the other hand, Smt. Chitra Shrivastava, learned counsel appearing for respondent No.3, the insurer of the alleged offending vehicle, has supported the award impugned.

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

10. From perusal of the record, it appears that on a fateful day, i.e., on 01.12.2012, the deceased was hit from his opposite side by the offending vehicle, i.e., motorcycle bearing registration No. C.G.-15-CK/9475, which was being driven by its driver Nitish Kumar in a rash and negligent manner, when he was going to village Sarhapani along with his wife by his motorcycle. In order to establish the factum of the alleged accident, it was stated by his wife Smt. Safira Kujur (A.W.1) in her evidence that her husband was driving the vehicle in a moderate speed at that particular time when it was hit by the offending vehicle. According to her, the alleged offending vehicle was being driven by its driver in a rash and negligent manner and owing to which, the alleged accident occurred and her husband sustained grievous injuries and succumbed to such grievous injuries on way to the hospital. No specific question was put to her regarding rash and negligent driving of her husband and her statement was duly corroborated by Mukesh Talukdar (A.W.3), an eye-witness of the alleged accident, who has also stated specifically that the accident took place due to negligent driving of the driver of the said offending vehicle, namely, Nitish Kumar. Besides, the F.I.R. (Ex.P.1) was lodged on account of alleged accident against the driver of the said offending vehicle alone which led to the filing of the charge-sheet against him under Section 304-A of I.P.C. The initial burden to establish the occurrence of the alleged accident and the rash and negligent act of the said driver was thus proved by the claimants. However, the driver of the alleged vehicle, though entered into

the witness box, but has failed to rebut the same by way of any cogent and reliable evidence nor has led any independent evidence in order to corroborate his testimony, nor has succeeded to establish the fact that the alleged complaint as lodged against him was a fake one. The Tribunal has, however, without considering the said evidence in its proper manner, arrived at a conclusion that the deceased was equally responsible for the alleged accident merely on the ground that it had taken place because of head on collision. Merely because the accident occurred as such, would not, by itself, be sufficient to arrive at such a conclusion that both the drivers are equally responsible for the same. Consequently, such a finding holding the deceased to be equally responsible for the alleged accident, deserves to be and is hereby set aside and, I accordingly hold that the driver of the alleged offending vehicle, namely, Nitish Kumar (N.A.W.1) alone was responsible for the alleged accident, which took place on 01.12.2012.

11. Now, in so far as the monthly income of the deceased, as assessed by the Tribunal to the tune of Rs.66,985/- is concerned, I do not find any infirmity in the same. The deceased Dharam Das Kujur was performing his duty as a Sub-Engineer in N.T.P.C and, the “Last pay drawn Certificate” (Ex.P.10), duly certified by Vijay Kishore (A.W.2), Manager of the said Corporation, would reveal his monthly salary as Rs.66,985/-, yearly Rs.8,03,820/-. Since it was a taxable income, therefore, while deducting the tax, as required, the Tribunal has rightly assessed his annual income to the tune of Rs.7,12,674/- and I accordingly hold the annual income of the deceased as such. It, however, appears that while determining the amount of compensation, the Tribunal has erred in holding that Ku. Sulochana, the unmarried daughter of the deceased, was not dependent upon him, owing to her employment as a teacher. It, however, cannot be the criteria to hold as such, particularly, being an

unmarried daughter, the entire responsibility to take care of her was upon her father. I accordingly hold that Ku. Sulochana is also dependent upon her deceased father.

12. It appears further that while assessing the amount of compensation, future prospects of the income of the deceased has neither been taken into consideration nor the multiplier was applied properly in accordance with the principles laid down by the Supreme Court in the matter of **Sarla Verma (Smt.) and Others** vs. **Delhi Transport Corporation and another** (supra). The award impugned is, therefore, liable to be reassessed in order to provide just and proper compensation payable to the claimants, in the light of the principles laid down by the Supreme Court in the matter of **National Insurance Company Limited -v- Pranay Sethi** and **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others** (supra).

13. Considering the annual income of the deceased as Rs.7,12,674/-, an addition of 15% of it, i.e., Rs.1,06,901.1, rounded off to Rs.1,06,901/- towards future prospects of his actual income is to be made, in the light of principles laid down in said the matter of **Pranay Sethi** (supra), which accordingly would come to Rs.8,19,575/- (Rs.7,12,674/- + Rs.1,06,901/-). Since the number of dependents upon the deceased is 3, deduction of 1/3rd of it, i.e., Rs.2,73,191.66, rounded off to Rs.2,73,192/- towards his personal and living expenses would be appropriate. The annual dependency would, thus, come to Rs.5,46,383/- (Rs.8,19,575/- - Rs.2,73,192/-). As the deceased was 53 and half years old at the time of accident, the proper multiplier applicable would be 11 and not 10, as applied by the Tribunal, in view of the said matter of **Sarla Verma** (supra). Thus, the total dependency would come to Rs.60,10,213/- (Rs.5,46,383/- x 11).

14. Besides, the widow, son and daughter are entitled to be awarded loss of consortium under the head of spousal and parental consortium, as held by the Supreme Court in the matter of **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others** (supra), at the rate as held in the matter of **Pranay Sethi** (supra). Consequently, in addition, the claimants are entitled to the following amounts towards conventional heads:

Sl. No.	Mode of Compensation	Amount in Rs.
1.	For loss of spousal consortium to wife	40,000/-
2.	For loss of parental consortium to son and unmarried daughter.	40,000/-
3.	For Funeral expenses	15,000/-
4.	For loss of estate	15,000/-
	Total:	Rs.1,10,000/-

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15. Consequently, the claimants would be entitled to a total sum of Rs.61,20,213/- (Rs.60,10,213/- + Rs.1,10,000/-) with 6% interest per annum from the date of filing of the claim petition till the date of actual payment.

15.1 Out of the aforesaid sum, a sum of Rs.35,00,000/- shall be given to widow Smt. Safira Kujur and out of it, a sum of Rs.5,00,000/- shall be given to her through account payee cheque, while rest of the amount, i.e., Rs.30,00,000/- shall be deposited in her name in any of the Nationalised Banks for a period of 3 years, which shall be disbursed to her upon its maturity, as per the direction of the Executing Court.

15.2 Likewise, Rs.18,20,213/- shall be deposited in the name of Ku. Sulochana Kujur (claimant No.2), while rest of the amount, i.e., Rs.8,00,000/- in the name of son, namely, Nilkamal (claimant No.3), in any of the Nationalised Banks for a period of 3 years which shall be disbursed to them after its maturity, as per the direction of the Executing Court.

15.3 In so far as the interest part is concerned, the same shall be calculated at the said rate of Rs.6% per annum from the date of filing of claim petition till the date of actual payment and the same shall be disbursed to them through cheque, as per the direction of the Executing Court.

16. It is observed further that if the claimants want to withdraw a portion of it or the entire deposited amount of their interest/share during the said period of 3 years, then they are at liberty to move an application for the said purpose before the concerned Executing Court, which may be considered by it and an appropriate order may be passed in this regard.

17. In the result, the appeal is allowed in part to the extent indicated herein above, with the aforesaid observations. Rest of the observations as made by the Tribunal shall remain intact. No order as to costs.

Sd/-

(**Sanjay S. Agrawal)**
Judge

Anjani