NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 246 of 2015

- ICICI Lombard General Insurance Co. Ltd. through its Legal Manager, ICICI General Insurance Co. Ltd. Ground Floor, Vanijya Bhawan, Devendra nagar Road, Raipur, Chhattisgarh.

------Appellant/ Non-applicant 3

VERSUS

1. Smt. Krishna Bai, wife of late Shri Manrakhan Markaam, aged about 24 years
2. Rupesh Kumar, son of late Manrakhan Markaam, aged about 5 years
3. Kamlesh Kumar, son of late Manrakhan Markaam, aged 03 years

   Respondent 2 and 3 being minors are represented through their natural guardian being their mother Smt. Krishna Bai.

   All residents of village Padariya, Thana and Tahsil Takhathpur, District Bilaspur Chhattisgarh
4. Om Prakash Sahu, son of Shri Saadh Ram Sahu, aged about 18 years, resident of Kharkena, Thana Hirri, Tahsil Takhatpur, District Bilaspur Chhattisgarh **-----Driver**
5. Saadh Ram Sahu, son of Shri Badri Prasad Sahu, aged about 35 years, resident of Kherkhena, Thana Hirri, Tahsil Takhatpur, District Bilaspur Chhattisgarh **------Owner**

-------Respondents

For Appellant	:	Mr. Tessy Abraham, Advocate on behalf of Mr. Amrito Das, Advocate
For Respondent 1 to 5	:	None.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J.

21/01/2021

1. Appellant/ Non-applicant 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 24.12.2014 passed by learned Sixth Additional Motor Accident Claims Tribunal, Bilaspur C.G. (for short “the Claims Tribunal”) in claim case no. 04/2013, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988 and awarded Rs. 7,05,000/- as total compensation in a fatal accident case.

2. Facts of the case in nutshell are that, on 17.08.2012, at about 05:30 p.m., Manrakhan Markam was travelling as a pillion rider on motor cycle bearing registration no. CG10EN8351 (henceforth “offending vehicle”), driven by non-applicant 1/ respondent 4, owned by non-applicant 2/ respondent 5, and going to village Ranidera Takhatpur from village Bodsara. On the way, on Bilaspur-Sakri bypass road, non-applicant 1 lost control over offending vehicle and dashed with cattle. In the said accident, Manrakhan Markam fell down from offending vehicle and suffered injuries over his head, chest and other parts of body. He was immediately taken to Primary Health Centre, Bilha. Looking to the seriousness of injuries, he was referred to CIMS Hospital, Bilaspur, where he died during the course of treatment on same day at about 11:00 p.m.

3. Respondents 1 to 3/ claimants filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident, deceased was abled-body person, aged about 26 years, working as Supervisor (*munshi*) with one Sudhir Malhotra in Coal Depot and earning Rs. 6,000/- per month. Claimants were dependent upon the income of deceased Manrakhan and claimed Rs. 12,13,200/- as total compensation under different heads.

4. Non-applicants 1 and 2, who are driver and owner of offending vehicle, submitted reply to the claim application, denying the facts pleaded therein. They have further pleaded that it is the deceased himself who borrowed the vehicle and was driving the same. Non-applicant 1 was not driving the offending vehicle. Non-applicant 1 has been falsely implicated in the case. Deceased was unemployed person. Compensation claimed is highly exaggerated. On the date of accident, offending vehicle was insured with non-applicant 3, as such, liability to pay any amount of compensation would be upon non-applicant 3.

5. Non-applicant 3/ Insurance Company submitted reply to claim application and denied the entire facts pleaded therein. It was further pleaded that on the date of accident, non-applicant 1 was not possessed with valid and effective driving licence, as such, there was breach of policy conditions and Insurance Company is not liable to pay any amount of compensation.

6. Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties held that Late Manrakhan died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant 1. Breach of policy conditions was found to be proved and awarded Rs. 7,05,000/- as total compensation.

