

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 131 of 2015

Reliance General Insurance Company Limited, Ravi Bhawan, Jaistambh Chowk, Raipur, At Present Branch Office, 5th Floor, National Corporate Park, G.E. Road, P.S -Saraswati Nagar, Civil & Revenue Distt -Raipur (C.G).

---- Appellant/Non-applicant No.3.

Versus

1. Sangeeta Madame W/o Late Shashikant Madame, Aged About 35 Years.
2. Kumari Niyati Madame D/o Late Shashikant Madame, Aged About 2 Years, Minor, Thru- Mother Smt. Sangeeta Madame, Both are R/o : B -692, Sectorvan Parisar, Tah -Gariyaband, Distt -Raipur, (Now Distt -Gariyaband), P.S-Gariyaband, Civil and Revenue Distt -Gariyaband, (C.G).
- --- Claimants/Applicants.
3. Rameshchandra Sahu S/o Jagannath Sahu, R/o: village -Kasibahra, P.S -Dharamgarh, Distt -Kalahandi, Civil and Revenue Distt -Kalahandi, (Odisha).
- ---Non-applicant No.1/Driver.
4. Bhagyadhar Sahu S/o Balkirishna Sahu, R/o -Pachpedi Naka, Raipur, Distt. Raipur, At Present- Dharamgarh, P.S -Dharamgarh, Civil and Revenue Distt – Kalahandi, (Odisha).
- ---Non-applicant No.2/Owner.
5. Smt. Ramvanti Bai Madame W/o Tularam Madame, Aged About 65 Years, R/o -Ward No. 10, Near Ambedkar Pratima, Shankar Nagar, Post Office -Mohan Nagar, Distt -Durg, P.S -Mohan Nagar, Civil and Revenue Distt -Durg, (C.G).
- ---Non-applicant No.4.
6. Archisha Madame Aged About 12 Years, Minor, Thru- Mother Smt. Archana Madame, R/o House No. G-16, PWD Colony, Near Rajbhawan, P.S -Civil Line, Civil and Revenue Distt -Raipur, (C.G).
--Non-applicant No.5/Respondent

MAC No. 724 of 2015

1. Sangeeta Madame W/o Late Shashikant Madame, Aged About 35 Years.
2. Ku. Niyati Madame D/o Late Shashikant Madame, Aged About 2 Years, Minor, Thru- appellant No.1/Mother Smt. Sangeeta Madame, Both are R/o :Van Parisar, Tah -Gariyaband, Distt -Gariyaband, (C.G).
--- Appellants/Claimants

Versus

1. Rameshchandra Sahu S/o Jagannath Sahu, R/o: village -Kasibahra, P.S -Dharamgarh, Distt -Kalahandi, Civil and Revenue Distt -Kalahandi, (Odisha).
- ---Non-applicant No.1/Driver.
2. Bhagyadhar Sahu S/o Balkirishna Sahu, R/o -Pachpedi Naka, Raipur, Distt. Raipur, At Present- Dharamgarh, P.S -Dharamgarh, Civil and Revenue Distt – Kalahandi, (Odisha).
- ---Non-applicant No.2/Owner.

3. Reliance General Insurance Company Limited, Ravi Bhawan, Jaistambh Chowk, Raipur, At Present Branch Office, 5th Floor, National Corporate Park, G.E. Road, P.S -Saraswati Nagar, Civil & Revenue Distt -Raipur (C.G).

----Non-applicant No.3/Insurer.

4. Smt. Rayvanti Bai Madame W/o Tularam Madame, Aged About 65 Years, R/o -Ward No. 10, Near Ambedkar Pratima, Shankar Nagar, Post Office -Mohan Nagar, Distt -Durg, P.S -Mohan Nagar, Civil and Revenue Distt -Durg, (C.G).

- ---Non-applicant No.4.

5. Archisha Madame Aged About 12 Years, Minor, Thru- Mother Smt. Archana Madame, R/o House No. G-16, PWD Colony, Near Rajbhawan, P.S -Civil Line, Civil and Revenue Distt -Raipur, (C.G).

