(2023) 02 CHH CK 0069

In the Chhattisgarh High Court

Case No : MAC No. 1035 Of 2016

National Insurance Company Ltd APPELLANT

Vs

Indrani Bai Verma RESPONDENT

Date of Decision : 24-02-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 173

Citation : (2023) 02 CHH CK 0069

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Raj Awasthi, P.R. Patankar, Rohitashva Singh

Final Decision : Partly Allowed

Judgement

1. Appellant/Insurance company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the award dated 11.05.2016 passed by VI Additional Motor Accident Claims Tribunal, District- Durg (C.G.) in Claim Case No. 17/2015 awarding the total compensation of Rs.8,44,219/- to the claimants fastening liability jointly and severally upon the appellant/insurance company along with respondents No.5 & 6, driver and owner of the vehicle.

2. As per claim petition, on 03.08.2014 at around 6:30 P.M., while Hinccharam Verma was returning to his Village- Arasnara by Moped bearing registration No. CG-07-LE-2554, on the way, respondent No.5 by riding TVS Vego motorcycle (hereinafter referred to as “the offending vehicle”) bearing registration No. CG-07-AJ-8903 in rash and negligent manner hit Hinchharam Verma from behind as a result of which, Hinchharam Verma sustained grievous injuries and ultimately succumbed to the same. At the time of accident, the offending vehicle was insured with the appellant/National Insurance Company Ltd.

3. On claim petition filed by the Claimants under Sections 166 & 140 of the Motor Vehicles Act, the Claims Tribunal considering the pleadings of the respective parties and the evidence adduced in support thereof passed the impugned award

as mentioned in the judgment.

4. Learned counsel for the appellant/insurance company submits that the impugned award is contrary to the facts and law applicable to the case. In fact, present is a case of contributory negligence on the part of the deceased but the Tribunal has recorded negative finding in this regard. The Tribunal was also not justified in assessing the monthly income of the deceased as Rs.4,500/- without any cogent and reliable evidence being available in this regard. Likewise, under the conventional heads also, the Tribunal has awarded excessive amount in favour of the claimants. Further in view of the oral and documentary evidence, it is clear that the Tribunal has wrongly fastened the liability on the Insurance Company. For all these reasons, the impugned award is liable to be set aside and the appellant be exonerated of its liability. Reliance has been placed on the judgment passed by Hon'ble Allahabad High Court in the matter of The New India Assurance Company Ltd. v. Dr. Sudhir Kumar Gupta & others in 2014 (2) ACCD 1014.

5. On the other hand, learned counsel for respondents have supported the impugned award.

6. Heard counsel for the parties and perused the impugned award.

7. As regards the liability, it is not in dispute that at the relevant time, the offending vehicle was duly insured with the appellant/Insurance Company. From the evidence adduced by the Insurance Company, it could not prove breach of any of the terms and conditions of the insurance policy and the Tribunal also found that non-applicant No.1/ Driver was having a valid and effective driving licence on the date of accident. This being the position, this Court is of the opinion that the Tribunal was justified in fastening liability on the Insurance company of satisfying the award.

8. Learned Claims Tribunal framed issue No.4 as under:-

4- क्या उक्त दुर्घटना मृतक की योगदायी “नही”

उपेक्षा के कारण घटित हुई?

9. So far as contributory negligence on the part of the deceased is concerned, Hon'ble Apex Court in the matter of Jiju Kuruvila and Ors. Vs. Kunjujamma Mohan and Ors. reported in (2013) 9 SCC 166 has held in para 20.5 as under:-

“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 vehilce 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 the 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.”

10. Learned Tribunal considering the evidence of non-applicant No. 1 Maniram Deshlahare (Driver), the inspection report Ex.D-1 and the manner in which the accident occurred, recorded a finding that there does not appear contributory negligence on the part of the deceased in causing the accident. This Court finds no illegality or infirmity in the said finding of the Tribunal.

11. Now this Court shall examine as to whether the compensation of Rs. 8,44,219/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case and Rs.6,00,000/- received by claimants as per the order of this Court should be adjusted or not while deciding the claim petition.

