(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 781 of 2015

1. Shyamji S/o Late Santu Ram Kewant, aged about 27 years.
2. Ramji, S/o Late Santu Ram Kewant, aged about 25 years.
3. Ramu, S/o Late Santu Ram Kewant, aged about 24 years.
4. Raju, S/o Late Santu Ram Kewant, aged about 22 years.
5. Parmeshwar, S/o Late Santu Ram Kewant, aged about 20 yrs.
6. Jaleshwar, S/o Late Santu Ram Kewant, aged about 18 years.

   All are R/o Village Birkona, PS Hirri, District Bilaspur (CG)

---- Appellants (Claimants)

Versus

1. Jagjeet Singh, S/o Preetam Singh, aged about 50 years, R/o In front of Banki Lambi Chal, PS Banki Mongra, Tahsil Kataghora, District Korba (CG) (Driver)
2. Mahesh Yadav, S/o Vishnu Dev, R/o Ward No.46, Quarter No.MQL/2, Balgi Project, PS-Banki Mongra, Tahsil Kataghora, Dist Korba (CG) (Owner)
3. Branch Manager, The Oriental Insurance Company Limited, Regional Office- 1st Floor, Rama Trade Centre, In front of Rajeev Plaza, Old Bus Stand, Bilaspur, Tahsil & District Bilaspur (CG) (Insurance Company)

---- Respondents

For Appellants	:	Shri Samir Singh, Advocate
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Order On Board

18/8/2021

1. Claimants/appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for brevity 'the Act of

1988') challenging the award dated 10.11.2014 passed by the learned 7th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.233/2014 thereby allowed claim application in part; awarded Rs.1,71,400/- as compensation to claimants in a fatal accident alongwith interest @ 9% p.a., after deducting 50% of the calculated amount of compensation towards contributory negligence on the part of driver of vehicle in which deceased was travelling.

2. Facts of the case, in nutshell, are that on 10.10.2010 Ramotin Bai along with her husband Santu Kenwat and others had gone to Chandrahasini Temple, Chandarpur on Tata Magic vehicle bearing registration number CG10-F-9761 for offering prayer. While returning from Chandarpur when they reached in front of High Court building located on Bilaspur-Raipur Highway, one truck bearing registration number CG12-C-2467 (for short 'offending vehicle'), driven by non-applicant No.1 rashly and negligently, dashed Tata Magic and dragged it about 50 mts. In the aforementioned accident, Ramoutin Bai suffered grievous injuries. She was taken to District Hospital, Bilaspur from where she was referred to CIMS Bilaspur. Looking to nature of injuries Ramoutin Bai was shifted to Dr. B.R. Ambedkar Hospital, Raipur where she died during the course of treatment on 20.10.2010. Incident was reported to concerned police station based on which crime bearing No.331/10 was registered against non-applicant No.1-driver.

3. Claimants-appellants, who are children of deceased Smt.

Ramoutin Bai, filed an application under Section 166 of the Act of 1988 claiming total amount of Rs.10,84,000/- under different heads as compensation pleading therein that deceased was an able bodied person aged about 48 years, earning Rs.7,000/- p.m. (Rs.250/- per day) by running a grocery shop in front of her house situated on Main Road.

4. Non-applicant No.1 & 2 filed reply to claim application denying the facts pleaded therein. It was further pleaded that non-applicant No.1 was possessing valid and effective driving license on the date of accident; there was valid permit and fitness certificate with the offending vehicle. The offending vehicle was insured with non-applicant No.3- Insurance Company, as such, liability to pay amount of compensation, if awarded any, 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 further pleaded that there was contributory negligence on the part of driver of Tata Magic in which deceased was travelling as accident was between two motor vehicles. Amount of compensation claimed is highly exaggerated. Vehicle on which deceased was travelling was overloaded and its driver was not possessing valid & effective driving license. Driver of offending vehicle was also not possessing valid and effective driving license at the time of accident, as such, there was breach of essential condition of insurance policy. Hence, the insurance company is not liable to indemnify the insured.

6. The Claims Tribunal upon appreciation of pleadings and evidence brought on record by respective parties, has held that deceased Smt. Ramoutin Bai died on account of motor accidental injuries suffered by her in road accident; driver of both vehicles involved in accident were equally responsible for accident and there was no breach of any condition of insurance policy. While assessing monthly income of deceased at Rs.3,000/- (Rs. 36,000/- per annum), the Claims Tribunal computed total compensation of Rs.3,42,800/-, out of which 50% was deducted towards contributory negligence on the part of driver of vehicle in which deceased was travelling and awarded Rs.1,71,400/- as compensation to claimants.
7. Shri Sameer Singh learned counsel for claimants-appellants would submit that the Claims Tribunal erred in assessing income of deceased at Rs.3,000/- per month, ignoring occupation of deceased and year of accident i.e. 2010. He submits that in the given facts and circumstances of case, the Claims Tribunal ought to have assessed income of deceased at Rs.4,500/- per month. He further submits that the Claims Tribunal has not awarded any amount towards future prospects and awarded only Rs.30,000/- under other conventional heads which is also on lower side. He further submits that the Claims Tribunal deducted one-third towards personal and living expenses, which is not correct in view of decision of Hon'ble Supreme Court in **Sarla Verma (Smt.) & other v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. Hence, the amount of compensation

awarded by the Claims Tribunal deserves to be enhanced suitably. Reliance is placed on decision of Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130.**

