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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1088 of 2015

1. Smt. Tiharin Bai W/o Chhatlal Dhivar, aged about 45 years
2. Chhatlal Dhivar, S/o late Ramgulal Dhivar, aged about 48 years

Both are R/o village Sendri, Thana Koni, Tahsil and District Bilaspur C.G.

------Appellants/Claimants

VERSUS

1. Madhoprasad Sahu, aged about 58 years, S/o Bhavani Prasad, R/o Village Tundra, Tahsil Kasdol, Distt. Raipur C.G.

----Owner of Tractor and Trailer

2. The United India Insurance Company Limited, through Divisional Manager, Divisional Office, Rajendra Nagar Chowk, Bilaspur, Distt. Bilaspur C.G.

------ Insurer of Trailer CG04D2530

3. Bajaj Allianz General Insurance Company Limited, Through Branch Manager, Shivmohan Bhavan, Vidhansabha Marg Pandri Raipur, Tahsil and District Raipur C.G.

------ Insurer of Tractor CG04ZG3918

-------Respondents

WITH

MAC No. 382 of 2015

- United India Insurance Company Limited, through its Divisional Manager, Divisional Office-2nd Floor Gurukripa Towers, Vyapar Vihar Road, Bilaspur, Dist. Bilaspur Chhattisgarh **-----Appellant**

VERSUS

1. Smt. Tiharin Bai W/o Chhatlal Dhiwar, aged 41 years
2. Chhatlal Dhiwar S/o late Ramgulal Dhiwar, aged 44 years

Respondent 1 and 2 are resident of Village Sendri, P.S. Koni, Tahsil and District Bilaspur Chhattisgarh

3. Madhoprasad Sahu, S/o Bhawani Prasad, aged 54 years, R/o Vill. Tundra, Tah. Kasdol, Distt. Raipur C.G.
4. Bajaj Allianz General Ins. Co. Ltd. Through its Branch Manager Branch Office Shivmohan Bhawan, Vidhansabha Marg Pandari, Raipur, Tah. and Dist. Raipur C.G.

------Respondents

MAC No. 1088/2015

For Appellants	:	Ms. Aditi Singhvi, Advocate
For Respondent 1	:	Mr. Abhijeet Mishra, Advocate
For Respondent 2	:	Mr. Dashrath Gupta, Advocate
For Respondent 3	:	Mr. Abhishek Sinha, Advocate

MAC No. 382/2015

For Appellant	:	Mr Dashrath Gupta, Advocate
For Respondents 1 and 2	:	Mr. Aditya Singhvi, Advocate
For Respondent 3	:	Mr. Abhijeet Mishra, Advocate
For Respondent 4	:	Mr. Abhishek Sinha, Advocate

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

Order on Board

Per Parth Prateem Sahu, J.

01/02/2021

1. As both the above appeals arise out of the same accident, they are being disposed of by this common order.

2. Challenge in these two appeals is to the award dated 22.12.2014 passed by learned 3rd Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh (for short "Claims Tribunal") in Claim Case no. 211/11, whereby learned Claims Tribunal allowed the application filed under Section 163-A of the Motor Vehicles Act, 1988 (for short "Act of 1988") and awarded Rs. 4,12,000/- as total compensation in a fatal accident case.

3. MAC No. 1088/2015 is filed by claimants seeking enhancement of amount of compensation. MAC No. 382/2015 is filed by non-applicant 2/ Respondent 2 (Insurance Company of trolley CG04-D-2530), challenging the apportionment of liability to satisfy the amount of compensation ie. 50% each by insurer of tractor and the insurer of trolley ie. non-applicants 2 and 3/ Respondents 2 and 3.

4. Facts relevant for disposal of these appeals are that, on 26.03.2009, Ramkhilawan Dhivar was driving the tractor bearing no. CG04-ZG-3918 and trolley no. CG04D2530, going to village Khapridih from Tundra, for bringing soil for the purpose of construction of edge (*med)* on agriculture field of his employer/ owner of tractor trolley. On the way, near village

Gadkhalhe, while giving side to other vehicle coming from opposite direction, tractor turned turtle and met with an accident. In the said accident, Ramkhilawan came under the tractor, suffered grievous injuries and died on spot. Offending tractor was insured with non-applicant 3 and trolley was insured with non-applicant 2/ appellant in MAC No. 382/2015.

