IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)
M.A. No.10 of 2019

Sri Ram General Insurance Co. Ltd., 74(192), G.T. Road, P.C. Chatterjee Market, 3rd Floor, A Block, Asansol, Distt. Burdwan (W.B,.) through its Assistant Manager Legal-Mohammad Imran s/o Abul Akalam, aged about 33 years, r/o C/o Shriram General Insurance Co Ltd., 2nd Floor, Jha Niwas, Opp. Yuvraj Palace, Diversion Road, P.O. & P.S. Doranda, Dist. Ranchi

.... …. Opposite Party No.2/Appellant

Versus

1. Sabahat Naz, W/o Late Azad Hussain,

2. Alia Naz, D/o Late Azad Hussain, minor

3.Ultaf Hussain, S/o Late Noor Mohamad, aged about 65 years, All are permanent resident of Malkera, Chaitudih, P.O. Malkera, P.s. Katras, Distt. Dhanbad, Jharkhand.

No.2 is minor and is represented by her natural guardian mother, who is respondent No.1-Sabahat Naz,

All R/o Vill. P.O. & P.s. Narayanpur, Distt. Jamtara

.... Claimants/Respondents

4. Ritesh Kumar Sharma, S/o Surendra Sharma, R/o Sonardangal, Chirkunda, P.S. Chirkunda, Distt. Dhanbad (Jharkhand)

.... Opp. Party No.1/Respondents

PRESENT
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. Ashutosh Anand, Adv.
Mr. Sahbaj Akhtar, JC to
Mr. Ashutosh Anand
For the Resp. Nos.1 & 3 : Mr. Rajiv Kr. Karan, Advocate
For the Resp. No.4 : None

JUDGMENT

C.A.V. ON 13/12/2023 **Pronounced On 12 /03 /2024**

Heard learned counsel for the parties.

2. The present miscellaneous appeal has been preferred on behalf of appellant-Sri Ram General Insurance Company Limited for setting aside the judgment/award dated 20.08.2018 passed by Sri Peeyush Kumar, District Judge-I-cum-PO M.A.C.T., Dhanbad in Motor Accident Claims Case No.284 of 2015 and for exonerating the appellant from payment of the award amount.

3. Upon service of notice to the respondent Nos.1 to 4, respondent Nos.1 to 3 appeared in this appeal by filing *Vakalatnama*. However, no one appeared on behalf of the respondent No.4 in spite of valid service of notice through his wife.

FACTUAL MATRIX

4. One Azad Hussain who was working in Sri Shyam Surgical, Dumka Road, Jamtara was going to Murli Pahari for supplying medicine and reached near Ghati Jungal, meanwhile, a pulsar motorcycle bearing Reg. No. JH-10AM-5570 was coming from opposite direction overloaded with three passengers violently dashed the motorcycle of Azad Hussain causing his instantaneous death. The legal heirs and representatives of the deceased instituted the FIR vide Narayanpur P.S. Case No.120 of 2015 for the offence under sections 279, 337, 338, 304A and 427 of Indian Penal Code against the driver of the offending pulsar motorcycle bearing Reg. No. JH-10AM-5570. Charge-sheet was submitted against one Harikesh Chaudhary who was driving the said motorcycle at the relevant time of accident. The claimants have revealed the age of deceased 37 years at the time of occurrence and he was earning Rs.8,000/- per month from his private service and claimed compensation amount to the tune of Rs.10 lakhs.

5. O.P. No.1-the owner of the offending vehicle bearing Reg. No.JH-10AM-5570 in his written statement, he admits that he is registered owner of the said vehicle but the driver who was driving the vehicle has not been made party in this case. It is further pleaded that one Ritesh Kumar Sharma, S/o Surendra

Sharma was duly authorized to drive the said vehicle through notary affidavit dated 31.01.2014. At the alleged time of accident, the driver of the offending motorcycle having valid license and photocopy of the documents of the said vehicle is attached as Annexure-2. There was no fault on the part of the driver of the offending vehicle in the happening of the accident. It is further pleaded that the motorcycle of the opposite party was insured with Sri Ram Insurance Co. Ltd. vide policy No.334028/31/15/001106 w.e.f., 16.01.2015 to 15.01.2016. The opposite party has no knowledge about the age and income of the deceased, since, the vehicle of this opposite party was insured with defendant No.2 Sri Ram Insurance Co. Ltd., hence, all the liability for payment of the compensation is on the insurance company.

