NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 225 of 2015

Judgment Reserved On : 09/11/2021
Judgment Delivered On : 18/11/2021

1. Smt. Anjana Pal W/o Late Giradhari Pal @ Girish Pal @ Dada; Aged About 45 Years

2. Sumit Pal S/o Late Giradhari Pal @ Girish Pal @ Dada; Aged About 24 Years

3. Kumari Madhumita D/o Giradhari Pal @ Girish Pal @ Dada; Aged About 22 Years

   All R/o Through- Subhash De Plot No. -261 Face-02 Near Kalchuri Awas, Rajkishor Nagar Bilaspur Tahsil And District (Revenue And Civil) - Bilaspur, C.G.,

---- Appellants

Versus

1. Gyandatt Mishra @ Raju Mishra S/o Chandrabhushan Mishra Aged About 22 Years R/o Village- Bhaloomada Tahsil And District (Revenue And Civil) - Anuppur M.P. (Driver And Owner Of The Scorpio No. - M.P. 65/T/0152,

2. The Oriental Insurance Company Limited Through- Branch Manager Branch Office- Near Rajiv Plaza, Bus Stand Bilaspur Tahsil And District (Revenue And Civil) - Bilaspur, C.G.

---- Respondent

For Appellants : Shri Anand Kesharwani, Advocate.
For Respondent No.1 : Shri Dhirendra Mishra, Advocate.
For Respondent No.2 : Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Deepak Kumar Tiwari, J

C A V JUDGMENT

1. The appellants have preferred this Appeal challenging the award dated 29.11.2014 passed by the 4th Additional Member to the Court of 1st Upper Motor Accident Claims Tribunal, Bilaspur in Claim Case

No.57/2013 whereby the appellants have been awarded a sum of Rs.40,49,800/-.

2. Facts of the case, in brief, are that on 8.11.2012 deceased Girdhari Pal was going to his native village Bhalumada in the Scorpio vehicle bearing registration No.MP65/T-0152, which was being driven rashly and negligently by respondent No.1. On Bilaspur Marwahi route, the said vehicle dashed the stationary truck bearing registration No.MP 18/ GA-4525. As a result of the accident the deceased suffered severe injuries and admitted to the CHC Marwahi. However, thereafter he was referred to Apollo Hospital, Bilaspur where he died on 9.11.2012. It was stated that respondent No.1 is the owner of the offending vehicle and the vehicle was insured with respondent No.2. The deceased was an employee of SECL and was working as Draftsman and the claimants are his dependents.

3. Respondent No.1 did not file any reply before the Tribunal and respondent No.2 filed its reply stating that it was not liable, as the said vehicle was being driven in violation of the conditions of the insurance policy. On the basis of pleadings and material available on record, the Claims Tribunal framed the issues, recorded the evidence of parties and passed the impugned award.

4. Learned counsel for the appellants would submit that the Tribunal has not awarded compensation towards Future Prospects and very meagre amount towards consortium and funeral has been awarded. The Tribunal should also have granted on the head of estate. Proper multiplier has also not been applied. The Tribunal has wrongly exonerated the Insurance Company in toto regarding plying the vehicle

without permit condition. Learned counsel would submit that the instant Appeal may be allowed and the award of compensation may be enhanced.

5. Per contra, learned counsel for the Insurance Company supported the impugned award and submitted that the Appeal may be dismissed.

6. I have heard learned counsel for the parties and perused the record.

7. Respondent No.1 being the driver and owner of the vehicle Scorpio bearing registration No. MP-65/T-0152, has filed Cross Appeal under Order 41 Rule 22 of the CPC on submission that after receiving the notice of the Claims Tribunal, he has engaged his counsel to represent him before the Tribunal. His counsel also moved an application under Order 9 Rule 7 of the CPC on 7.1.2014 to set aside the ex-parte order passed against him by the Claims Tribunal. Thereafter on the next date i.e. on 16.1.2014, learned counsel for respondent No.1 did not press the application, therefore, respondent No.1 remains ex-parte before the Tribunal.

8. It is alleged that respondent No.1 has not instructed his counsel and without his consent and without giving any information to him, such application was moved.

9. Looking to the facts of the case and the reasons assigned by respondent No.1, this Court is not convinced to allow the Cross Appeal and to remand the matter back to the Tribunal for fresh adjudication. Therefore, Cross Appeal filed on this limited ground deserves to be dismissed.

