

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 366 of 2015

- The Oriental Insurance Company Limited Through Divisional Manager, The Oriental Insurance Company Limited, Kachaheri Chowk Madina Manjil, Tahsil And District Raipur Chhattisgarh.

---- Appellant

Versus

1. Smt. Suruti Bai Chouhan W/o Wd/o Late Shri Jagatram Chouhan Aged About 42 Years R/o Village Kutela, Post Saraipali, Police Station And Tahsil Saraipali, District Mahasamund, Presently Residing At Kushalpur, Raipur, Tahsil and District Raipur Chhattisgarh.
2. Ramlal Chouhan S/o Late Shri Jagatram Chouhan Aged About 18 Years R/o Village Kutela, Post Saraipali, Police Station And Tahsil Saraipali, District Mahasamund, Presently Residing At Kushalpur, Raipur, Tahsil And District Raipur Chhattisgarh.
3. Ku. Anita Chouhan D/o Late Shri Jagatram Chouhan Aged About 16 Years Minor Through Mother Smt. Suruti Bai Chouhan R/o Village Kutela, Post Saraipali, Police Station And Tahsil Saraipali, District Mahasamund, Presently Residing At Kushalpur, Raipur, Tahsil And District Raipur Chhattisgarh.
4. Prakash Chouhan S/o Late Shri Jagatram Chouhan Aged About 14 Years Minor Through Mother Smt. Suruti Bai Chouhan R/o Village Kutela, Post Saraipali, Police Station And Tahsil Saraipali, District Mahasamund, Presently Residing At Kushalpur, Raipur, Tahsil And District Raipur Chhattisgarh.
5. Nandkishore Chouhan S/o Late Shri Jagatram Chouhan Aged About 12 Years Minor Through Mother Smt. Suruti Bai Chouhan R/o Village Kutela, Post Saraipali, Police Station And Tahsil Saraipali, District Mahasamund, Presently Residing At Kushalpur, Raipur, Tahsil And District Raipur Chhattisgarh.
6. Manbodh @ Sevakram S/o Shri Jeera Lal Aged About 25 Years R/o Village And Post Limdarha, Police Station Basna, District Mahasamund Chhattisgarh.
7. Naveen Agrawal S/o Shri Manuman Prasad Agrawal Aged About 35 Years C/o R.K.C. Complex, G.E. Road, Raipur Chhattisgarh R/o Jagdishpur Road, Basna, Police Station And Tahsil Basna District Mahasamund Chhattisgarh.

---- Respondents

For Appellant	: Shri Pankaj Agrawal, Advocate
For Respondents	: Shri Shobhit Mishra, Advocate

Hon'ble Smt. Justice Rajani Dubey

Order on Board

22.06.2021

1. This appeal, at the behest of the Insurance Company, challenges the judgment and award dated 31.01.2015 passed in Motor Accident Claim No. 37/2014 by Third Additional Motor Accident Claims Tribunal, Raipur.

2. Jagatram Chouhan died in a motor vehicle accident which occurred on 10.05.2012. His legal heirs, respondent No.1 (wife) and respondents No. 2 to 5 (children), filed a claim petition under Section 166 of the Motor Vehicles Act and the case set up by the claimants was that the deceased was travelling in Commander Jeep No. CG-07 ZA-0712, which was dashed by Pickup bearing Registration No. CG-04 JB-0309, driven by respondent No.-6 Manbodh @ Sevakram. Deceased Jagatram Chouhan received severe injuries and died on the spot. The claimants have claimed that they were dependent upon the deceased and due to untimely death, have claimed compensation for a sum of Rs. 15,25,000/- from the driver, owner and insurance company jointly and severally.

3. Respondents No. 6, 7 and appellant/non-applicant No.-3 took the plea that accident was occurred due to the rash and negligent driving of Commander Jeep. The said accident was occurred in Saraipali, District Mahasamund and claimants filed this petition before Raipur Claims Tribunal which is not maintainable. The owner and driver of the Commander Jeep are necessary party in this claim petition but the claimants

did not file claim against them, therefore, this claim petition is liable to be dismissed.

4. The Tribunal awarded compensation of Rs. 6,95,000/- with interest @ 6% per annum, in favour of the respondents No. 1 to 5/claimants for the death of Jagatram Chouhan. On the issues with respect to jurisdiction and non-joinder of parties, it has been observed by the Tribunal that the petition is under the jurisdiction of Tribunal, Raipur and the owner and driver of Commander Jeep are not the necessary party. Hence, this appeal filed by the appellant/Non-applicant No.3, Insurance Company.