5. Claimants/ appellants in MAC 1088/2015 filed an application under Section 163-A of the Act of 1988 pleading therein that on the date of accident, deceased Ramkhilawan was aged about 24 years, he was working as driver of tractor, earning Rs. 3,300/- per month and claimed Rs. 6,48,600/- as total compensation.

6. Non-applicant 1 submitted reply to the claim application and denied the facts pleaded therein. It was further denied that deceased was engaged as driver to drive offending tractor and trolley. Deceased who was resident of his village and known to him, took the key of tractor-trolley from his children present at home without his knowledge and took the tractor trolley for his own use. Deceased himself was negligent in the motor accident. Tractor was insured with non-applicant 3/ Bajaj Allianz General Insurance Company and trolley was insured with non-applicant 2/ United India Insurance Company limited. Non-applicant 1 paid an amount of Rs. 60,000/- as compensation to the claimants and an agreement was also executed between them.

7. Non-applicant 2 filed its reply to claim application and denied the facts pleaded in claim application. It was further pleaded that deceased was not possessed with valid and effective driving licence. No documents with regard to registration of offending tractor, insurance policy, fitness certificate and driving licence of driver is placed on record, hence, no liability can be fastened upon Non-applicant 2 to satisfy the amount of compensation.

8. Non-applicant 3/ Insurance Company submitted reply to the claim

application pleading therein that accident did not take place with the vehicle insured by it. Accident was result of negligence on the part of deceased driver himself. There was breach of policy conditions, offending tractor trolley was not having fitness, permit and deceased was not possessed with valid and effective driving licence. Tractor trolley was being used for carrying gratuitous passengers, hence, Insurance Company is not liable to pay any amount of compensation.

9. Upon appreciation of pleadings and evidence brought on record by the respective parties, learned Claims Tribunal held that Late Ramkhilawan died in a motor accident. Breach of policy conditions was not found to be proved; awarded Rs. 4,12,000/- as compensation and fastened liability to pay amount of compensation upon non-applicants 2 and 3, jointly and severally.

10. Ms. Aditi Singhvi, learned counsel for appellants/ claimants in MAC No. 1088/2015 submits that learned Claims Tribunal has awarded meagre amount of compensation. Income of deceased has been assessed on lower side. No amount of compensation is awarded towards future prospects. The amount awarded towards other conventional heads is also on lower side. She submits that amount of compensation be suitably enhanced.

11. Mr. Dashrath Gupta, learned counsel for Respondent 2/ Insurance Company submits that learned Claims Tribunal based on the pleadings and evidence brought on record by the respective parties has awarded just amount of compensation, hence, Quantum of compensation, in the facts of the case, does not call for any interference. He further contended that deceased met with an accident while driving the tractor-trolley, which turned turtle. Deceased Ramkhilawan came under the tractor. Non-applicant 2/ Insurance Company/ appellant in MAC 382/2015 is Insurer of trolley and not of tractor. There is no involvement of trolley in any manner

in the accident, hence, Claims Tribunal ought not to have fastened liability upon appellant-Insurance Company ie. non-applicant 2 to satisfy the amount of compensation jointly and severally. He contended that in this appeal, he is only challenging fastening of liability to satisfy the compensation to the extent of 50% upon non-applicant 2.

12. Mr. Abhishek Sinha, learned counsel for Respondent 3/ Insurance Company of tractor submits that learned Claims Tribunal, taken into consideration the entire facts and circumstances of the case, the fact that at the time of accident, trolley was attached with the tractor. He further contended that the accident might have caused due to some defects in the trolley. Offending tractor becomes 'goods vehicle' only after attachment of trolley to it. He further pointed out that the appellant/ insurer of trolley has not brought on record any evidence to prove whether Late Ramkhilawan died on account of motor accidental injuries suffered by him from the tractor or the trolley. Lastly, he submits that as at the time of accident, tractor and trolley were attached to each other and running as a single unit vehicle, hence, Claims Tribunal is justified in fastening liability equally upon both the insurance companies. Award passed by Claims Tribunal is just and proper in the facts and circumstances of the case and does not call for any inteference.

