

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR
M. A. (C) No. 1077 of 2015

1. Harkunwar Nirmalkar Wd/o R. C. Nirmalkar, Aged About 54 Years,
2. Ku. Rekha Nirmalkar D/o R. C. Nirmalkar, Aged About 20 Years, both are R/o Village Pendarwa, Ranigaon, P. S. and Tehsil - Ratanpur, District Bilaspur, Chhattisgarh.

---- Appellants

Versus

1. Sushila Nirmalkar (correct title is Dewangan), Wd/o Shyamlal Nirmalkar, Aged About 27 Years, R/o Ward No. 7, Deendayal Nagar, Deepka, presently residing at Deengapur Basti, Rampur, Tehsil and District Korba, Chhattisgarh,
2. Mahavir @ Baburam Gond S/o Amaan Singh Gond, R/o Litiyakhar, Tehsil Pali, District Korba, Chhattisgarh,
3. Madhu Agrawal W/o Suresh Agrawal, R/o Laxmi Niwas, Vinoba Nagar, Bilaspur, Chhattisgarh,
4. Divisional Manager, The New India Insurance Company Ltd., Rama Trade Centre, IInd Floor, UT Earth Building, Opp- Rajiv Plaza, Bilaspur, Chhattisgarh.

---- Respondents

For Appellants	:	Shri Pallav Mishra, Advocate
For Respondent No.1	:	Shri Alok Rishi, Advocate
For Respondent No.2	:	None
For Respondent No.3	:	Shri J.A. Lohani, Advocate
For Respondent No.4	:	Shri Dashrath Gupta, Advocate

(Proceedings through Video Conferencing)
Hon'ble Shri Parth Prateem Sahu, Judge
Judgment on Board

19.07.2021

1. Challenge in this appeal filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') is to the impugned award dated 09.02.2015 passed by the Additional Motor Accident Claims Tribunal, (F.T.C.) Korba, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.152 of 2013 whereby learned Claims Tribunal allowed the application filed under Section 166 of the M.V. Act

in part and awarded Rs.7,09,000/- as total compensation in a fatal accident case.

2. Brief facts relevant for disposal of this appeal, are that, on 16.05.2012, Shyamlal Nirmalkar was sleeping in the campus. On the fateful day, at about 3.15 hours, one Hyva Truck bearing No.CG/10/C/5667 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, ran over Shyamlal Nirmalkar and Santram. In the said accident, Shyamlal Nirmalkar suffered injuries over his person and succumbed to those injuries.
3. Respondent No.1/applicant filed an application under Section 166 of the M.V. Act claiming herself to be wife of Late Shyamlal Nirmalkar. Appellant No.1 was impleaded as non-applicant No.4 (mother of deceased) and appellant No.2 (sister of deceased) has been impleaded as non-applicant No.5 by way of amendment. In claim application, it was pleaded that claimant is wife of deceased, on the date of accident, deceased was aged about 27 years, working as Office Assistant, earning Rs.10,000/- per month from Budhia Enterprises and claimed total compensation of Rs.80,60,000/-.
4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply to claim application and denied the entire pleadings made in claim application. It was pleaded that truck owned by non-applicant No.2 was insured with non-

applicant No.3, as such, liability, if any, to pay the amount of compensation would be upon non-applicant No.3.

5. Non-applicant No.3/Insurance Company also submitted reply to claim application, while denying the factual pleadings made in claim application, pleaded that accident was not as a result of negligence on the part of non-applicant No.1; non-applicant No.1 was not possessed with valid and effective driving licence; on the date of accident, offending vehicle was plied in breach of policy conditions as there was no valid fitness certificate with offending vehicle. It was further pleaded that applicant has not arrayed all the legal representatives of deceased as party non-applicants in claim application.
6. Non-applicant No.4/appellant No.1 widow mother of deceased submitted reply to claim application pleading therein that on the date of accident, deceased was unmarried and applicant only in the greed of money, filed an application claiming herself to be wife of Late Shyamlal Nirmalkar. It was further pleaded that applicant has not placed on record any document to show the place of her resident. Unmarried sister of deceased has not been arrayed as party to claim proceeding, hence, claim application is liable to be rejected. Mother of deceased was searching for bride within her caste, to which, deceased was also agreed. Prior to the date of accident, deceased went along with her mother to see the other girl on 13.05.2012 for the purpose of marriage. Non-applicants No.4 and 5 i.e.

mother and unmarried sister of deceased were only dependent upon the deceased, hence, they are only entitled for the amount of compensation. The pleading made in claim application with regard to marriage of applicant/respondent No.1 with deceased on 26.01.2012 was specifically denied.

7. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, allowed the claim application in part, awarded Rs.7,09,000/- as total compensation and further apportioned the amount of compensation between applicant/respondent No.1 and appellants/non-applicants No.4 and 5 i.e. mother and sister of deceased.
8. Shri Pallav Mishra, learned counsel for the appellants submits that appellant No.1 in her reply to claim application has taken a very specific plea that applicant was not wife of deceased as the deceased was unmarried, hence, she is not entitled for any amount of compensation, but even then, learned Claims Tribunal has not made any issue with regard to “whether the applicant is legal heir/legal representative of Late Shyamlal Nirmalkar being his wife?”. He further submits that when the specific plea was raised in defence by non-applicants in their reply to claim application, then learned Claims Tribunal ought to have framed issue in this regard and learned Claims Tribunal erred in not framing the issue, which is one of the main dispute raised by non-applicant No.4 in her reply. It is

contended that learned Claims Tribunal has erred in awarding meagre amount of compensation as learned Claims Tribunal has assessed the income of deceased on lower side, deducted 40% of total amount of compensation towards contributory negligence without there being any specific evidence or proof in this regard.

