

(2024) 01 CHH CK 0108
In the Chhattisgarh High Court
Case No : MAC No. 661 Of 2016

Pinky		APPELLANT
	Vs	
Mahendra Kumar		RESPONDENT

Date of Decision : 30-01-2024

Acts Referred:

Chhattisgarh Motor Vehicles Rules, 1994 — Rule 242(3)
Code of Civil Procedure, 1908 — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 166
Indian Penal Code, 1860 — Section 166

Citation : (2024) 01 CHH CK 0108

Hon'ble Judges : Radhakishan Agrawal, J

Bench : Single Bench

Advocate : Amit Kumar Sahu, Priyanka Rai, Abhishek Thakur, Sourabh Sharma, Qamarul Aziz

Final Decision : Partly Allowed

Judgement

1. This is claimants' appeal for enhancement of compensation awarded by the Additional Motor Accidents Claims Tribunal, Bemetara, Dist. Bemetara (for short 'the Tribunal') in claim case No.37 of 2015 vide award dated 06.02.2016.

2. The appellants/claimants filed claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') seeking compensation to the tune of Rs.13,50,000/- under various heads for the death of Hemant Satnami in the motor accident took place on 09.11.2014 caused by respondent No.1 herein by driving tractor bearing registration No.CG/04/DA/3653 and trolley bearing registration No.CG/04/DB/9452 (for short, the offending vehicle) in a rash and negligent manner by dashing the motorcycle bearing registration No.CG-25-1801 being driven by deceased Hemant Satnami as soon as he reached near Yadav Hotel along with household material.

3. It is not disputed that respondent No.1 is the driver of the offending vehicle and respondents No.2 & 3 are the owner of the same vehicle, but, they denied to

pay compensation as the offending vehicle was duly insured and that they are having valid documents. On the other hand, respondent No.4, by filing its written statement, admitted that respondent No.4 is the insurer of alleged Tractor and denied the averments with respect to income based on no evidence and the deceased was not having valid and effective driving licence to drive the motorcycle, while respondent No.5, by filing its written statement, pleaded that trolley of the tractor was not insured with its company for want of verification of insurance policy and that accident took place due to tractor being driven by its driver in a rash and negligent manner and not on account of trolley and also that there was negligence on the part of the deceased, therefore, it is not responsible for payment of compensation

4. The learned Tribunal, on a close scrutiny of the evidence led, held: the accident had occurred due to rash and negligent driving of offending vehicle by its driver Mahendra Kumar/respondent No.1 herein; deceased Hemant Satnami sustained multiple injuries and died; there was contributory negligence on the part of the deceased; terms and conditions of the insurance policy could not be established; assessed the total compensation of Rs.7,93,500/- and since the deceased was held equally liable for contributory negligence on his part to the extent of 50%, therefore, deducted 50% of the amount assessed by it and then awarded the remaining 50% amount (Rs.3,96,750/-) to the claimants while fastening liability upon respondent No.4 – I.C.I.C.I Lombard Insurance Company as it could not establish violation of policy conditions.

5. Shri Amit Kumar Sahu, learned counsel for the appellant submits that the Claims Tribunal has fallen in error in taking the monthly income of the deceased as Rs.100/-. It is also submitted by him that the Claims Tribunal also erred in holding the deceased equally responsible for cause of accident to the extent of 50%. While inviting attention to this Court towards Ex.P/3, which is a spot map, it is next contended that there was no head on collision between the vehicle and it was the driver of the offending vehicle, who was wholly responsible for cause of accident and not the deceased. It is further submitted by him that after due investigation, Police have filed charge sheet against respondent No.1/ driver of the offending vehicle. It is also submitted that both tractor and attached trolley are involved in the accident, therefore, both the insurance companies are liable to satisfy the award. On these premises, learned counsel for the appellants urged that the compensation awarded by the Tribunal may suitably be enhanced.