13. We have heard learned counsel for the respective parties and also perused the record of Claim Case.

14. We will first deal with the appeal filed by Respondent-insurer of trolley ie. non-applicant 2. Mr. Dashrath Gupta, learned counsel has raised only one ground for consideration of this Court ie. the apportionment of liability to satisfy amount of compensation. Upon going through entire pleadings and material available before us, we put a pin pointed query to Mr. Dashrath Gupta, learned counsel that on what ground the impugned award is

challenged, to which he replied that non-applicant 2 has challenged the apportionment of liability to the extent of 50% and no other ground has been put to challenge in the appeal of insurance company. There is no dispute that the deceased was driving the tractor-trolley. Once the trolley is attached with the tractor, it becomes one vehicle ie. 'goods carriage vehicle'. There is no dispute that while giving side to other vehicle, tractor attached with the trolley turned turtle. In the aforementioned facts, trolley would also come within the term 'use of motor vehicle' as trolley and tractor both were in use ie. in running condition when accident took place. In this situation, trolley also contributed in the accident. For the foregoing reasons, we do not find any infirmity in the view taken by the Claims Tribunal in apportioning liability between both the insurance companies ie. of the tractor and trolley respectively, moreso when tractor and trolley are owned by one and the same person. In view of the above, submission made by learned counsel for Respondent 2 that the Claims Tribunal erred in fastening liability upon it to the extent of 50% to be erroneous is not sustainable and it is hereby repelled.

15. Now, we will deal with the appeal filed by claimants seeking enhancement of amount of compensation. Claimants have very specifically pleaded the income of deceased as Rs. 3,300/- per month. Claims Tribunal, without assigning any reason for disbelieving the income pleaded and stated in the evidence, has assessed income of deceased as Rs. 3,000/- per month. Considering the fact that deceased met with an accident while driving the offending tractor trolley, in the opinion of this Court, Tribunal erred in assessing income as Rs. 3,000/- per month. Ordinary labourer could have earned more wages than that assessed by Tribunal. Taking into consideration the nature of occupation, date of accident, we find it appropriate to reckon income of deceased as pleaded in the claim application ie. Rs. 3,300/- per month. Claims Tribunal has awarded Rs. 2,000 towards loss of estate, Rs. 2,000/- towards funeral expenses only

and not awarded any amount towards loss of consortium.

16. Learned counsel for the appellants-claimants has raised following grounds: Income of deceased assessed on lower side, non-grant of compensation towards future prospects, application of wrong multiplier and award of meagre compensation on other conventional heads. Application is filed under Section 163-A of the Act of 1988. Compensation is required to be calculated as per structured formula basis applying standard deduction, multiplier and adding compensation other conventional heads, as provided under Second Schedule. In the case at hand, from perusal of award, it is evident that Claims Tribunal has not calculated the compensation in the manner as provided under Second Schedule formulated under Section 163-A of the Act of 1988. Claims Tribunal erred in not awarding just amount of compensation. For the foregoing reasons, we find it appropriate to recompute the amount of compensation.

17. Income of deceased is reckoned as Rs. 3,300/- per month ie. Rs. 39,600/- p.a. As per 2nd Schedule appended to Section 163-A of the Act of 1988, there will be deduction of 1/3rd towards personal and living expenses. After deducting 1/3rd towards personal and living expenses from the established income, yearly loss of dependency will come to Rs. 26,400/- (Rs.39,600 –1/3rd of Rs.39,600). Upon applying multiplier of 17 to the early loss of dependency as applied by the Claims Tribunal, total loss of dependency will come to Rs.4,48,800/- (Rs.26,400x17). Apart from above, appellants are further entitled for Rs. 2,000/- towards funeral expenses, Rs. 2,500/- towards loss of estate and Rs. 5,000/- towards loss of consortium. Now the appellants-claimants will be entitled for **Rs. 4,58,300/- (Rs.4,48,800 + Rs.2,000 + Rs.2,500 + Rs. 5,000)** as total compensation instead of Rs. 4,12,000/- as awarded by the Claims Tribunal. Amount of compensation shall carry interest @ 6% p.a. from the

date of filing of claim application till its realization.

18. In the result-

i) appeal filed by claimants ie. MAC No. 1088/ 2015 is allowed in part and quantum of amount of compensation is enhanced as calculated above.

ii) appeal filed by Insurance Company (non-applicant 2) ie. MAC 382/2015 is dismissed.

iii) Both the Insurance Companies are equally liable (to the extent of 50% each) to satisfy amount of compensation.

19. Impugned award is modified to the extent as indicated above.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

Pawan