NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1066 of 2013

1. Dhan Bai. W/o Late Panch Ram Sahu @ Shambhu Sahu Aged About 36 Years
2. Bodhi Sahu S/o Late Panch Ram Sahu @ Shambhu Sahu Aged About 12 Years
3. Manisha Sahu D/o Late Panch Ram Sahu @ Shambhu Sahu Aged About 10 Years
4. Manoj Sahu S/o Late Panch Ram Sahu @ Shambhu Sahu Aged About 8 Years

   Appellants- 2 to 4 Minors, Thru- Mother Smt. Dhan Bai, w/o Late Panch Ram Sahu @ shambhu Sahu

   All R/o Okhar, P.S. Masturi, Tah. Masturi, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh

---- Appellants

Versus

1. Yogendra Singh Markam @ Pappu Markam And Anr. S/o Balwant Singh Markam Aged About 26 Years R/o village Okhar, P.S. Masturi, Tah. Masturi, Distt. Bilaspur, Chhattisgarh
2. The Oriental Insurance Company Ltd. Thru- Divisional Manager, Divisional Office, Madina Manjil, Kutcheri Chowk, Raipur Chhattisgarh

----Respondents

For Appellants	:	Shri Ravindra Kumar Agrawal, Advocate
For Respondent-2	:	Shri HS Patel, Advocate
For Respondent- 1	:	None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
15.07.2020

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 16.07.2013 passed by the 3rd Additional Member of the First Additional Motor Accident Claims Tribunal, Bilaspur (for short, 'Claims Tribunal'), in Claim Case-02 of 2012, whereby learned Claims Tribunal allowed the

Claim application in part and awarded Rs.3,80,000/- as total compensation and while exonerating the Insurance Company from its liability, fastened the liability upon respondent-1, driver of Motorcycle for payment of compensation.

2. Brief facts relevant for disposal of this appeal are that on 01.03.2011, NA1/respondent-1 called Panchram @ Shambhu Sahu (since deceased) from his house and took him on his Motorcycle bearing No.CG 10 HE-7592 (for short, 'offending vehicle') as Pillion rider to village Giroudpuri. On the way when they reached near village Mevubhata, offending vehicle met with an accident near the bridge. In the aforementioned accident, Panchram received grievous injuries over his person and was taken to Government Hospital, Pamgarh. But looking to the grievousness of injuries, he was referred to the CIMS Hospital, Bilaspur. From there, again he was referred to the Ambedkar Hospital, Raipur, where during the course of treatment, injured succumbed to the injuries suffered by him in the motor accident.

3. Appellants/Claimants, who are widow and children of deceased Panchram filed claim application under Section 166 of Motor Vehicles Act, claiming compensation of Rs.11,30,000/- on account of untimely motor accidental death of sole bread winner of the family.

4. NA1/respondent-1 did not appear before the learned Claims Tribunal and was proceeded *ex-parte.*

5. NA2/respondent-2 Insurance Company submitted reply to the claim application and denied the pleadings made in the claim application. In its

reply to the claim application, it was pleaded that there was rash and negligent driving on the part of NA1. Deceased Panchram has not suffered any accidental injuries and also denied the fact of the treatment and treatment at different hospitals after the accident. It was further pleaded that there was breach of conditions of Insurance Policy on the date of accident, because three persons were travelling on offending vehicle. Adding to that, NA1, rider of offending vehicle was not possessing valid and effective driving license to drive the motorcycle.

6. On appreciation of pleadings and evidence placed on record by the respective parties, learned Claims Tribunal held that NA1 drove his motorcycle rashly and negligently and caused the accident, deceased Panchram died on account of motor accidental injuries suffered by him in the said accident. Upon recording breach of conditions of Insurance Policy, fastened liability on NA1/rider of offending vehicle and awarded a sum of Rs.3,80,000/- as compensation.

7. Shri Ravindra Kumar Agrawal, learned counsel for the appellant submits that learned Claims Tribunal erred in assessing the income of deceased as Rs.3,000/- per month only, ignoring specific pleadings and evidence of appellants/claimants that income of deceased on the date of accident to be Rs.15,000/- per month from his business of the contract of fisheries; erroneously applied deduction of 1/3rd, instead of 1/4th, ignoring the number of claimants; not awarded any amount towards future prospects; and awarded meagre amount on other conventional heads. It is also submitted that if the learned Claims Tribunal has arrived at a finding that there was breach of conditions of Insurance Policy, then

learned Claims Tribunal ought to have issued a direction of pay and recovery, more so, when deceased being the pillion rider of offending vehicle, he was third party.

