NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 880 of 2017

- Branch Manager, Cholamandlam MS General Insurance Company Ltd. 2Nd Floor Simran Tower, Opposite Life Insurance Building, Pandri, Raipur, Chhattisgarh

---- Petitioners

Versus

1. Smt. Kusum Sardar (died) Through Lrs.

   1-A. Amar Sardar, S/o Late Shri Vidha Sardar Age- 28 years R/o 88/Kh Ward No. 3 Naveen Colony, Backside of the Police Station Farasgaon, Tehsil Farasgaon, District – Kondagaon, Chhattisgarh
2. Santuram Mourya, S/o Budhruram Mourya, Aged about 45 years, R/o Gurugovind Singh Ward Near M.P.M. Hospital Dandabadi Jagdalpur, District Bastar Ward No.20, Dallirajhara, Chhattisgarh
3. B. Gourishankar Rao, S/o B. Basurao, R/o Moti Talab Para Jagdalpur, District Bastar, Chhattisgarh

---- Respondents

For Appellants : Shri Ghanshyam Patel, Advocate
For Respondent No.1 : Shri Raza Ali, Advocate

Hon'ble Shri Parth Prateem Sahu

Order On Board

10.09.2021

1. Non-applicant No. 3 Insurance company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') challenging the impugned award dated 17.02.2017 passed by Motor Accident Claims Tribunal, Kondagaon, C.G. in Claim Case No.51/2015, whereby learned Claims Tribunal allowed the application for compensation in part awarded

Rs15,37,384/- as total compensation with interest @ 9% from the date of filing of the claim application till its realization in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 02.07.2015, Vidhan Sardar was dashed by truck bearing registration number CG18-H-2700 driven by non-applicant No.1 and caused accident. In the said accident Vidhan Sardar suffered grievous injuries on his person he was immediately taken to Government Hospital at Farasgaon from where he was shifted to Ramkrishan Care Hospital, Raipur. During the course of his treatment Vidhan Sardar died on 15.07.2015.

3. Claimant, who was wife of deceased filed an application under Section 166 of the Act of 1988, pleading therein that on the date of accident deceased was aged about 52 years, working as Beat Guard in Forest Department and earning Rs.20,762/- per month salary. She was dependent upon income of the deceased and claimed total sum of Rs.33,50,208/- as compensation.

4. Non applicant No.1 submitted reply resisting the claim and further pleaded that owner, driver and insurer of the motorcycle driven by the deceased were not arrayed as non-applicants. The offending vehicle was insured with non-applicant No.3 as such liability to satisfy compensation if any, would be upon on non-applicant

No.3. Non-applicant no.2 even after service of notice did not appear before the Claim Tribunal and he was proceeded as ex-parte.

5. Non-applicant No.3/Insurance Company submitted its reply denying the facts pleaded in claim application. It was further pleaded that on the date of accident non-applicant No.1 was not possessed with valid and effective driving license. There was no permit and fitness certificate of the offending vehicle as such there was breach of policy conditions, hence, Insurance company is not liable to satisfy the compensation if awarded by Claims Tribunal.

6. Learned Tribunal, upon appreciation of pleadings and evidence brought on record by respective parties, held that Vidhan Sardar died on account of motor accidental injuries due to rash and negligent driving of offending truck by non-applicant No.1. Negligence on the part of deceased and breach of policy conditions of the Insurance Policy of the offending truck was not found to be proved and awarded total sum of Rs.15,37,384/- as compensation.

7. Shri Ghanshyam Patel, learned counsel for the appellant Insurance Company would submit that the Claims Tribunal erred in not making statutory deduction towards income tax from the total annual income of the

deceased. Deceased was a government servant drawing salary from State Government, hence the deduction towards income tax is required to be made as per the rate of income tax prevailing on the date of accident. Tribunal further erred in not considering that deceased was also contributory negligent in the incident overlooking the fact that the place of accident was center of the road, non-applicant No.1 driver of the offending truck was not possessed with valid and effective driving license. Lastly, it is submitted that the Claims Tribunal erred in awarding excessive amount of Rs.1,00,000/- under the head of loss of consortium. Shri Patel, Counsel for the appellant places reliance upon the judgment passed by Hon'ble Supreme Court in case of **National Insurance Company Limited Vs. Indira Shrivastava and others** reported in **(2008) 2 SCC 763** and ***National Insurance Company Limited Vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680***.

8. Shri Raza Ali, learned counsel for the respondent No.1-A (legal heirs of the original claimants) submits that the amount of compensation awarded by the Claims Tribunal is just and proper, which does not call for interference. He submits that the submission of learned counsel for the appellant with regard to contributory negligence and breach of policy conditions are not sustainable because

the Insurance company has not led any evidence before the Claims Tribunal in support of its defence. The grounds raised before this Court for the first time cannot be considered in absence of any supporting evidence.