10. Learned Tribunal in paragraph-20 of the impugned award determined the age of the deceased to be 50 years and in paragraph-19, yearly

income of the deceased has been assessed at Rs.4,66,125/-. However, the said determination remains unchallenged before this Court.

11. Learned counsel for the appellants rightly submitted that as the deceased was permanent employee, therefore, in view of the judgment of the Hon’ble Supreme Court in the matter of **National Insurance Company Ltd Vs. Pranay Sethi and Others** {(2017) 16 SCC 680}, future prospects ought to have been added. In the said judgment, it was observed that for the age group of 50-60 years, addition of 15% to the actual salary should be made. The annual income assessed by the Tribunal is Rs.4,66,125/- and after adding 15% i.e. Rs.69,920/-, it comes to Rs.5,36,045/-, in which for personal expenses, 1/3rd deduction is required to be made which comes to Rs.1,78,681/-. Therefore, loss of dependency per annum is assessed at Rs.3,57,364/- and looking to the age of the deceased, multiplier of 13 is to be applied. Thus total dependency comes to Rs.46,45,732/-.

12. In conservative heads i.e. for funeral expenses, only Rs.5,000/- has been awarded. However, the said amount is enhanced to Rs.15,000/-. For loss of estate, no amount has been awarded. On this head, Rs.15,000/- is awarded. For loss of spousal consortium, only Rs.5,000/- has been awarded and for loss of parental consortium to children, no amount has been awarded. Therefore, Rs.40,000/- on each head is to be awarded.

13. Learned Tribunal has exonerated the Insurance Company in entirety by holding that at the time of accident, the vehicle was plying without valid permit. Surendra Kumar Agrawal has been examined on behalf of the Insurance Company. He has stated that on investigation, the RTO Shahdol has issued an information (Ex.-D/6) that there was no permit

on the date of the accident for the said vehicle. Copy of the permit (Ex.-D/3) issued by the RTO, Shahdol indicates that it was valid from 12th March, 2011 to 11th March, 2012. Before this Court also, learned counsel for respondent No.1 could not demonstrate as to the breach of policy condition, which is wrongly decided by the Tribunal. Therefore, the finding arrived at by the Tribunal is proper and the said finding is affirmed. However, in such circumstances also, for the third party, the Insurance Company is liable to pay compensation first and thereafter it may recover from the insured.

14. The Hon'ble Supreme Court in the matter of **Amrit Paul Singh and another Vs. TATA AIG General Insurance Co. Ltd and Others** {AIR 2018 SC 2662} held that the vehicle not having permit at all and if used on hire basis is the case of fundamental breach and hence the Insurer though absolved of its liability had to pay compensation and recovery order made. In such cases recovery from the insured permitted. Therefore, the Tribunal is not right to exonerate the Insurance Company completely.

15. Thus, the claimant would be entitled for the following compensation :-

Sr. No.	Head	Amount
1.	For loss of yearly income (assessed by the Tribunal)	Rs.4,66,125/-
2.	For Future Prospects	Rs.4,66,125/- x 15% = Rs.69,920/-
3.	Total yearly income (1+2)	Rs.5,36,045/-
4.	For personal expenses, 1/3rd of Rs.5,36,045/-	Rs.1,78,681/-.
5.	Total dependency after applying multiplier of 13	Rs.3,57,364 x 13 = Rs.46,45,732/-

6.	For Funeral Expenses	Rs.15,000/-
7.	For loss of estate	Rs.15,000/-
8.	For loss of spousal consortium	Rs.40,000/-
9.	For loss of parental consortium	Rs.40,000/-
	Total (5+9)	Rs.47,55,732/-
	Amount already awarded	Rs.40,49,800/-
	Enhanced amount	Rs.7,05,932/-

16. The appellants are held to be entitled for total compensation of Rs.47,55,732/- with 6% interest per annum from the date of filing of claim petition i.e. 6.5.2013 till its realization.

17. In view of the finding arrived at by this Court in the preceding paragraphs, it is directed that the respondent No.2 Insurance Company shall firstly pay the award amount of Rs.47,55,732/- to the claimants with 6% interest per annum from the date of filing of claim petition i.e. 6.5.2013 till its realization and thereafter shall recover the said amount from respondent No.1 in the same execution without filing separate suit.

18. Other conditions of the award passed by the learned Claims Tribunal shall remain in tact.

19. In the result, the Appeal filed by the Claimants is allowed in part to the extent as indicated above and the Cross Appeal filed by the respondent No.1 is dismissed.

Sd/-
(Deepak Kumar Tiwari)
Judge

Barve