6. Ms. Priyanka Rai, learned counsel for respondent No.2 submits that both tractor and trolley were duly insured by respondents No.4 & 5/insurance companies and that there was no breach of policy conditions by owner at the time of accident, therefore, the findings arrived at by the Claims Tribunal cannot be faulted with.

7. Likewise, Shri Sourabh Sharma, learned counsel for respondent No.4 submits that although the tractor was insured with respondent No.4, but at the same time, the trolley was also liable for cause of accident as it was insured by

respondent No.5 and was attached with tractor at the time of accident, therefore, respondent No.5 is also equally responsible for payment of compensation to the claimants while admitting the fact that it could not establish the violation of policy conditions.

8. Per contra, Qamarul Aziz, learned counsel for respondent No.5 submits that since on the date of incident, the tractor was insured by respondent No.4, therefore, learned Claims Tribunal has rightly held respondent No.4/insurance company liable for payment of compensation, although he has admitted that respondent No.5 is the insurer of trolley on the date of accident.

9. I have heard learned counsel for the parties and perused the award impugned including the record of the Tribunal.

10. Admittedly, there was no separate appeal by respondents including respondent/insurance companies.

11. As regards the contributory negligence on the part of the deceased, perusal of record shows that the Tribunal, relying upon the statement of A.W.2 Shatruhan Lahre with respect to the accident being head on collision between the two vehicles, has held the deceased equally responsible for cause of accident. Respondent No.1/driver was examined as N.A.W.1, who has stated in his cross-examination para 8 that a case of rash and negligent driving is pending against him due to said accident but denied that the deceased was hit by the front part of his tractor trolley. However, he admitted that at the place of accident there was junction of three roads (Tiraha) towards Bemetara, Bhilai and Saja. He has further stated that he did not file any report as he has not been negligent. In cross-examination para 3, A.W.3 Shatruhan Lahre has stated that deceased Hemant was going towards Saja from Berla and at the same time, the offending vehicle was also going towards Berla from Bemetara. After due investigation, the Police have filed final report (Ex.P.1) along with F.I.R. (Ex.P.2) and spot map (Ex.P.3) and Non-applicant No.1/respondent No.1 herein was charge sheeted for the offence punishable under Section 304-A IPC. A perusal of spot map (Ex.P.3) would clearly reveal that deceased was moving towards Saja road from Berla on his left side whereas the offending vehicle, being driven by respondent No.1, was going towards Berla from Bemetara and from perusal of F.I.R. and Final Report, it is clear that it was respondent No.1/Non-applicant No.1, who was driving the offending vehicle in a rash and negligent manner, dashed the motorcycle being driven by the deceased on his left side and caused the accident leading to death of deceased. Therefore, it is held that owing to rash and negligent manner by respondent No.1 while driving the offending vehicle, the deceased has lost his life in the said accident and there is no contributory negligence on the part of the deceased in the said accident. In view thereof, the finding arrived at by the Tribunal that deceased was also equally responsible for cause of accident is erroneous.

12. Now, I shall deal with the compensation assessed by the Tribunal. The

Tribunal, despite there being no documentary evidence to show the exact income of the deceased, has assessed the monthly income of the deceased at Rs.100/- per day and Rs.3000/- per month. The approach of the Tribunal in assessing monthly income of the deceased is not just and proper. Looking to the facts and circumstances of the case and considering his nature of job and taking into account the fact that the incident occurred in the year 2014, it can safely be held that he could have easily earned Rs.5,000/- per month by working as mason. I, therefore, propose to re-compute the compensation taking the income of the deceased at Rs.5,000/- per month and Rs.60,000/- per annum. The Tribunal was justified in determining the age of the deceased as 26 years at the time of accident and by applying the principles of law laid down by the Supreme Court in the matter of National Insurance Company Limited vs. Pranay Sethi reported in (2017) 16 SCC 680, 40% (Rs.24,000/-) towards increase in future income is added and after addition of Rs.24,000/-, the annual income would come to Rs.84,000/-. It is noteworthy to mention here that there are total 4 claimants (dependents) in number and looking to the dependency, the Tribunal deducted 1/4th amount, i.e., Rs.21,000/- towards his personal and living expenses in the light of decision in the matter of Sarla Verma vs. Delhi Transport Corporation & ors., reported in (2009) 6 SCC 121 and if 1/4th amount is deducted, the total annual income would come to Rs.63,000/-. The Tribunal used multiplier 17 in the light of decision by the Supreme Court in the matter of Sarla Verma vs. Delhi Transport Corporation (supra), while computing the total compensation. If the total annual income is multiplied by 17, then the total loss of dependency would come to Rs.10,71,000/-.

13. Further, the Tribunal has awarded Rs.25,000/- towards funeral expenses, Rs.30,000/- towards love and affection as well as mental agony and Rs.50,000/- towards loss of consortium and mental agony and thus awarded only a sum of Rs.1,05,000/-, which, in my view, needs consideration.

14. In view of dictum rendered in the case of Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others reported in (2018) 18 SCC 130, appellant No.1, being wife of the deceased, is entitled to be awarded a sum of Rs.40,000/- towards spousal consortium. This apart, the appellants No. 2 to 4 would also get Rs.40,000/- each towards parental consortium. Further, in view of dictum rendered in the case of National Insurance Company Limited vs. Pranay Sethi (supra), the appellants are also entitled to be awarded a sum of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Thus, the appellants are held entitled to Rs.1,90,000/- under conventional heads in place of Rs.1,05,000/- as made by the Tribunal.

15. Accordingly, it is held that the appellants are entitled to be awarded a total sum of Rs.12,61,000/- as compensation in place of Rs.3,96,750/- as awarded by the Tribunal. Since the Tribunal has already awarded a total compensation of Rs.3,96,750/-, therefore, after deducting the same from the amount of compensation of Rs.12,61,000/-, the appellants are held entitled to get a sum of

Rs.8,64,250/- along with interest as awarded by the Tribunal from the date of filing of claim petition till its realisation.

16. Now, the question that arises for consideration is as to whether both the insurance companies are liable for payment of compensation or not? Before dealing with the said question, it is relevant to quote sub-rule (3) to Rule 242 of the Chhattisgarh Motor Vehicles Rules, 1994 (for short, Rules, 1994), which read as under :-

"242. Form of appeal and contents of memorandum ---

(1) xxxx xxxx xxxx xxxx

(2) xxxx xxxx xxxx xxxx

(3) Save as provided in sub-rule (1) and (2) the provisions of Order XXI and Order XLI of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908) shall mutatis mutandis apply to appeals preferred to the High Court under Section 173."

It is also relevant to reproduce the provisions contained in Order 41 Rule 33 of C.P.C., which is as under :-

Power of Court of Appeal---- The Appellate Court shall have

power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:

[Provided that the Appellate Court shall not make any order under Section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]

17. A bare perusal of above provisions read with sub-rule (3) of Rule 242 of Rules, 1994, would clearly reveal that the appellate Court is empowered to make or change any order that ought to have been passed and to pass or make further or other decree or order as the case may require.

18. When the matter is examined in the light of above broad features of the case, in the considered opinion of this Court, the contention of learned counsel for respondent No.5 that it is not liable for payment of compensation as the accident took place not by the trolley has no force, as such, it is rejected, as on the date of incident, the trolley insured by respondent No.5 was attached with tractor and was form part of the offending vehicle. By applying the provisions

contained in the Order 41 Rule 33 of C.P.C. read with sub-rule (3) of Rule 242 of Rules, 1994 and in the facts and circumstances of the case, I direct both the insurance companies (Respondents No.4 and 5) to satisfy the amount of compensation in the ratio of 50:50, as awarded by this Court, along with interest as awarded by the Tribunal from the date of claim petition till its realisation.

19. For the reasons mentioned herein above, the appeal is allowed in part. The award is modified to the above extent. Rest of the conditions of the award shall remain in tact. The amount if deposited by the insurance company pursuant to the award impugned passed by the Tribunal shall be adjusted.