9. Heard learned counsel for the parties and perused the records of claim case.

10. Perusal of the impugned award would show that the Claims Tribunal considered income of the deceased as Rs.20,762/- based on Ex-P/8, which is salary slip issued by the Forest Department. Income appearing in the salary as Rs.20,762/- is gross salary of the deceased for the month of June-2015, Tribunal deducted Rs.1994/- towards GPF as mentioned in the salary slip and assessed Rs.18,543/- as income for calculating compensation. Tribunal further added 15% towards future prospects in income which is in consonance with the law laid down by the Hon'ble Supreme Court in case of ***National Insurance Company Limited Vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680***, and thereafter, calculated the amount of compensation. For calculating compensation under Motor Vehicle Act gross income is to be taken into consideration (-) tax. The accident is of 2015 and therefore, the income tax is to be deducted from the gross salary of the deceased as prevailing on the date of accident which is a statutory deduction, for

assessing net income. Total annual gross income of the deceased comes to Rs.20,762 x 12 = Rs.2,49,144/-. In view of the ruling of Hon'ble Supreme Court in case of Pranay Sethi (supra) 15% of established income is to be added towards future prospects for computing total income of the deceased upon adding 15% of established income, total income will be Rs.2,49,144 + (Rs.2,49,144 x 15%) = Rs.2,86,515.06/-. As per income tax slab during the financial year 2015-16 income exempted from tax is Rs.2,50,000/-. Taxable income will be Rs.2,86,515.06/- – Rs.2,50,000/- = Rs.36,515.06/-. Income tax @ 10% is to be charged on income above Rs.2,50,000/- upto Rs.5,00,000/-. Tax payable on income of deceased will be Rs.36,515.06 – (Rs.36,516.06 x 10%) = Rs.3651.56. After deducting income tax from total income, net income of the deceased will be Rs.2,86,515.60 – Rs.3,651.56/- = Rs.2,82,864.04/- rounded off to Rs.2,82,864/-.

11. Perusal of the reply submitted by Insurance Company would show that appellant Insurance Company in reply have not taken the specific plea with regard to the contributing negligence. The learned Claims Tribunal have framed issue with regard to the accident on account of rash and negligent driving of motorcycle by the deceased itself which was found to be not proved.

Record would further show that Insurance Company did not examine any witness in support of their plea taken in reply. Contributory negligence is a fact which is required to be specifically pleaded and proved by placing cogent and reliable piece of evidence before the Tribunal. In absence of any clinching evidence brought on record by the appellant, Claims Tribunal justified in not recording a finding that there was contributory negligence on the part of the deceased as laid down. Hon'ble Supreme Court in the Case of ***Minu Rout and another Vs. Satya Pradyumna Mohapatra and others*** reported in ***(2013) 10 SCC 695*** has considered the issue with regard to the proof of contributory negligence and held thus :-

> "17. The Tribunal, on appreciation of the oral and documentary evidence, has recorded the erroneous finding by placing strong reliance upon the charge-sheet-Exh.1 without considering the fact that the criminal case was abated against the deceased and further has made observation in the judgment that the appellants had not produced the FIR. Therefore, it has held that there was 50% contributory negligence on the part of the deceased driver in causing accident. The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck driver for the offences punishable under Sections 279 read with Section 302 of IPC read with the provisions of the M.V. Act. The Insurance Company, though claimed permission under Section 170(b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on

> record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet-Exh.1 in which the deceased driver was mentioned as an accused and on his death; his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of P.W.2 and P.W.3 in their cross-examination and placed reliance on them to record the finding on issue no.1.”

12. In the case at hand appellant has not led any evidence before the Tribunal to prove the fact of contributory negligence. In absence of any evidence, Tribunal is well justified in arriving at a finding that negligence of deceased was not proved.

13. For the foregoing reasons, the second submission of learned counsel for the appellant with regard to contributory negligence is hereby repelled.

14. The third ground raised by learned counsel for the appellant that non-applicant No.1 was not possessed with valid and effective license is concerned perusal of the record would show that the non-applicant No.1 and 2 have placed on record copy of driving license of Santuram Mourya mentioning it to be a transport license to be valid up to 20.03.2018. As the Insurance Company has not led any evidence nor examined any witness to prove that on the date of accident non-applicant No.1 driver of offending vehicle was not possessed with valid and effective driving license, the said submission of learned counsel for the appellant is not sustainable and it is here by repelled. Award of compensation on other

conventional heads has been considered and decided in the case of ***National Insurance Company Limited Vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680***, and ***Magma General Insurance Company Vs. Nanu Ram alias Chuhuru Ram and others*** reported in ***(2018) 18 SCC 130. T***he Hon'ble Supreme Court in case of **Pranay Sethi** (supra) specified the heads on which compensation is to be awarded, i.e. loss of consortium, loss of estate and funeral expenses and quantified the amount on each head. The amount of Rs.1,00,000/- awarded by the Claims Tribunal towards loss of consortium is on little higher side.

15. To appreciate the submissions of the learned counsel for the appellant that amount of compensation is on higher side, if the amount of compensation is recalculated as under :- Rs.2,82,864/- net income, claimant was spouse (widow) of the deceased hence there shall be deduction of 1/3 instead of ½ hence annual loss of dependency will be Rs.2,82,864 – (Rs.2,82,864 x 1/3) = Rs.1,88,576/- upon applying multiplier of 11 as applied by Tribunal, total loss of dependency will be Rs.20,74,336/-. By adding Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, total compensation will be Rs.21,44,336/- = (Rs.20,74,336/- + Rs.40,000/- +

Rs.15,000/- + Rs.15,000/-). Tribunal awarded total compensation of Rs.15,37,384/-.

16. In view of the above discussion this Court is of the view that the amount of compensation awarded on other conventional heads is slightly on higher side but the total compensation awarded to claimant cannot be said be more than what the claimant was entitled for. Hence, I am not inclined to interfere with the impugned award.

17. For the foregoing, appeal is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

yasmin