5. Learned counsel for the appellant submits that the learned Tribunal was wrong in not holding that Raipur Tribunal has no jurisdiction to entertain claim, particularly, when there is no document showing that claimants reside at Raipur. It is an admitted position that accident was taken place in Saraipali, which falls under the jurisdiction of Mahasamund District Court. He further submits that the learned Tribunal committed error in not holding that it is a case of contributory negligence, therefore, suitable apportionment ought to have been mentioned even in absence of making party to the driver, owner and insurance company of Commander Jeep. It is next contended that the learned Tribunal has committed error in granting relief of loss of company and love and affection to the claimants @ 50,000/- each which comes to Rs. 2,50,000/-, which is very high and excessive and is liable to be suitably reduced. It is further submitted that the driver

of the offending vehicle was not having valid & effective driving license but the learned Tribunal ignoring this fact awarded the compensation on fastening the liability on the appellants.

6. On the other hand, counsel for respondent No. 1 to 5 relying on the decision of ***National Insurance Co. Ltd. Versus Pranay Sethi & Others*** reported in **(2017) 16 SCC 680** and supported the order of the Tribunal.

7. No one appeared on behalf of respondents No. 6 & 7 (driver and owner of the offending vehicle).

8. Heard, counsel for the parties and perused material available on record.

9. Through this appeal, learned counsel for the appellant raised his objection regarding the non-joinder of the parties and the jurisdiction of the Tribunal. With regard to this, the learned Tribunal framed issue Nos. 6 & 7, which are as under :-

6. क्या आवश्यक पक्षकारों का असंयोजन किया गया है, हों तो प्रभाव?

7. क्या प्रस्तुत दावा इस मोटर दुर्घटना दावा अधिकार के श्रवण क्षेत्राधिकार में है?

Before the learned Tribunal, Satish Sahu (AW-2), driver of the Commander Jeep, was examined and in his statement he stated that on the date of incident, the offending vehicle was driven by Manbodh @ Sevakram, respondent No.6 in a rash and negligent manner. He also states that Manbodh was

coming from the wrong side. Thereafter, he lodged a report against the Manbodh @ Sevakram, respondent No.6/Non-applicant No.1 upon which criminal case No. 354/12 under Section 304-A of the IPC was registered, which is exhibited as Ex. P/1 to Ex. P/9, certified copy of criminal case. Learned Tribunal has also observed in para 17 of its judgment that it is not a case of contributory negligence, therefore, the driver, owner and insurance company of the Commander Jeep bearing Registration No. CG-07 Z-0712 are not the necessary party and thus, the finding of the Tribunal on the issue is fully justified.

10. So far as the issue of jurisdiction is concerned, respondent Nos. 1 to 5 in their claim petition and also in affidavit have addressed themselves the residents of Saraipali, District Mahasamund, presently residents of Kushalpur, District Raipur. Furthermore, as per the Ex. P/9, the Insurance Company i.e. the Oriental Insurance Co. Ltd. is said to be located in Madina Manjil, District Raipur. In Ex. P/8, copy of Registration Certificate of the offending vehicle, the address of the Naveen Agrawal, owner of the said vehicle is clearly mentioned as resident of R.K.C. Complex, G.E. Road, Raipur. Thus, after considering all the factual aspects learned Tribunal recorded its finding in para No. 16 of Judgment that the petition is under the Jurisdiction of the Tribunal, Raipur, and this finding of the Tribunal, in the opinion of this Court, is just and proper.

11. The learned trial Court awarded Rs. 50,000/- to the

Respondent No.1 herein under the head of 'loss of espousal consortium' and Rs. 50,000/- each to Respondents No. 2 to 5 under the head of 'loss of parental consortium'. The appellant raised objection stating that this award is on higher side and excessive but in view of the judgment of Hon'ble Supreme Court in the matter of '**Magma General Insurance Co. Ltd. Vs. Nanu Ram**' reported in **AIR Online 2018 SC 189** and also the finding of this Court, the amount awarded by the Tribunal under the heads of loss of 'espousal consortium' and 'parental consortium' in the facts and circumstance case is on the right side.

12. The foregoing discussion leads to an irresistible conclusion that the impugned order of the Tribunal dated 31.01.2015 is perfect, both in law and on facts, and is not liable to be disturbed. Thus, this Appeal is liable to be and is hereby dismissed.

Sd/-
(Rajani Dubey)
Judge