6. The opposite party No.2-insurance company denied the factum of the accident by the offending vehicle and also age and income of the deceased but admitted the insurance of the offending vehicle bearing Reg. No.JH-10AM-5570 with this company vide policy No.334028/31/15/001106 w.e.f., 16.01.2015 to 15.01.20216.

It is further pleaded that the driver of the offending vehicle was not holding a valid and effective driving license at the time of accident and was also not qualified for holding and obtaining such driving license, hence, the appellant-insurance company is not liable to satisfy any compensation award due to breach of terms and conditions of the policy. The claimants have also not disclosed the registration number of the motorcycle and its insurer by which the deceased was travelling, which is necessary for effective adjudication of the case. The deceased himself was not holding any valid driving license and the age and income of the deceased is also required to be proved strictly by the claimants and the amount claimed is exorbitant. It is also pleaded that this is case of non-joinder of necessary party in as much as the owner/insurer of motorcycle by which the deceased was travelling are necessary

party of this case and in its absence, the issues involved in this case can not be fully and effectively adjudicated upon. There is head collision between the vehicles, therefore, it is a clear cut case of contributory negligence in equal ratio of the drivers of the both vehicles. Therefore, the opposite party No.2/appellant can not be saddled with liability to pay entire compensation amount.

In the premises of the above facts, the insurance company is liable to be absolved from any liability.

7. On the basis of pleadings of the parties following issues were settled for adjudication by learned Tribunal:-

(i) Whether the claim case is maintainable or not in the present form?

(ii) Whether this court has jurisdiction to decide the case or not?

(iii) Whether there is valid cause of action for the suit?

(iv) Whether the deceased died due to road accident caused by motorcycle No. JH-10AM-5570 which was being driven rashly and negligently by its driver?

(v) Whether the owner/insurer of the vehicle was liable for the payment of compensation amount or not?

(vi) Whether plaintiffs are entitled for compensation or not?

(vii) Whether the plaintiffs are entitled for any other reliefs?

8. In course of trial altogether four witnesses were examined by the claimants i.e. P.W.1-Sabahat Naz, wife of the deceased, PW 2 Md. Ehsanul Haque, eye-witness, PW3 Sonu Poddar owner of the Shri Shyam Surgical Firm and PW 4 Ulfat Hussain, father of the deceased. Apart from oral testimony of the witnesses, documentary evidence has been adduced as under:-

Ext.1 is salary certificate of Md. Azad Hussain.

Ext.2 is certified copy of F.I.R.

Ext.3 is certified copy of charge sheet of Jamtara (Narayanpur) P.S. Case No.120/15, G.R. Case No.647/15.

Ext.4 is the photocopy of the post mortem report of the deceased.

Mark 'x' for identification is photocopy of the registration of offending vehicle.

Mark 'x/1' for identification is photocopy of certificate of insurance policy.

On the other hand, no oral and documentary evidence has been adduced by the parties.

9. Learned Tribunal has taken together issue Nos.4 and 7 for adjudication as they are inter-related with main issues. Learned Tribunal after discussing at length the oral testimony of eye witness of the accident (P.W.-2), and also the FIR and the charge-sheet submitted in the police case and the photo-copy of the post-mortem of the deceased came to conclusion that the deceased died in a road accident due to rash and negligent driving by the driver of the offending vehicle bearing Reg. No.JH-10AM-5570 and dashed in the motorcycle of the deceased due to which he died on spot.

10. Learned Tribunal also recorded findings that the owner of the offending vehicle has filed certificate of insurance policy of the offending vehicle, which was valid and effective on the date of accident but so far the driving license of the driver is concerned the same has not been produced either by the claimants or the opposite party No.1, hence, opposite party No.2 is liable to pay the compensation amount with right to recovery of the same from the owner of the offending motorcycle. Accordingly, above issues were decided in favour of the claimants. Since the main issues are decided in favour of the claimants, hence, ancillary issues have also been decided in favour of the claimants. Learned Tribunal on the basis of proved facts ascertained monthly income of the deceased to Rs.8,000/-, which has been proved by P.W.-3 who is employer of deceased and has not been rebutted by any of the defendants either by way of cross-examination of the witness or adducing any evidence to rebut the same. The age of the deceased

has shown to be 37 years for which multiplier of 15 is available and also adding 40 % future prospect, loss of state, loss of consortium and funeral expenses total amount of Rs.14,14,000/- was assessed as compensation which was awarded along with interest @ 6 % per annum.