12. Learned counsel for respondents No. 1 to 4 submits that in this case, learned Tribunal has not awarded future prospects as per judgment passed by Hon'ble Supreme Court in the matter of National Insurance Company Ltd., V. Pranay Sethi and others reported in (2017) 16 SCC 680.

13. So far as the income of the deceased is concerned, though the claimant has pleaded and deposed that the deceased was earning Rs. 6,000/- per month as a labour but in absence of any documentary evidence to this effect, the Tribunal considering the fact that the accident occurred in the year 2014 assessed the per day income of the deceased as Rs. 150/- i.e. Rs.4,500/- P.M. Being so the monthly income assessed by the Tribunal cannot be said to be on the higher side.

14. True it is that Tribunal has not awarded any amount towards future prospects of the deceased. Therefore, keeping in view, the nature of job of the deceased and his age in law of judgment of Hon'ble Supreme Court in the mater of 'NATIONAL INSURANCE COMPANY LTD., VS PRANAY SETHI AND OTHERS', (2017) 16 SCC 680, there has to be 10% addition of his income towards future prospects. Thus, after adding 10% towards future prospects, the monthly income raises to Rs.4,950/- i.e. Rs. 59,400/- per annum. Since the deceased was survived by 4 dependents/claimants, after making ¼ deduction towards personal and living expenses of the deceased i.e. Rs. 14,850/-, the annual loss of dependency comes to Rs. 44,550/-In view of judgment of the Hon'ble Supreme Court in Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 considering the age of the deceased, after applying multiplier of 9, the total loss of dependency comes to Rs.4,00,950/-. This apart in view of decision of Hon'ble Supreme Court in PRANAY SETHI (supra) the claimants are also entitled for Rs. 15,000/- towards loss of estate and Rs. 15,000/- for funeral expenses and respondent No.1 is entitled for Rs.40,000/- towards loss of consortium. In addition thereto, as per the Judgment of Hon'ble Supreme Court in the matter of Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram And Others reported in (2018)

18 SCC 130, respondents No.2, 3 & 4 the children of the deceased, are also entitled for Rs.40,000/- each towards loss of Parental Consortium. Thus, the claimants are held entitled for compensation in the following manner:-

S.No.	Particular	Awarded by the Tribunal	Awarded by this Court
1.	Monthly Income of the deceased	4,500/-	4,500/-
2.	Annual Income of the deceased	54,000/-	54,000/-
3.	Future prospect @ 10%	Nil	5,400/-
4.	Total Income	54,000/-	59,400/-
5.	Personal Exp. (1/4th)	13,500/-	14,850/-
6.	Net Annual Income	40,500/-	

44,550/-

7.

Multiplier of 9 applied to assess total loss of dependency

3,64,500/-

4,00,950/-

8.

Funeral Expenses

25,000/-

15,000/-

9.

Loss of estate

10,000/-

15,000/-

10.

For Spousal Consortium to respondent No.1

1,00,000/-

40,000/-

11.

Towards Parental Consortium to respondents No.2, 3 & 4 @ Rs. 40,000/- each

3,00,000/-

1,20,000/-

12.

Medical Expenditure

44,719/-

44,719/-

Total Compensation

8,44,219/-

6,35,669/-

15. For the foregoing reasons, the appeal is allowed in part. The amount of compensation of Rs.8,44,219/- awarded by the Tribunal is reduced to Rs.

6,35,669/.

15.1 Since in compliance of the order of this Court dated 11.08.2016, the appellant/Insurance Company has deposited Rs.6,00,000/- with the concerned Tribunal and the same has been received by the claimants, the Insurance Company is liable to pay the remaining amount of Rs.35,669/- to the claimants. This apart the Insurance Company shall also be liable to pay interest on the total amount of compensation of Rs.6,35,669/- @ 9% p.a. to the claimants from the date of claim petition till actual payment.

16. The impugned award stands modified to the above extent and rest of the conditions shall remain intact.