Learned counsel further submits that the Claims Tribunal erred in deducting 50% of total compensation towards contributory negligence on the part of driver in which deceased was travelling. He submits that as finding of the Claims Tribunal is that accident took place on account of negligence of driver of both the vehicles and the deceased was occupant of Tata Magic, therefore, it would be case of composite negligence and not contributory negligence for the occupants of vehicle. Occupant of vehicle cannot be said to have contributed to accident and being so, liability cannot be apportioned. He further submits that driver, owner and insurer of vehicle on which deceased was travelling were not arrayed as party to claim application and only the owner, driver & insurer of offending vehicle have been arrayed as party to claim application. He submits that victim of motor vehicular accident, who was occupant of one of the vehicles out of two which met accident, can seek compensation from driver, owner & insurer of any of vehicles involved in accident. In support of afore submissions, learned counsel places his reliance on decision of Hon'ble Supreme Court in **T.O. Anthony vs. Karvarnan & ors** reported in **(2008) 3 SCC 748**.

8. On the other hand, Mrs. Chitra Shrivastava, learned counsel for respondent No.3 Insurance Company would submit that the Claims Tribunal taking into consideration date of accident, the fact that claimants-appellants failed to prove income of deceased in accordance with law, assessed income of deceased on notional basis. She further submits that the Claims Tribunal on appreciation of evidence placed on record by respective parties has rightly come to conclusion that there was contributory negligence on the part of driver of both vehicles. Claimants-appellants have not arrayed owner, driver & insurer of vehicle of which deceased was an occupant, hence the Claims Tribunal was justified in deducting 50% of calculated amount of compensation towards contributory negligence on the part of driver of vehicle in which deceased was travelling. She further submits that amount of compensation awarded by the Claims Tribunal is just and proper, which does not call for any interference.

9. I have heard learned counsel for the parties and perused the record of the Claims Tribunal.

10. So far as submission of learned counsel for claimants/ appellants with regard to deduction of 50% of calculated amount of compensation towards contributory negligence is concerned, undisputedly deceased Smt. Ramoutin was not driver of Tata Magic, she was an occupant along with others. Principle of contributory negligence will apply for the act of driver of two vehicles and not for occupants of vehicle. For

occupants of vehicle, it would be case of composite negligence and not contributory negligence. Legal representatives of deceased or victim can seek compensation from driver, owner and insurer of any of vehicles or both the vehicles involved in accident. In case of **T.O. Anthony (supra)** the Hon'ble Supreme Court has considered the issue with regard to contributory negligence and composite negligence and held thus:-

> "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 wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer 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 wrongdoer separately, nor it is necessary for the court to determine the extent of liability of each wrongdoer 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 on 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 stand reduced in proportion to his contributory negligence.

In case of **Khenyei Vs. New India Assurance Company Limited & others** reported in **(2015) 9 SCC 273** the issue with regard to contributory negligence and composite negligence has come up for consideration and Hon'ble Supreme Court has held thus:-

> "16.In Pawan Kumar v. Harkishan Dass Mohan Lal[19],

the decisions in T.O. Anthony[17] and Hemlatha[18] have been affirmed, and this Court has laid down that where the plaintiff/ claimant himself is found to be negligent jointly and severally, liability cannot arise and the plaintiff's claim to the extent of his own negligence, as may be quantified, will have to be severed. He is entitled to damages not attributable to his own negligence. The law/distinction with respect to contributory as well as composite negligence has been considered by this Court in Machindranath Kernath Kasar v. D.S. Mylarappa[20] and also as to joint tortfeasors. This Court has referred to Charlesworth and Percy on Negligence as to cause of action in regard to joint tortfeasors thus: (Machindranath Kernath Kasar[20], SCC p.212, para 42)

> "42. Joint tortfeasors, as per 10th Edn. of Charlesworth & Percy on Negligence, have been described as under:-
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> > 'Wrongdoers are deemed to be joint tortfeasors, within the meaning of the rule, where the cause of action against each of them is the same, namely, that the same evidence would support an action against them, individually.... Accordingly, they will be jointly liable for a tort which they both commit or for which they are responsible because the law imputes the commission of the same wrongful act to two or more persons at the same time. This occurs in case of (a) agency; (b) vicarious liability; and (c) where a tort is committed in the course of a joint act, whilst pursuing a common purpose agreed between them.'"