7. Mr. Tessy Abraham, learned counsel for appellant/ Insurance Company submits that amount of compensation awarded by Claims Tribunal is on higher side. It is submitted that the claimants though pleaded income of deceased as Rs. 6,000/- per month but they have not placed any admissible piece of evidence on record, even then the Claims Tribunal has erroneously assessed income of the deceased as Rs. 5,000/- per month. Accident was of 17.08.2012 and in absence of any proof of income, Tribunal ought to have assessed income as Rs. 3,000/- per month on notional basis. He further pointed out that the Tribunal while deciding the Issue No. 2 with regard to breach of policy conditions has arrived at a finding that non-applicant 1, being minor on the date of accident, was not possessed with valid and effective driving licence, as such, there was breach of policy conditions, but in paragraph 14 of the impugned award has directed the Insurance Company to first pay the entire amount of compensation and thereafter to recover the same from non-applicant 2 owner of offending vehicle. In paragraph 17 of the impugned award, Tribunal has held appellant along with other non-applicants to be jointly and severally liable, which is erroneous. He submits that in view of finding

arrived by Tribunal, Insurance Company deserves to be exonerated from liability to satisfy the amount of compensation.

8. No one appeared on behalf of Respondents even in second round.

9. Office note shows that Respondents 4 and 5, who are driver and owner of offending vehicle, refused to accept the notice sent to them for their appearance. This being the position, case is finally heard in their absence.

10. We have heard learned counsel for appellant and also perused the record of claim case.

11. Sofar as, the first submission made by learned counsel for appellant with regard to assessment of monthly income of deceased is concerned, true it is that the claimants have not placed on record any admissible piece of evidence to hold the income of deceased as Rs. 5,000/- per month. In absence of any proof of income of deceased, it is the duty of Court/ Tribunal to assess income of victim on notional basis. Admittedly, on the date of accident, deceased has been shown to be 26 years of age, a married person having a family of two children and wife. Taking into consideration the date of accident and presuming that on the date of accident, deceased was working as labourer, income of deceased could not have been less than Rs. 4,000/- per month. This Court in several other cases in which accident took place in between 2010 to 2012, has reckoned income of deceased as Rs. 4,000/- per month, where their occupation is accepted as labourers, hence, Income of Rs. 5,000/- as assessed by the Claims Tribunal appears to be on little higher side, but taking into consideration that the Claims Tribunal has not awarded any amount towards future prospects, which would be 40% of the established income in the given facts of the case, and further taking into consideration the fact that only Rs. 20,000/- has been awarded under other conventional heads, we are not inclined to interfere with monthly income, and quantum of the amount of compensation calculated by Claims Tribunal. First

submission of learned counsel for appellant challenging the quantum of award is hereby repelled.

Sofar as, the second submission made with regard to exoneration of Insurance Company from its liability is concerned, Claims Tribunal has arrived at a finding that on the date of accident, non-applicant 1 driver of offending vehicle, was not possessed with valid and effective driving licence and has categorically held in paragraph 14 of the award that there was breach of policy conditions, but looking to the fact that offending vehicle was insured with non-applicant 3 and risk of deceased, being a pillion rider, was covered under the policy, has observed that it will be the first liability of Insurance Company to satisfy the amount of compensation and thereafter to recover the same from non-applicant 2/ owner.

12. It is not a case where the insurance policy is disputed or risk of deceased was not covered under the policy. Claims Tribunal has already exonerated the Insurance Company from its liability, and only issued the direction of pay and recover, which is in consonance with the judgment passed by Hon'ble Supreme Court in case of ***Shamanna v. Oriental Insurance Co. Ltd.*** reported in **(2018) 9 SCC 650.** Claims Tribunal erred in mentioning in paragraph 17 of award that all the non-applicants including Insurance Company are jointly and severally liable for satisfying the amount of compensation, which is contrary to the finding recorded by it in paragraph 14 of the award.

13. In view of undisputed finding recorded by Claims Tribunal in paragraph 14 of the impugned award that there was breach of policy conditions, we set aside the finding recorded by Claims Tribunal in paragraph 17(1) that Insurance Company is jointly and severally liable to satisfy the amount of compensation. Appellant-Insurance Company is exonerated from its liability. Now the liability to satisfy the amount of compensation shall be upon non-applicants 1 and 2/ driver and owner of offending vehicle.

Appellant-Insurance Company shall first deposit the entire amount of compensation before the Claims Tribunal and thereafter recover the same from non-applicants 1 and 2/ driver and owner of offending vehicle in accordance with law. Other conditions of the award shall remain intact.

14. For the foregoing reasons, appeal is allowed in part. Impugned award is modified to the extent as indicated herein-above.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Pawan