---Non-applicant No.5/Respondent

MAC No.131 of 2015

- For Appellant : Shri Rohitasva Singh, Advocate.
 For Respondent Nos.1 & 2 : Shri Gautam Khetrapal & Shri A.L. Singroul, Advocate.
 For Respondent Nos.3 & 4 : None.
 For Respondent Nos.5 & 6 : Ms. Pushplata Khalkho, Advocate.

MAC No.724 of 2015

- For Appellants/Claimants : Shri Gautam Khetrapal and Shri A.L. Singroul, Advocate.
 For Respondent No.1 & 2 : None.
 For Respondent No.3 : Shri Rohitasva Singh, Advocate.
 For Respondent Nos.4 & 5 : Ms. Pushplata Khalkho, Advocate.
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Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Parth Prateem Sahu, J

12/01/2021

1. As above two appeals arise out of same accident, they are being disposed off by this common order.
2. Challenge in above two appeals is to the award dated 18/12/2013 passed by learned Additional Motor Accident Claims Tribunal, Gariyabandh, (CG) (for short, 'Tribunal') in Claim Case No.61/2010, whereby Tribunal partly allowed application filed under Section 166 of the Motor Vehicle Act, 1988 (for short, 'Act of 1988'), awarded compensation of Rs.17,11,096/- after deducting 50% towards contributory negligence, along with interest @ 9% p.a., fastened

liability upon non-applicant Nos.1 to 3, jointly and severally, to satisfy the amount of compensation.

3. MAC No.131/2015 is filed by appellant-Insurance Company challenging the finding recorded by Tribunal with regard to contributory negligence of non-applicant No.1 -driver of Matador vehicle of which appellant is insurer and also challenged the quantum of compensation.
4. MAC No.724/2015 is filed by appellants/claimants seeking enhancement of amount of compensation on the ground that Tribunal erred in recording a finding that deceased was also contributory negligent to the extent of 50% and thereby deducted 50% of total calculated amount of compensation.
5. Facts relevant for disposal of these appeals are that on 26.03.2010, deceased Shashikant Madame was returning on Maruti Alto Car, (for short, 'Alto Car'), from Mainpur alongwith two other companions namely Rajesh Manual and Trilochan Bairpanthi. In late evening, when they reached near, Urtuli turn, one Matador Vehicle bearing registration No.CG04/J/5655, (for short, 'Offending vehicle'), coming from Gariyaband and going towards Devbhog (opposite direction), driven by non-applicant No.1 rashly and negligently dashed the Alto Car and took it along pushing it about 60 meters. In the said accident, all three occupants of alto car suffered grievous injuries. Initially, they were taken to Primary Health Centre, Gariyaband where Trilochan was declared dead. Looking to serious condition of Shashikant and Rajesh, they were referred to Mekahara Hospital, Raipur. Shashikant was admitted in Life Worth Superficiality Hospital, Raipur where he succumbed to the motor accidental injuries during the course of treatment on 03.04.10. Accident was reported to concerned police station based upon which crime was registered against non-applicant No.1. After completion of investigation charge-sheet was filed.

6. Claimants, who are widow and daughter of Shashikant, filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.85,61,720/- pleadings therein that on the date of accident, deceased was working as "Senior Accounts Inspector' and was posted **at Laghu Vanopaj Jila Union Maryadit Udanti Van Mandal, Gariyaband** on deputation and getting Rs.19,778/- per month as salary.
7. Parents of deceased were impleaded as non-applicants but during the pendency of claim application, father of deceased died and he was deleted from array of non-applicants. Mother of deceased has been shown as non-applicant No.4. Application under Order 1 Rule 10 CPC was filed by Archisa Mandapey and Achrana Mandapey before the Tribunal claiming themselves to be daughter and divorced wife of deceased. Said application was considered and partly allowed by Tribunal and Archisa Mandapey (daughter of deceased) has been impleaded as non-applicant No.5.
8. Non-applicant No.1 & 2, driver & owner of offending vehicle, submitted reply to application, while denying pleadings made therein further pleaded that accident was result of negligence of deceased -driver of Alto Car. Amount of compensation claimed is highly exaggerated.
9. Non-applicant No.3/appellant-Insurance Company in MAC 131/2015 submitted its reply to application, while denying pleadings made therein, further pleaded that if offending vehicle is insured by it, then original of insurance policy must be with non-applicant No.2. In additional pleadings, it was further pleaded that on the date of accident, offending vehicle was plied in breach of policy condition as offending vehicle was not having valid permit and fitness certificate. There was contributory negligence on the part of deceased -driver of Alto Car.

10. Non-applicant No.4, mother of deceased, submitted reply to application, while denying relation of applicants, as pleaded in claim application, pleaded that applicant No.1 is not married wife, applicant No.2 is illegitimate child of deceased. Applicant No.2 and Archish Mandapey both are equally entitled for the share being successors of Late Shashikant.
11. Non-applicant No.5 submitted reply to application and pleaded that applicants are not legal heirs of deceased and non-applicant No.4 and 5 are only legal heirs of deceased.
12. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal has formulated 6 issues for consideration and held that Shashikant Madame died on account of motor accidental injuries while travelling on Alto car due to head-on collision of car with with offending vehicle driven by non-applicant No.1. Income of deceased was found to be proved as Rs.20,783/ per month, Contributory negligence of deceased was found to be proved to the extent of 50%, breach of policy condition was not found to be proved, calculated total amount of compensation as Rs.34,22,192/- and after deducting 50% towards contributory negligence of deceased, awarded Rs.17,11,096/- and fastened liability upon Non-applicant No.1 to 3, jointly & severally, to satisfy the amount of compensation.
13. Learned counsel for appellant-Insurance Company submits that Tribunal erred in awarding excessive amount of compensation without any proof of income of deceased, finding recorded by Tribunal with regard to the contributory negligence to the extent of 50% of deceased is erroneous because present is the case where deceased was found to be under influence of liquor and in such circumstance negligence of deceased ought to

have been held as 100% instead of 50%. Further Tribunal erred in deducting 1/4th instead of 1/3rd towards his personal and living expenses. Tribunal has not conducted proper inquiry as provided under Sections 168 & 169 of the Act of 1988 and Rule 226 of the Chhattisgarh Motor Vehicles Rules, 1994.

14. Learned counsel for the claimants/respondents No.1 & 2 submits that claimants by producing pay bill register as Ex.24 and examining one Manikram Sahu, posted as Assistant Grade-III in the same department where deceased was posted/employed, proved income of deceased as Rs.20,783/-. Submission of learned counsel for appellant-Insurance Company with regard to negligence of deceased to the extent of 100% instead of 50%, is without any material and basis. He further submits that claimants have filed separate appeal bearing MAC No.724/2015 challenging the finding of contributory negligence recorded by Tribunal to the extent of 50% upon deceased, because Tribunal recorded the finding of contributory negligence only taking into consideration the fact that there was head on collusion between two motor vehicles and further taken into consideration MLC report placed on record as Ex.P-3 wherein there is mention of alcoholic smell during breathing. There is no admissible piece of evidence available on record to show that deceased was under the influence of liquor and driving Alto Car in a drunken condition. He submits that there is no blood test report available on record to prove that the deceased was under influence of liquor or drugs to such an extent that he was incapable to exercise proper control over the vehicle. Non-applicant No.1-driver of offending vehicle who could be the best witness did not enter into the witness box nor Insurance Company has examined any evidence in support of its pleadings. He further submits that finding of contributory negligence recorded by Tribunal is erroneous and not sustainable. In fact documentary evidence available on record shows that

accident was the result of sole negligence of non-applicant No.1. In support of his submissions, he placed his reliance upon the rulings of Hon'ble Supreme Court in case of **Tulsi Na fernandes and others versus Jokim Javours goods & Ors¹**, **Jiju Kuruvila and others v. Kunjamma Mohan and Ors²** and **Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors³**.

15. Ms. Pushplata Khalkho, learned counsel for respondent No.6 in MAC No.131/2015 supports impugned award passed by Tribunal.