8. Shri HS Patel, learned counsel for the Insurance Company submits that learned Claims Tribunal in the facts and circumstances of the case has assessed income of deceased as Rs.3,000/- per month, which cannot be said to be erroneous as the claimants have not placed on record any admissible piece of evidence to prove the income of deceased. He further contended that deduction and award of amount of compensation in the facts and circumstances of the case, is just and proper which do not call for any interference. Adding to that, when there was breach of conditions of Insurance Policy, then the Insurance Company cannot be directed to indemnify the Insured.

9. We have heard learned counsel for the respective parties and also perused the record.

10. Main challenge in this appeal is with regard to the quantum of compensation awarded by the learned Claims Tribunal. There is no dispute with regard to the policy issued by the Insurance Company. In support of their pleading with regard to proof of income of deceased, appellants/claimants have filed copy of agreement deed between Village Panchayat Okhar, Block-Masturi as Party-1 with Bahadur Sahu and Panchram Sahu as Party-2. This agreement (Ex.A14), which was relied upon by learned counsel for the appellants was of the year 2002, whereas, date of accident is 01.03.2011. The claimants have not

produced any document to prove income of deceased, showing the nature of business or income just prior to the date of accident or prior reasonable period. The document executed about 8-9 years prior to the accident cannot be considered as the occupation or business of deceased on the date of accident. Apart from Ex. A14, there is no other document placed on record in support of their pleading of income of the deceased.

11. In the aforementioned facts and circumstances of the case, income of deceased cannot be said to be proved by the appellants/claimants by placing admissible piece of evidence on record and therefore, income of deceased is to be assessed on notional basis.

12. For assessing income of deceased on notional basis, several factors are to be required to be considered by the Tribunals or Courts for calculating amount of compensation under the Motor Vehicles Act, 1988, such as age of the deceased, Price Index, cost of living and wage structure.

13. Looking to the date of accident ie 01.03.2011, deceased to be able body person, having left behind him four dependants, as also considering the price index and cost of living at that time, we find it appropriate to assess income of the deceased as Rs.4,000/- per month.

14. Hon'ble Supreme Court in the matter of **National Insurance Company Vs Pranay Sethi** reported in 2 AIR 2017 SC 5157, considered the issue of award of future prospects and held that in case of death of person less than 40 years of age, claimants will be entitled for addition of

40% of assessed established income towards future prospects for calculating total income of deceased.

15. Age of deceased Panchram Sahu as mentioned in Ex.A14 was 27 years in the year 2002 and by adding 9 years to it as the accident took place in the year 2011, age of deceased on the date of accident would be around 36 years. Therefore, there will be an addition of 40% of established income towards future prospects.

16. Learned Claims Tribunal has applied deduction of 1/3rd which in light of law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt) and Others Vs Delhi Transport Corporation and Another** reported in (2009) 6 Supreme Court Cases 121, is not correct. Hon'ble Supreme Court in the aforementioned case held that, where the dependants are 4-6, then, appropriate deduction towards personal and living expenses would be 1/4th.

17. Learned Claims Tribunal further awarded a sum of Rs.25,000/- towards loss of estate, Rs.25,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium and Rs.10,000/- towards love and affection to the children, which in view of law laid down in the matters of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited Vs Nanu Ram** reported in 2018 ACJ 2782, is on lower side.

18. For the foregoing reasons, impugned award requires re-computation, which is as under:

a) Income of deceased as taken by this Court is Rs.4,000/- per month and Rs.48,000/- per annum. By adding 40% of established income towards future prospects, total yearly income of deceased comes to Rs.67,200/- {48000 + (48000 x40/100)}. By deducting 1/4th of yearly income towards personal and living expenses, yearly loss of dependency comes to Rs.50,400/- {67200 – (67200 x1/4)}. On the date of accident, deceased was 36 years of age and appropriate multiplier would be 15. Upon multiplying yearly loss of dependency with 15, total loss of dependency would come to Rs.7,56,000/-.

b) Apart from aforementioned amount of compensation, towards total loss of dependency, claimants will be further entitled for Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, Rs.40,000/- towards loss of parental consortium to the children and Rs.10,000/- towards pain and suffering, making the total amount of compensation as Rs.8,76,000/-.

19. Now, we consider the prayer made by learned counsel for the appellants that a direction of pay and recover be issued even if there is breach of conditions of Insurance Policy.