11. Learned counsel for the appellant assailed the impugned order mainly on following grounds:

(i) It is argued that there was head on collision between two motorcycles coming from opposite direction hence, both vehicles have equally contributed in the happening to the accident. There must be apportionment of liability to the extent of 50% on each vehicle/insurer but the claimants have not made party to the owner and the insurer of the vehicle driven by the deceased in this regard. Learned counsel for the appellant has placed reliance upon the judgment of Hon'ble Apex Court in the case of ***T.O. Anthony vs. Karvarnan and Ors. reported in (2008) 3 SCC 748.***

(ii) Learned Tribunal has ignored the specific pleading of the insurance company as regards contributory negligence and no issue was framed to decide the same.

(iii) Since, no driving license of the driver of any vehicle has been brought on record and the appellant/opposite party No.2 has mentioned the name of driver against whom no charge-sheet has been submitted in the criminal case, the claimants have deliberately failed to produce the driving license, which indicates that there was no driving license of the driver of the offending motorcycle as such insurance company ought to be completely and absolutely exonerated from liability to indemnify the insured in payment of compensation.

(iv) Learned Tribunal has erred in taking income of the deceased as Rs.8,000/- per month without any substantive proof and wrongly applied multiplier of 15 instead of 13 which is applicable in this case and has wrongly assessed the exorbitant amount of compensation.

12. On the other hand respondent Nos.1 to 3 are claimants who have appeared in this appeal and justified the impugned award passed by learned Tribunal submitting that there is no illegality or infirmity calling for any interference in the impugned award. The pleading of contributory negligence requires to be pleaded and proved but there is no issue settled by the learned Tribunal in this regard and on the basis of evidence led by the claimants definite findings were recorded by the learned Tribunal that the accident took place only due to rash and negligent driving of the offending vehicle by its driver, therefore, there is no question of contributory negligence. So far the quantum of compensation is concerned, the income of the deceased has been proved by the employer which has not been rebutted by the opposite party No.2/appellant in the cross-examination of the witness nor any oral or documentary evidence has been adduced by the insurance company to rebut the income of the deceased. Learned Tribunal has adopted all the norms and parameters established by the Hon'ble Apex Court while granting compensation amount to the claimants. Hence, this appeal on behalf of insurance company is fit to be dismissed.

13. Respondent No.4 the owner of the vehicle bearing Reg. No.JH-10AM-5570 has not turned up in this appeal in spite of valid service of notice through his wife as reported by the office. Therefore, there is no objection on the part of respondent No.4 and no separate appeal has been instituted by him in spite of the recovery right given in favour of the appellant/opposite party No.2.

ANALYSIS, REASONS AND DECISIONS

Ground Nos.(i) and (ii)

14. So far ground Nos.(i) and (ii) is concerned, in the case of ***T.O. Anthony(Supra)*** relied upon by the learned counsel for the appellant, it was observed by the Hon'ble Apex Court at paras 5 to 7 which is extracted as under:

> ***"5. The Tribunal assumed that the extent of negligence of the appellant and the first respondent is 50:50 because it was a case of composite negligence. The Tribunal, we find, fell into a common error committed by several tribunals, in proceeding on the assumption that composite negligence and contributory negligence are the same. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.***
>
> ***6. "Composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured***

which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of "composite negligence" will not apply nor can there be an automatic inference that the negligence was 50 : 50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

15. From bare perusal of the above principles laid down by the Hon'ble Apex Court, it is crystal clear that merely because there is head on collision between the vehicles the inference of contributory negligence can not be drawn. The Contributory negligence has to be proved as a matter of fact by leading evidence showing the manner of accident and circumstances leading to conclusion that there was negligence of driver of the both vehicles.