16. So far as ground raised by learned counsel for appellant-Insurance Company in MAC No.131/2015 with regard to quantum of compensation and income of deceased is concerned, perusal of pleadings made in application would show that claimants have pleaded that deceased was a Senior Accounts Inspector and getting Rs.19,778/- per month as salary. In support of employment and income of deceased, claimants have examined one Manikram Sahu, Asst Grade -III posted in same department where deceased was posted. as AW-3 This witness produced Pay-Bill register of the year 2009-10, wherein gross income of deceased has been shown as Rs.20,783/- and net income as Rs.18,458/-. Photocopy of payable register is marked as Ex.P-24(c). From total income of Rs.20,783/-; there is deduction towards GPF of Rs.2,100/-; deduction towards general insurance of Rs.150/-; deductions towards festival advance of Rs.75/- thereby total deduction was Rs.2,352/-; net income of deceased has been shown as Rs.18,458/-. In view of above oral and documentary evidence brought on record by claimants, we do not find any force in the submission made by learned counsel for appellant -Insurance Company that income of deceased has not been proved by placing admissible piece of evidence, hence, said submission is repelled. We

1 (2013) 4 TAC 827 SC.

2 (2013) 9 SCC 166.

3 (2013) 10 SCC 695. .

affirm the finding recorded by Tribunal that income of deceased was Rs.20,783/- per month. Tribunal has added 30% of established income towards future prospects, deducted 1/4th towards personal and living expenses and applied multiplier of '14', which are inconsonance with the ruling of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors⁴** and **National Insurance Company Ltd vs. Pranay Sethi⁵**.

17. Tribunal has awarded Rs.1,85,000/- under other conventional heads which in the given facts and circumstance of the case and as per ruling of Hon'ble Supreme Court in case of **Pranay Sethi (supra)** appears to be on higher side and requires to be scaled down.
18. So far as submission made by learned counsel for the Insurance Company with regard to the contributory negligence is concerned, we will consider this ground along-with the ground raised by claimants in MAC No.724/2015.
19. To appreciate the submission made by learned counsel for the appellants in both the appeals, we have perused the findings recorded by Tribunal in Para No.22 to 25 of impugned award, which are with regard to contributory negligence. Tribunal has recorded that deceased was driving the Alto Car at the time of accident, taken into consideration that both vehicles were coming from opposite direction, there was head on collision between two motor vehicles, Alto Car was dragged about 60 meters towards Mainpur and further MLC report Ex.P-3 wherein doctor has recorded a finding regarding smell of alcohol during breathing and held that there was contributory negligence of both the drivers. One of the fact considered by Tribunal for arriving at finding of contributory negligence on the part of deceased is smell of Alcohol in breathing of deceased. Fact of alcoholic smell in itself will not prove that

4 (2009) 6 SCC 121

5 (2017) 16 SCC 680

deceased at the time of accident was under the influence of alcohol. Something more is required to be proved to hold that person concerned driving motor vehicle is under the influence of alcohol or drugs to such an extent that he was incapable to exercise proper control. Section 185 of the Act of 1988 provides for punishment for driving of motor vehicle by a drunken person or by a person under influence of drugs. Relevant portion of provisions of Section 185 of the Act of 1988 is reproduced for ready reference :-

"Section 185. Driving by a drunken person or by a person under the influence of drugs, – whoever, while driving, or attempting to drive, a motor vehicle,-

[(a). has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or].

(b). is under this influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle,

shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

20. There is no blood test report available on record to show presence of alcohol in blood exceeding 30mg/100ml of blood and to prove that deceased was under the influence of liquor.

21. Issue with regard to driving of motor vehicles by a person who had consumed liquor, has been considered by Hon'ble Supreme Court in case of

Jiju Kuruvila (supra) and held thus:-

“20.5. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the

other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual”

20.6. The post-mortem report, Ext.-A5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal as his stomach was half full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit. The aforesaid evidence, Ext.-A5 clearly suggests that the deceased had taken liquor but on the basis of the same, no definite finding can be given that the deceased was driving the car rashly and negligently at the time of accident.

21. In view of the aforesaid, we, therefore, hold that the Tribunal and the High Court erred in concluding that the said accident occurred due to the negligence on the part of the deceased as well, as the said conclusion was not based on evidence but based on mere presumption and surmises.”

22. Taking support of aforementioned ruling of Hon'ble Supreme Court and the provisions of Section 185 of the Act of 1988, we are of considered view that there is no acceptable/admissible piece of evidence to hold that deceased was under influence of liquor and contributed to the accident.

23. Other aspect of the case is that though there was head on collusion between two vehicles but looking to the spot map (Ex.P-4) alongwith other materials available on record, it is apparent that offending vehicle after causing accident, pushed /dragged Alto Car about 60 meters on the direction to which offending vehicle was travelling. Perusal of spot map and other evidence shows speed of offending vehicle and manner in which accident took place. Contributory negligence is the fact which is required to be proved by placing cogent and reliable piece of evidence on record. In this case driver of offending vehicle -non-applicant No.1, who could be the best witness to prove negligence and contributory negligence on the part of deceased, did not enter into the witness box.

24. The Hon'ble Supreme Court in case of **Minu Rout** (supra), while considering the issue of contributory negligence where there was head on collision between the truck and car, held thus :-

“17. The Tribunal, on appreciation of the oral and documentary evidence, has recorded the erroneous finding by placing strong reliance upon the charge- sheet, Ext.1 without considering the fact that the criminal case was abated against the deceased and further has made observation in the judgment that the appellants had not produced the FIR. Therefore, it has held that there was 50% contributory negligence on the part of the deceased driver in causing accident. The Tribunal ought to have seen that non-production of FIR has no consequence for the reason that charge -sheet was filed against the truck driver for the offences punishable under Sections 279 read with Section 302 IPC read with the provisions of the MV Act. The Insurance Company, though claimed permission under Section 170 (b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eyewitness to prove the allegation of contributory negligence on the part of the deceased Sushil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner.

25. In view of aforementioned rulings of Hon'ble Supreme Court, if the facts of the present case are taken into consideration, we find that except Alcoholic smell there is no proof that deceased was under influence of liquor, there is no admissible piece of evidence that deceased was driving Alto Car in rash and negligent manner but for that there was head on collision between two motor vehicles. In view of aforementioned facts and evidence available on record and further taking note of above rulings of Hon'ble Supreme Court, we hold that finding of contributory negligence recorded by Tribunal is without

there being any admissible piece of evidence which is liable to be and it is hereby set aside. We hold that accident was a result of sole rash and negligent act of non-applicant No.1-driver of offending vehicle.

26. So far as submission with regard to quantum of amount of compensation is concerned, as we have recorded in preceding paragraphs that Tribunal has awarded excessive amount of compensation under other conventional heads, which is to be calculated based on the guidelines issued by Hon'ble Supreme Court in case of **Pranay Sethi (supra)**, which should be Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.40,000/- towards filial consortium, Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate. Now, total amount of compensation on other conventional heads will be Rs.1,50,000/- instead of Rs.1,85,000/- as awarded by Tribunal.

27. Now, claimants are entitled for Rs.32,37,192/- towards loss of dependency and Rs.1,50,000/- towards other conventional heads which would make total amount of compensation as Rs.33,87,192/-. Other conditions of impugned award with regard to the award of interest, apportionment of amount of compensation shall remain intact.

28. In the result :

- **MAC No.131 of 2015** filed by appellant/Insurance Company is allowed in part and amount of compensation calculated by Tribunal is reduced to **Rs.33,87,192/-** from **Rs.34,22,192/-**.

- * **MAC No.724 of 2015** filed by claimants is allowed in part and finding recorded by Tribunal towards contributory negligence to the extent of 50% on the part of deceased is set aside. It is ordered that claimants are entitled for Rs.33,87,192/- as total compensation with interest @ 9% p.a.

from the date of filing of claim application till its realization. 50% of the enhanced amount of compensation shall be kept in a fixed deposit scheme of any nationalized bank for a period of three years in the ratio of apportionment fixed by the Tribunal. Other conditions of the award impugned shall remain intact.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-