NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 216 of 2016

Reserved on.12.01.2021
Pronounced on.18.01.2021

1. Smt. Shyamkali W/o Late Raghunath Sahu, Aged About 48 Years R/o Village- Ameri Kanpa, Police Station- Bilha, District- Bilaspur, Chhattisgarh.
2. Chaitram S/o Late Raghunath Sahu, Aged About 12 Years Minor, Represented Through Legal Guardian Mother Smt. Shyamkali, R/o Village- Ameri Kanpa, Police Station- Bilha, District- Bilaspur, Chhattisgarh.
3. Savitri D/o Late Raghunath Sahu, Aged About 8 Years, Minor, Represented Through Legal Guardian Mother Smt. Shyamkali, R/o Village- Ameri Kanpa, Police Station- Bilha, District- Bilaspur, Chhattisgarh. **---- Appellants**

Versus

1. Gajadhar Jaiswal S/o Pitamber Jaiswal, Aged About 36 Years, R/o Mohbhattha, Police Station- Bilha, District- Bilaspur, Chhattisgarh.
2. The Oriental Insurance Company Limited, Divisional Office-1 Post Box 49, Medical College Road, Kachahari Chowk, Raipur, Chhattisgarh. **---- Respondents**

For Appellants:	: Shri A.L. Singroul, Advocate
For Respondent No.1:	: None, though served.
For Respondent No.2:	: Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice Sanjay S. Agrawal
CAV Judgment order

1. This Miscellaneous Appeal has been preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act of 1988') questioning the legality and propriety of the award dated 21.01.2016 passed by the 5th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.151/2014, whereby, the Tribunal while allowing the claim in part has awarded a total amount of compensation to the tune of Rs.3,22,000/- (Rupees Three Lakh Twenty Two Thousand Only) with a direction that if the same is not paid within

60 days', then the same shall carry interest at the rate of 6% per annum from the date of filing of claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description in the Tribunal.

2. Briefly stated, the facts of the case are that on 17.08.2012, the deceased Raghunath Sahu, was going along with his friend Ramnarayan Sahu to village Tala Ameri Kanpa, from the village Bilha by a motor cycle bearing registration no.CG-10-CS-6696. At the relevant time, a driver of the another motor cycle bearing registration no.CG-10-EM-5607, while driving the same in a rash and negligent manner has turned the same without showing its signals, owning to which, the alleged accident occurred and both Raghunath Sahu and his friend have fell down and during the course of treatment, the deceased Raghunath has died on 18.08.2012. A criminal case was registered against the driver of the offending vehicle namely, Gajadhar Jaiswal, under sections 279 and 337 of I.P.C. of the Police Station Hirri, District-Bilaspur in connection, Crime No.144/2012 and after its investigation, the charge sheet was submitted before the Judicial Magistrate First Class, Bilha against the said driver under Sections 279, 337, 338 and 304-A of I.P.C. along with under sections 146 and 196 of the Act of 1988.

3. On account of the aforesaid accident, the claimants who are widow and minors of the deceased Raghunath Sahu, instituted a claim petition enumerated under section 166 of the Act of 1988 by submitting *inter alia* that the deceased, a 50 years old, was a driver by profession and working as such under an employee of one Bahadur Singh at the

monthly wages of Rs.6,000/- (Rupees Six Thousand Only) apart from daily allowance of Rs.50/- (Rupees Fifty Only) and, thus, total amount of compensation to the tune of Rs.36,00,000/- (Rupees Thirty Six Lakhs Only) has been claimed under various heads.

4. The aforesaid claim has been contested by the Non-Applicants. According to Non-Applicant No.1, the owner-cum-driver of the alleged offending vehicle, the alleged accident occurred due to rash and negligent driving by the deceased himself and pleaded further that in case of any liability being fastened, the same could be indemnified by the Oriental Insurance Company Limited, as it was insured with the said Insurance Company.

5. Non-Applicant No.2/Insurer of the alleged offending vehicle, while denying the claim contested the same mainly on the ground that the driver of the alleged offending vehicle was driving the same, without holding the effective and valid driving licence, therefore, no liability could be fastened upon it.

6. After considering the evidence led by the parties, it has been held by the Tribunal that the alleged accident occurred due to rash and negligent driving by the driver of the alleged offending vehicle, namely, Gajadhar Jaiswal, resulting the sad demise of Raghunath Sahu, who was found to be 50 years old. It held further that the vehicle in question was being used in violation of the Insurance policy, as the driver of it, was not possessing the effective and valid driving license and that by considering the income of the deceased to the tune of Rs.3,000/- per month awarded a total amount of compensation as mentioned herein above, while exonerating the Insurance Company from its liability.

7. Shri A.L. Singroul, learned counsel appearing for the Appellants/Claimants submits that while determining the amount of compensation, the Tribunal has committed an illegality in assessing the income of the deceased only to the tune of Rs.3,000/- and thereby, erred in awarding a meagre amount of compensation even without considering the future prospects of his income. It is contended further that since the vehicle in question was insured with the Oriental Insurance Company Limited therefore, while exonerating the said company, the Tribunal ought to have applied the principles of pay and recover by directing the said company to satisfy the award under appeal with a direction to recover the same from the owner of the alleged offending vehicle. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of ***National Insurance Company Limited*** vs. ***Pranay Sethi*** and ***Magma General Insurance Company Limited*** vs. ***Nanu Ram Alias Chuhru Ram And Others*** reported in **(2017) 16 SCC 680** and **(2018) 18 SCC 130** respectively.

8. On the other hand, Shri Pankaj Agrawal, learned counsel for Non-Applicant No.2/the insurer of the alleged offending vehicle has supported the award under appeal.

9. I have heard learned counsel for the parties and perused the entire record carefully.

10. From perusal of the record, it appears that the amount of compensation as determined by the Tribunal, while assessing the monthly income of the deceased to the tune of Rs.3,000/- only, even without considering the future prospects of his income, is unjustified and deserves to be

modified.

11. According to the claimants, the deceased Raghunath Sahu was a driver by profession and used to earn Rs.6,000/- per month, apart from daily allowance of Rs.50/-. But in absence of any cogent and reliable evidence vis-a-vis the non-examination of the said employer of Bahadur Singh, under which the deceased was alleged to have been working as a driver, his income cannot be held to be 6,000/- per month, as claimed by them. However, the claimants are entitled to be awarded compensation on the basis of the wages of the deceased for unskilled worker and it would be appropriate to consider the deceased's income as such, as provided under the Minimum Wages Act, 1948.

12. As the alleged accident occurred on 17.08.2012, it would therefore be appropriate to consider his monthly income to the tune of Rs.4,498, (Rupees Four Thousand Four Hundred and Ninety Eight Only) rounded of at Rs.4,500/-, yearly Rs.54,000/-, prevailing at the relevant point of time, as per the notification issued by the Prescribed Authority under the said Minimum Wages Act, 1948. Since the deceased was 50 years old, as evidenced by the Post-Mortem Report (Ex. P-4), therefore, while determining his actual income, an addition of 10% of it, i.e., Rs.5,400/-, towards future prospects of his income, is to be made in the light of the principles laid down by the Supreme Court in the matter of ***National Insurance Company Limited*** vs. ***Pranay Sethi*** **(Supra).** It would, thus, come to Rs.59,400/- (Rs.54,000/- + Rs.5,400/-) and by that, by deducting 1/3rd of it, i.e., Rs.19,800/-, towards personal and living expenses of him, the yearly dependency would come to Rs.39,600/- (Rs.59,400/- – Rs.19,800/-). By applying the multiplier of 13, looking to

the age of the deceased, the total dependency would thus arrived at Rs.5,14,800/- (Rs.39,600 x 13).

13. Besides, the widow and children are entitled to be awarded a loss of consortium under he head of spousal and parental consortium as laid down by the Supreme Court in the of ***Magma General Insurance Company Limited*** vs. ***Nanu Ram Alias Chuhru Ram And Others (supra).*** Consequently, in addition, the claimants are entitled to the following amounts towards conventional heads:-

	Mode of Compensation	**Amount (in Rs.)**
(I)	For loss of spousal consortium to wife	40,000/-
(ii)	For loss of parental consortium to children	40,000/-
(iii)	For funeral expenses	15,000/-
(iv)	For loss of estate	15,000/-
	Total	Rs.1,10,000/-

14. Consequently, the claimants would be entitled to a total sum of Rs.6,24,800/- (Rs.5,14,800/- + Rs.1,10,000/-) with 6% interest per annum from the date of filing of claim petition till the date of actual payment.

15. Since, the vehicle in question was admittedly insured as evidenced by the Insurance Policy (Ex.D-3) with Non-Applicant No.2/The Oriental Insurance Company Limited, therefore, in view of the principles laid down by the Supreme Court in the matter of ***National Insurance Company Limited*** vs. ***Swaran Singh And Others*** and ***Manager, National Insurance Company Limited*** vs. ***Saju P. Paul And Another*** reported in ***(2004) 3 SCC 297*** and ***(2013) 2 SCC 41*** respectively, it would be just and proper to apply the principles of pay

and recover, while directing the Non-Applicant No.2/The Oriental Insurance Company Limited to first pay the aforesaid amount of compensation, i.e., Rs.6,24,800/-, (Rupees Six Lakh Twenty four Thousand Eight Hundred Only), with 6% interest per annum from the date of filing of claim petition till the date of actual payment to the claimants/Appellants and, then to recover the same from the owner-cum-driver namely, Gajadhar Jaiswal (Respondent No.1 herein) of the vehicle in question.

16. The appeal is, accordingly, allowed in part to the extent indicated herein above with the aforesaid observations and rest of the observations made by the Tribunal shall remain intact.

No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE

Vivek