16. In the instant case, P.W. 2 is the sole eye-witness of the occurrence and according to his evidence, the offending vehicle was being driven very rashly and negligently at high speed riding with three persons suddenly dashed in the motorcycle of the deceased who died instantaneously and the passengers of the

offending vehicle have also sustained some injuries. There is no cross-examination of this witness by the insurance company eliciting anything that there was negligent driving on the part of the deceased also. The insurance company has also not adduced any evidence oral or documentary to rebut the evidence of P.W. 2. Moreover, the contents of FIR (Ext.2)and the charge-sheet, which was submitted after thorough investigation of the case has been marked as (Ext.3), which is also not disputed by the insurance company which clearly shows that it was rash and negligent driving of the offending motorcycle bearing Reg. No.JH-10AM-5570 by its driver due to which the accident took place. Accordingly, the driver of the offending vehicle was charge-sheeted in this case. Therefore, mere bald plea of the appellant-insurance company regarding contributory negligence of the deceased is not sustainable in absence of any cogent and reliable evidence.

Ground No.III

17. Admittedly, learned Tribunal has granted right of recovery to the appellant-insurance company due to non-production of driving license of the offending vehicle by the insured. The insured/owner of offending vehicle has not challenged the above findings by filing any appeal which has become final. It is settle law that in case of third party risk the insurance policy always covers the risk and statutorily liable to satisfy the award in favour of third party and if there is any violation of terms and conditions of the policy, the Tribunal may direct to recover the same from insured/owner. Therefore, there is no substance in the above argument of the appellant.

Ground No. IV

18. As regards the income of the deceased, all the witnesses have been examined by the applicants particularly P.W.3 Sonu Poddar, who is owner of the Shayam Surgical Firm and employer of the deceased Md. Azad Hussain has categorically proved by filing a certificate of monthly payment to the deceased (Ext.1) and

stated on oath that he was paying Rs.8,000/- per month to the deceased and his service was availed as supplier of the medicine. This witness has been cross-examined by the O.P. No.2 but nothing has been elicited to rebut his testimony and no oral or documentary evidence has been led by the insurance company to rebut the income of the deceased as proved by the claimants, therefore, there is no error committed by the learned Tribunal in accepting the income of the deceased as proved by the employer.

19. In the case of ***Sarla Verma and Ors. v. DTC and Ors. (2009) 6 SCC 121***, the multiplier chart has been propounded which applies age wise and for the age up to 40 years, the multiplier is 15 is applicable, therefore, the Tribunal has committed no error in applying the multiplier of 15 in the instant case.

20. So far grant of future prospect is concerned, the Hon'ble Apex Court in the case of ***National Insurance Company Ltd. vs Pranay Sethi and Ors. (2017) 16 SCC 680*** has held as under:-

> *"59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*
>
> *59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

21. The assessment of quantum of award amount has been mentioned in the tabular chart by the learned Tribunal which is extracted as under:-

Sr. No.	Head	Calculation
1.	Annual Income of	Rs.8,000/-x 12=

	deceased	Rs.96,000/-
2.	Since the deceased is aged about 37 years. So, multiplier will be 15 and total amount will be	Rs.96,000/- x15=14,40,000/-
3.	Since, dependents of the deceased are three, so, 1/3 will be deducted as personal and living expenses of the deceased. Total amount will be	1/3 of 14,40,000/- =4,80,000/- = 14,40,000 – 4,80,000/-=9,60,000/-
4.	Since age of deceased was 37 years, and he has fixed salary. So, Future Prospect will be 40 % of the fixed salary will be added	+ 40% of 9,60,000/- =Rs.3,84,000/-
	Total Amount will be	Rs.9,60,000/- + Rs.3,84,000/-=13,44,000/-
5.	Loss of estate	+Rs.15,000/-
6.	Loss of Consortium	+Rs.40,000/-
7.	Funeral expenses	+Rs.15,000/-
	Total Compensation Amount	Rs.14,14,000/-

22. It appears that all the principles propounded by Hon'ble Apex Court from time to time have been categorically adopted by the learned Tribunal while assessing the amount of compensation. The amount so assessed as depicted in the aforesaid chart does not appear to be vitiated from any irregularity or non-compliance of any guidelines in the matter of assessment of compensation

amount. Therefore, I do not find any legal substance in the above points of argument of the learned counsel for the appellant and no merits in this appeal, which is, hereby dismissed.

23. Let the copy of this order be sent back to the concerned court.

24. Pending I.As., if any, are disposed off accordingly.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi
Date 12/03/2024
Pappu-N.A.F.R./