20. The Insurance Policy is available on record as Ex.D2, which is, two wheeler package policy. Under this policy, the risk of pillion rider is also covered as per the regulations of IRDA (Insurance Regulatory and Development Authority). Learned claims Tribunal exonerated the

Insurance company only on the ground that driver of offending vehicle was not possessing valid and effective driving license. Hon'ble Supreme Court while considering the case, where the driver was not possessing valid and effective driving license in the matter of **Shamanna v. Oriental Insurance Co. Ltd.** reported in (2018) 9 SCC 650 has considered the issue of “pay and recover” and held that if the driver of the offending vehicle does not possess a valid driving licence, the principle of pay and recover can be ordered to direct the insurance company to pay the claimant first, and then to recover the same from the owner of the offending vehicle and held as under:

> “13. Since the reference to the larger Bench in *Parvathneni case (National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785)* has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in *Swarn Singh case (National Insurance Co. Ltd. v. Swarn Singh, (2004) 3 SCC 297)* followed in *Laxmi Narain Dhut (National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700* and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in *Swarn Singh (supra)* and *Laxmi Narain Dhut (supra)* cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment (Shamanna v. Laxman, 2016 SCC On Line Kar 6928) of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.”

21. In light of law laid down by Hon'ble Supreme Court in the aforementioned case, if the facts of present case are considered, the

policy of offending vehicle is a 'Package Policy' and risk of the pillion rider is covered.

22. In the aforementioned facts of the case, we find it appropriate to issue a direction to the Insurance Company /respondent-2 to first deposit the entire amount of compensation before the learned Claims Tribunal and thereafter, to recover the same from respondent-1/owner of offending vehicle. Insurance company for recovery of amount so deposited by it, is not required to file any separate suit or case, but it can recover the amount so deposited by it in the very same proceeding by filing an application for execution.

23. For the foregoing reasons, the appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

REVP No. 125 of 2020

1. Dhan Bai, aged about 36 years (Presently Age 43 Years) W/o Late Panch Ram Sahu @ Shambhu Sahu
2. Bodhi Sahu, Aged About 12 Years (Presently Aged About 19 Years), S/o Late Panch Ram Sahu @ Shambhu Sahu
3. Manisha Sahu D/o Late Panch Ram Sahu @ Shambhu Sahu Aged About 10 Years (Presently Aged About 17 Years), Minor
4. Manoj Sahu S/o Late Panch Ram Sahu @ Shambhu Sahu Aged About 8 Years (Presently Aged About 15 Years), Minor

   Petitioners- 3 and 4 minors Through Their Natural Guardian Mother Dhan Bai , W/o Late Panch Ram Sahu @ Shambhu Sahu

   All R/o Village Okhar , Police Station Masturi , Tahsil Masturi , District Bilaspur, Chhattisgarh

---- Petitioners

Versus

1. Yogendra Singh Markam @ Pappu Markam S/o Balwant Singh Markam Aged About 26 Years (Presently Aged About 33 Years), R/o Village Okhar, Police Station Masturi , Tahsil Masturi , District Bilaspur Chhattisgarh
2. The Oriental Insurance Co.Ltd. Through Its Divisional Manager, Division Office Madina Manjil, Kutcheri Chowk, Raipur Chhattisgarh

----Respondents

For Petitioners	:	Shri Ravindra Agrawal, Advocate
For Respondent- 2	:	Shri Sidharth Dubey, Dy GA
For Respondents- 3 and 4	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
21.01.2021

1. This Review Petition has been filed against the order dated 15.07.2020 passed in MAC-1066 of 2013.

2. Shri Ravindra Agrawal, learned counsel for the petitioners submits that the petitioners have filed MAC-1066 of 2013 seeking enhancement of amount of compensation awarded by the Claims Tribunal vide its order dated 16.07.2013 in Claim Case-02 of 2012, whereby, learned Claims Tribunal along with compensation of Rs.3,80,000/- compensation, has

awarded interest @ 6% per annum from the date of filing of claim application till its realisation. He submits that while partly allowing MAC-1066 of 2013 and granting enhancement of award of Claims Tribunal, interest has not been awarded on the amount of compensation. He submits that interest may also be awarded on the amount of compensation awarded by this Court.

3. Upon going through the proceedings and documents enclosed along with the review petition, we find some inadvertent typographical error in the impugned order. While enhancing the amount of compensation, award of interest in terms of Section 171 of the Motor Vehicles Act, 1988 could not have been mentioned. Non-mentioning of award of interest is only a typographical mistake.

4. For the foregoing reasons, the application is allowed. The amount of compensation awarded by this Court vide order dated 15.07.2020 in MAC-1066 of 2013 shall carry interest @ 6% per annum from the date of filing of claim application till its realisation.

5. Copy of this order be made part of Order dated 15.07.2020 passed in MAC-1066 of 2013.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma