NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1032 of 2013

1. Satrughan Lal Rathore, S/o Late Bhagwat Prasad Rathore, Aged About 48 Years
2. Smt. Sunil Bai Rathore, W/o Satrughan Lal Rathore, Aged About 43 Years

   Both are R/o Jayprakash Colony, Ramnagar, Tah. And District : Korba, Chhattisgarh

---- Appellants/Claimants

Versus

1. Ramkripal Pal, S/o Doodhnath Pal, Aged About 50 Years, R/o Badlapur, Thana-Badlapur, Distt. Jaunpur, Uttar Pradesh (Driver-Trailer No.HR-38/L/6983)
2. M/s K.C.G.C. Carrier Pvt. Ltd. 2710, Kutub Road, Nabi Karim, New Delhi, Thru-Trailer Owner Premshanker Shukla S/o B.D. Shukla, R/o Plot No. 88, T.P. Nagar, District : Korba, Chhattisgarh (Owner-Trailer No.HR-38/L/6983)
3. Branch Manager The Oriental Insu.Co.Ltd., Office Korba, District : Korba, Chhattisgarh

---- Respondents

For Appellants	:	Shri Ashutosh Shukla, Advocate
For Respondent-3	:	Shri Anumeh Shrivastava, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

27.09.2021

1. Claimants have preferred this appeal under Section 173 of Motor Vehicles Act, 1988 (for short, 'Act of 1988') challenging impugned award dated 16.4.2013 passed by Motor Accident Claims Tribunal, Korba (for short, 'Claims Tribunal') in Claim Case- 80 of 2011, whereby learned Claims Tribunal allowed application for grant of compensation in part, awarded total sum of Rs.3,39,000/- while exonerating the Insurance Company from its liability, fastened liability upon respondents 1 & 2, Driver and Owner of offending vehicle.

2. Facts relevant for disposal of this appeal are that on 28.03.2008, Kamleshwar Kumar Rathore **(since deceased)** was travelling on Motorcycle along with his friend Chavilal as pillion rider and going to Government College,

Korba for appearing in examination. While so, when they reached near Niharika Road, one Trailer No.HR-38-L-6983 (hereafter, referred to as 'offending vehicle'), driven by NA1 rashly and negligently, dashed Motorcycle and caused accident. On account of accident, **Kamlesh Kumar Rathore** fell down on road and offending vehicle ran over him. He was immediately taken to hospital but on the way, he succumbed to injuries.

3. Claimants, who are parents of deceased filed an application under Section 166 of Act of 1988 pleading therein that deceased- **Kamlesh Kumar Rathore** while doing his graduation course, took six months' training of computers. From tuitions and computer work, he was earning Rs.5,000/- per month. He was also a good player and participated in several other activities organised by the State.

4. NA1 and 2 submitted reply to claim application denying the facts pleaded therein. After filing of reply to claim application they did not appear before the claims tribunal and were proceeded *ex parte*.

5. NA3/ Insurance Company submitted reply to claim application resisting the claim and further pleaded that accident was result of rash and negligent driving of motorcycle by its driver in rash and negligent manner. As such, there was contributory negligence on the part of deceased also. NA 1 was not possessed with valid and effective driving license with him on the date of accident. There was breach of policy conditions.

6. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties, held that deceased- Kamleshwar Kumar Rathore died on account of motor accidental injuries due to rash and

negligent driving of offending vehicle by NA1. Contributory negligence and claim application to be not maintainable on account of non-joinder of necessary parties were not proved. Tribunal upon assessing income of deceased as Rs.3,000/- per month, calculated amount of compensation, and awarded Rs.3,39,000/- with interest @ 9% from the date of filing of claim application till its realisation, fastened liability upon respondents- 1 and 2 to satisfy the compensation.

7. Shri Ashutosh Shukla, learned counsel for the petitioner would submit that learned Claims Tribunal erred in awarding meagre sum of compensation upon assessing income of deceased as Rs.3000/- per month only, overlooking his qualification, certificates, six months' training certificate of computers and further other certificates issued by the State Authorities, available on record. He submits that Tribunal has not awarded any amount of compensation towards future prospects and awarded less compensation on other conventional heads. Lastly, he submits that Tribunal exonerated Insurance company on the ground that NA1 was not possessed with valid and effective driving license and there was breach of policy conditions. Even if Tribunal arrived at a finding of breach of policy conditions, then also looking to the fact that deceased was 3rd party and issuance of insurance policy was not disputed by Insurance Company, he prays for a direction to respondent-3/Insurance Company to first deposit the entire amount of compensation and thereafter to recover the same from owner and driver of offending vehicle.

8. Shri Anumeh Shrivastava, learned counsel for respondent-3/ Insurance Company opposing the submission of learned counsel for appellants would submit that though the claimants have pleaded income of deceased in claim application as Rs.5,000/- per month, but said pleadings have not been proved

in accordance with law. He further submits that considering the entirety of facts and circumstances of the case, date of accident, age of deceased, Tribunal awarded just and proper compensation which does not call for any interference. He further submits that as there was breach of policy conditions, hence, Tribunal justified in fastening liability upon respondents- 1 and 2.

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

10. So far as the first submission of learned counsel for the parties regarding assessing income of deceased as only Rs.3,000/- per month is concerned, perusal of record would show that claimants in support of their claim application have filed several certificates issued by the government authorities and other institutions showing participation of deceased in several activities including participation as member of scouts and guides. Claimants have further filed Ex.P22, certificate of 6 months' Computer Training course issued by AIMS COMPUTER ACADEMY, Korba, admission card of final examination of B.Com 1st year and Computer certificate issued by Indira Suchna Shakti Yojana, Government of Chhattisgarh.

11. Appellant-1 examined himself as AW1. In his evidence, he stated that deceased was prosecuting B.com 2nd year course. He proved (copies of certificates) issuance of certificates by the authorities which are placed on record as Ex.P8 to P21. In his statement AW1 stated that deceased was earning Rs.5,000/- per month from giving tuitions to small children and from working on computers. Apart from oral statements and pleadings, appellants have not brought any other evidence on record.

12. Chavilal, who accompanied deceased on the date of accident on motor cycle as pillion rider was examined as AW2. He in his evidence stated that deceased was giving tuitions to small children and also doing computer job work and earning Rs.5,000 to Rs.6000 per month. Except pleadings and oral evidence of AW1 & AW2, claimants have not placed on record any documentary evidence to prove income of the deceased.

13. In absence of any admissible piece of evidence showing income of the deceased, income of deceased cannot be accepted as Rs.5000/- or more. But, income of deceased has to be assessed keeping in mind his educational qualification, date of accident, wage structure, cost of living etc. Considering the fact that deceased was prosecuting his B.Com 2nd year on the date of accident as evident from Ex.P23 and further computer training certificate available on record, income of deceased is to be assessed more than income of deceased was assessed. For the foregoing reasons, I find it appropriate to assess income of deceased as Rs.4,000/- per month in the facts of the case.

14. Learned Claims Tribunal not awarded any amount of compensation towards future prospects. Award of compensation towards future prospects is now well settled by Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others reported in** (2017) 16 SCC 680. Hon'ble Supreme Court held that where the deceased is less than 40 years of age and not in any permanent employment, there shall be addition of 40% of income to the established income of the deceased towards future prospects. Hence, in case at hand, there shall be addition of 40% of the established income of the deceased towards future prospects. It is ordered accordingly.

15. Award of compensation on other conventional heads is also considered by Hon'ble Supreme Court **Pranay Sethi** (supra) and held that as to what are the heads to be considered for award of compensation on other conventional heads and also fixed the amount under those heads. In case of **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others,** (2018) 18 SCC 130 Hon'ble Supreme Court explained loss of consortium to be of three types. Appellants/claimants shall be entitled for amount of compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.

16. Claims Tribunal applied multiplier of 18, looking to age of deceased on the date of accident.

17. For the foregoing reasons, the amount of compensation to be awarded to the claimants requires re-computation and re-calculation which is as under:

a) Income of deceased has been taken as Rs.4,000/- per month and Rs.48,000/- per annum.

b) By adding 40% of established income of the deceased, yearly income of the deceased comes to Rs.67,200/- {48000 + (48000 x 40/100)}.

c) After deducting 50% from the total income of deceased towards personal and living expenses, annual loss of dependency comes to Rs.33,600/- {67200 — (67200 x 50/100)}.

d) Upon applying multiplier of 18 to the annual loss of dependency, total loss of dependency comes to Rs.6,04,800/- (33600 X 18).

e) Apart from loss of dependency, claimants are further entitled for Rs.40,000/- for loss of filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

18. Now the appellants/claimants are entitled for a total sum of **Rs.6,74,800/-** (604800 + 40000 + 15000 + 15000) as compensation instead of Rs.3,39,000/-, awarded by learned Claims Tribunal. The amount of compensation shall carry interest @ 7% from the date of filing of claim application till its realization. Any amount awarded by the Tribunal and already paid to claimants shall be adjusted from amount of compensation. Other conditions imposed by learned Claims Tribunal shall remain intact.

19. So far as submissions of the learned counsel for the appellants with regard to issuance of direction of pay and recovery is concerned, perusal of record would show that Insurance Company has not disputed issuance of policy, having effective on the date of accident. Exoneration of the Insurance Company is on the ground that offending vehicle was being plied in breach of policy condition as NA1 driver was not having valid and effective driving licence. Deceased was 3rd party and his risk is also covered under the policy.

20. Hon'ble Supreme Court in case of **Shamanna and another Vs Divisional Manager, Oriental Insurance Company Limited and others,** (2018) 9 SCC 650 has considered issuance of direction of pay and recover, where offending vehicle was being driven by the driver not possessed with valid and effective driving license and held thus:

> "13. Since the reference to the larger bench in Parvathneni case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case followed in Laxmi Narain Dhut 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 Swaran Singh and Laxmi Narain Dhut 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 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. Taking support of aforementioned ruling of Hon'ble Supreme Court, to protect the interest of appellants, I find it appropriate to direct respondent-3 Insurance Company to first deposit entire unsatisfied amount of compensation along with interest before the Tribunal and thereafter to recover the same from respondents- 1 and 2, driver and owner of offending vehicle in accordance with law.

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

Sd/-
(Parth Prateem Sahu)
JUDGE

padma