11. From the aforementioned rulings of Hon'ble Supreme Court it is clear that where driver of both vehicles involved in accident are found responsible for accident, here will be contributory negligence for drivers and if owner, driver and insurer of both vehicles involved in the accident are party to proceedings,

Tribunal can apportion the compensation in the ratio of their negligence. For the occupants of any of the vehicles, it will be case of composite negligence and not of contributory negligence. In case at hand also, the deceased was only an occupant of one of the vehicles out of two involved in accident and not driver. Hence, this Court is of the opinion that deduction of 50% of total calculated amount of compensation towards contributory negligence by the Claims Tribunal is not sustainable in law and the same is liable to be set aside. Accordingly, it is hereby set aside.

12. So far as submission made by learned counsel for appellants regarding enhancement of amount of compensation is concerned, the Claims Tribunal has assessed monthly income of deceased as Rs.3,000/- per month and Rs.36,000/- per annum. Claimants-appellants failed to prove income of deceased by placing cogent and reliable piece of evidence, hence the Claims Tribunal was justified in assessing income of deceased on notional basis. But, the Claims Tribunal erred in not considering factors relevant for assessing income of deceased on notional basis. For assessing notional income it is incumbent upon the Claims Tribunal to consider date of accident, nature of occupation of deceased, wage structure and price index prevailing on the date of accident. From perusal of the impugned award, it is apparent that Claims Tribunal has not considered the aforementioned factors, hence, in the opinion of this Court, income of deceased as

assessed by the Claims Tribunal i.e. Rs.3,000/- per month, is not sustainable and it is hereby set aside. Taking into consideration age of deceased, even if she is treated as manual labourer, considering wage structure and price index, I find it appropriate to assess income of deceased as Rs.4,000/- per month. It is ordered accordingly.

13. On the date of accident, age of deceased was 48 years, as mentioned in post-mortem report (Ex.P-3), hence, the deceased would fall in the age group of 45 to 50 years. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has considered award of amount of compensation towards future prospects based on the age of deceased. Hon'ble Supreme Court has made three categories i.e. below 40 years; in between 40 to 50 years and 50 to 60 years of age and held that there shall be additional of 40%, 25% & 10% respectively where the deceased was not in permanent employment. In view of aforementioned ruling of Hon'ble Supreme Court, I find it appropriate to add 25% of established income of deceased towards future prospects to assess total income of deceased on the date of accident for the purpose of calculating amount of compensation. It is ordered accordingly.

14. So far as deduction of amount towards personal and living expenses of deceased is concerned, perusal of impugned award would show that the Claims Tribunal has deducted one-third towards personal and living expenses of deceased, which in the opinion of this Court is not correct. In case of

Sarla Verma (supra), Hon'ble Supreme Court has held that where the deceased was married and survived 4 to 6 dependent family members, the deduction towards personal and living expenses of deceased should be one-fourth. In case at hand, the deceased was survived by six dependent family members i.e. children. Hence, as per decision of Sarla Verma's case (supra), appropriate deduction will be one-fourth towards personal and living expenses of deceased and not one-third as done by the Claims Tribunal. It is ordered accordingly.

15. Hon'ble Supreme Court in case of **Pranay Sethi (supra)** has further considered award of amount of compensation on other conventional head. Heads on which the compensation is to be awarded in case of death are specified as loss of consortium, loss of estate and funeral expenses. Further, Hon'ble Supreme Court has quantified amount of compensation to be awarded under aforementioned heads as Rs.40,000/-; Rs.15,000/- & Rs.15,000/- respectively. In case of **Nanuram @ Chuhruram (supra)** Hon'ble Supreme Court has explained the consortium to be of three types i.e. spousal, filial and parental. Hence, it is ordered that appellants shall be entitled for amount of compensation under other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.

16. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to claimants/

appellants.

17. As discussed above, income of deceased is taken as Rs.4,000/- per month and since at the time of accident the deceased was in the age group of 45 to 50 years and was not in permanent employment, therefore, in view of law laid down in case of **Pranay Sethi's case** (supra), the income of deceased is required to be enhanced by 25% towards future prospects, which comes to Rs.5,000/- (4000+1000). Thus, annual income of deceased for the purpose of calculating compensation comes to Rs.60,000/-(5000x12). Out of this amount, one-fourth is to be deducted towards personal & living expenses of deceased. After deducting one-fourth, annual loss of dependency comes to Rs.45,000/- (60000 - 15000). By applying multiplier of 13, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency comes to Rs.5,85,000/- (45000x13). Besides this, appellants being sons of deceased are entitled for a sum of Rs.40,000/- towards parental consortium, as held by Hon'ble Supreme Court in case of **Nanuram (supra)**. In addition to aforesaid amount, appellants are also entitled to get a sum of Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. Appellants will also be entitled for Rs.800/- towards medical expenses as awarded by the Claims Tribunal. Thus, total amount of compensation comes to **Rs.6,55,800/- (585000 + 40000+ 15000 + 15000 + 800)**. This amount of compensation shall carry simple interest @ **9% p.a**. from the date of filing of application till its realization.

Respondents No.1 to 3 are jointly and severally responsible to satisfy the amount of compensation. Rest of the conditions mentioned in impugned award shall remain intact. Any amount already paid to claimants/appellants as compensation shall be adjusted from total amount of compensation as calculated above.

18. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-

(Part Prateem Sahu)
Judge

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