9. Per contra, Shri Alok Rishi, learned counsel for respondent No.1 submits that respondent No.1/applicant is wife of deceased. In claim application, it was very specifically pleaded that applicant was married with deceased on 26.01.2012 and in support of pleading, applicant has placed on record the certificate issued on 10.08.2013, which was signed by five persons mentioning therein that applicant was married with deceased on 26.01.2012 in their presence. He further submits that other certificate issued by one Balram Vishwakarma was also placed on record to show that after death of her husband, applicant is residing with her father. Even if, specific issue in this regard has not been framed, applicant has placed on record the documents in the shape of certificate issued to her in support of proof that she is married wife of deceased and learned Claims Tribunal has rightly apportioned the amount of compensation between applicant and non-applicants No.4 and 5, which does not call for any interference.
10. Shri J.A. Lohani, learned counsel for respondent No.3 submits that learned Claims Tribunal while considering the facts and

evidence available on record, has passed just award, which does not call for any interference.

11. Shri Dashrath Gupta, learned counsel for respondent No.4/Insurance Company submits that award passed by learned Claims Tribunal is just and proper in the facts and circumstances of the case, which does not call for any interference.
12. I have heard learned counsel for the respective parties and perused the record carefully.
13. This appeal is filed by legal representatives of deceased on two grounds; firstly, learned Claims Tribunal has not framed any specific issue on the pleadings made by appellant No.1/non-applicant No.4 in her reply to claim application that applicant/respondent No.1 is not wife of deceased, as such, she was not dependent and not entitled for any amount of compensation and secondly, finding of learned Claims Tribunal that deceased was contributory negligent in the accident to the extent of 40% to be erroneous as also amount of compensation calculated to be on lower side.
14. So far as first submission made by learned counsel for the appellants that learned Claims Tribunal has not framed issues based on the pleadings made in written statement is concerned, Courts/Tribunals are required to frame issues on each factual dispute raised by the parties to the proceedings. Framing of issues on the pleadings is one of the important

stage to proceeding before the Court or Tribunal. Issues framed by Court/Tribunal makes aware the parties to the proceedings as to what evidence they have to brought on record before the Court/Tribunal.

15. Section 166 of the M.V. Act envisages for 'Application for Compensation'. Section 166(1)(c) talks about filing of application by legal representatives of the deceased and Section 166(1)(d) by any agent duly authorized by the legal representatives of the deceased. In the case at hand, relationship of non-applicant No.4 as mother of deceased was not disputed. The non-applicant No.4 in her return has raised specific plead that deceased was unmarried and applicant was not wife of the deceased.

16. Order XIV Rule 1 of the Code Civil Procedure, 1908 (hereinafter referred to as 'CPC') provides for framing issues. Order XIV Rule 1 of the CPC reads as under :

“XIV(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Order XIV Rule 4 mentions issues are of two kinds -

- (a) issues of fact,
- (b) issues of law.”

17. In the instant case, there is specific pleading by non-applicant No.4/appellant No.1 in her reply to claim application that applicant/respondent No.1 is not legal heir of deceased and on the date of accident, deceased was unmarried, hence, in view

of specific pleading, it was the duty casted upon the Tribunal to frame “as to whether applicant was legal heir of deceased being his wife?”. Applicant in support of her pleading that she is wife of deceased Late Shyamlal Nirmalkar has placed on record certain documents in the shape of certificates issued by some persons, but those documents are not proved in accordance with law.

18. In view of above, in the considered opinion of this Court, instant case is required to be remitted back to learned Claims Tribunal for deciding the entitlement of applicant/respondent No.1 for receiving compensation on account of motor accidental death of Shyamlal Nirmalkar after framing the issue as under :

“Whether applicant is legal heir/representative and dependent upon Late Shyamlal Nirmalkar being his wife?”

19. So far as other ground raised by learned counsel for the appellants with regard to finding recorded by learned Claims Tribunal of contributory negligence on the part of deceased to the extent of 40% is concerned, deceased was sleeping on the ground near fly-ash pile, deceased was not sleeping on the secured place or any place specified for taking rest, but in an open place, where there was movement of heavy vehicles for loading and transporting of fly-ash. In view of above, I do not find any error in the finding recorded by learned Claims Tribunal with regard to contributory negligence on the part of

deceased to the extent of 40%. Hence, submission made by learned counsel for the appellants is repelled and the finding of contributory negligence is affirmed.

20. Learned Claims Tribunal has calculated the amount of compensation based on income certificate placed on record as Ex.P/14, which does not call for any interference. Learned Claims Tribunal has also added the amount of compensation towards future prospects and awarded Rs.60,000/- towards other conventional heads. Though other conventional heads is on little lower side, but looking to the fact that 50% of established income is added towards future prospects, which is on higher side, I do not find that the amount of compensation calculated by learned Claims Tribunal to be on lower side. Hence, submission made by learned counsel for the appellants that amount of compensation is on lower side is also repelled.
21. For the foregoing reasons, appeal is allowed in part. The matter is remanded back to Additional Motor Accident Claims Tribunal (F.T.C.), Korba, Chhattisgarh only for limited purpose for deciding the entitlement of applicant/respondent No.1 for compensation after framing issue as mentioned above, in accordance with law, after providing adequate opportunity of hearing to all the parties. It goes without saying that the parties to the case shall be granted opportunity to place further oral and documentary evidence before the Tribunal.

22. Since the accident is of the year 2012, learned Claims Tribunal is directed to decide Claim Case No.152 of 2013 as expeditiously as possible preferably within 'five months' from the date of receipt of copy of the order.
23. Original record of Claim Case No.152 of 2013 be sent back forthwith along with copy of this judgment.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh