IN THE HIGH COURT OF JHARKHAND AT RANCHI

[Civil Miscellaneous Appellate Jurisdiction]

M.A. No. 376 of 2015

Divisional Manager, National Insurance Company Limited, having its Divisional Office at S. N. Ganguly Road, Ranchi. .... Appellant(s)

Versus

1.Rohshan Khatoon, W/o Late Sagir Ansari
2.Mujahim Ansari, S/o Bandhan Ansari
3.Saliman Bibi, W/o Mujahim Ansari
All residents of Village- Hesal, P.O. Kurse, P.S. & District- Lohardaga.
4.Bagha Motor Pariwahan Swalambi Sahkari Samiti, having its office at Village & P.O.- Bagha, District- Lohardaga. .. .. Respondent(s)

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CORAM :HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through :-Video Conferencing)

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For the Appellant(s) : Mr. Alok Lal, Advocate
Mr. Santosh Kumar, Advocate
For the Respondent Nos.1 to 3 : Mr. Ashutosh Anand, Advocate

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10/09.06.2020. Heard, learned counsel for the parties.

2. The appellant- National Insurance Company Limited has preferred this Misc. Appeal against the award dated 06.01.2015 passed by learned Presiding Officer, Motor Vehicles Accident Claims Tribunal, Ranchi, in Compensation Case No.112 of 2005 whereby, the claimants/respondents have been awarded a compensation to the tune of Rs.8,23,000/- after deducting the amount, if any paid under Section 140 of the Motor Vehicles Act with interest at the rate of 9% per annum from the date of publication of notice in the Newspaper i.e. from 7th August 2012 till the date of payment which shall be made within one month from the date of receipt of copy of this judgment, failing which interest @ 12% per annum from the date of judgment shall be payable.

3. Learned counsel for the appellant, Mr. Alok Lal, while assailing the impugned judgment has fairly submitted that he has not prayed any relief against the owner of the offending vehicle insured before him i.e. Bagha Motor Pariwahan Swalambi Sahkari Samiti having its office at Village & P.O.- Bagha, District-Lohardaga.

Learned counsel for the appellant, Mr. Alok Lal has vehemently argued and submitted that the deceased -Sagir Ansari was travelling in a bus bearing Registration No.JH-08A 1542 as 'Khalasi'. The said bus collided on 19.12.2003 with a Truck bearing Registration No.BHV 9114, causing injury to several persons and Sagir Ansari, cleaner died in course of treatment. Police registered Chanho P.S. Case No.69 of 2003 and after investigation submitted chargesheet against both the drivers of the offending vehicles i.e. Bus and truck, but learned Tribunal has framed issue with regard to composite negligence as Issue No.VII and has decided the same at

Para-14 along with Issue Nos.3, 5, 6 and 8. The learned Tribunal has wrongly held that in absence of particular evidence brought by Opp. Party No.2/ witness No.1-Sunil Kumar, Surveyor of the Insurance Company dealt in Para-9 of the impugned judgment.

Learned counsel for the appellant, Mr. Alok Lal has further submitted that it is a case of composite negligence. It was duty of the learned Tribunal to implead the owner, driver and the Insurance Company of another vehicle i.e. Truck bearing Registration No.BHV 9114 as party in this case, so as to apportion the share of the award upon both the Insurance Companies or both the owners of the offending vehicle, if they have violated any terms and conditions of the policy under Section 149(2) of the Act. Learned counsel for the appellant has fairly submitted that the claimants have every right to sue any of the Insurance Company, in view of the judgment passed by the Hon'ble Apex Court in the case of ***Meera Devi Vs. Himachal Pradesh Road Transport Corporation and Ors.,*** reported in ***(2014) 4 SCC 511.*** Further, the learned counsel for the appellant has fairly submitted that the Hon'ble Apex Court in the case of ***Khenyei Vs. New India Assurance Company Ltd.,*** reported in ***(2015) 9 SCC 273,*** has elaborately dealt this issue at para 15 regarding the distinction between the contributory and composite negligence, relying upon the judgment of ***T.O. Anthony Vs. Karbarnan & Ors.,*** reported in ***(2008) 3 SCC 748.*** The same is quoted hereafter:-

> "***15.*** *There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the accident cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but due to the outcome of combination of negligence of two or more other persons. This Court in T.O. Anthony v. Karvarnan [(2008) 3 SCC 748 : (2008) 1 SCC (Civ) 832 : (2008) 2 SCC (Cri) 738] has held that in case of contributory negligence, 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. It is only in the case of contributory negligence that the injured himself has contributed by his negligence in the accident. Extent of his negligence is required to be determined as damages recoverable by him in respect of the injuries have to be reduced in proportion to his contributory negligence. The relevant portion is extracted hereunder: (SCC pp. 750-51, paras 6-7).*
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> *"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."

4. Learned counsel for the appellant has fairly submitted that the Hon'ble Apex Court has decided the question of composite negligence between the two vehicles and apportionment of composite negligence has been discussed at para 17 [***Khenyei Vs. New India Assurance Company Ltd. (Supra)]*** which is quoted herein:-

"***17.*** *The question also arises as to the remedies available to one of the joint tortfeasors from whom compensation has been recovered. When the other joint tortfeasor has not been impleaded, obviously question of negligence of non-impleaded driver could not be decided. Apportionment of composite negligence cannot be made in the absence of impleadment of joint tortfeasor. Thus, it would be open to the impleaded joint tortfeasors after making payment of compensation, so as to sue the other joint tortfeasor and to recover from him the contribution to the extent of his negligence. However, in case when both the tortfeasors are before the court/Tribunal, if evidence is sufficient, it may determine the extent of their negligence so that one joint tortfeasor can recover the amount so determined from the other joint tortfeasor in the execution proceedings, whereas the claimant has right to recover the compensation from both or any one of them."*

Learned counsel for the appellant has fairly submitted that in para 22.1 the Hon'ble Apex Court has categorically held:-

"In case of composite negligence, In the case of composite negligence, the plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several".

5. Learned counsel for the appellant has thus submitted that though the issue of composite negligence has been taken by the learned Tribunal as issue no.7 but no finding has been recorded with regard to apportionment as the other vehicle i.e. Truck bearing Registration No.BHV 9114 or insurer of the vehicle have not been impleaded as party, as such, this Court may give liberty to the appellant to pursue the matter before the learned Tribunal for apportionment of the share because of composite negligence and the same may be decided in a fixed period by the learned Tribunal on consideration of the materials.

Learned counsel for the appellant has fairly submitted that he has not sought any relief from the owner of the vehicle i.e. bus bearing Registration No.JH-08A 1542, who even after substituted service of notice, has not appeared and the case has been fixed ex-parte, as such, he has nothing to say against the respondent no.4-Bagha Motor Pariwahan Swalambi Sahkari Samiti but the appellant has serious grievances against the non-apportionment of share between the two vehicles or their

respective Insurance Companies.

Learned counsel for the appellant has further submitted that quantum of compensation has been wrongly awarded by the learned Tribunal considering the monthly income of the deceased as Rs.3,000/- per month and annual income as Rs.36,000/-. The multiplier has been used as 18, considering the age of the deceased about 25 years, working as a labourer (Khalasi), while multiplier ought to have been 17 instead of 18. Learned counsel for the appellant has further submitted that future prospect has been considered @ 50% by the learned Tribunal, which ought to have been 40% because the deceased was not having a fixed income, as such, considering the age below 25 years, future prospect must be 40% instead of 50% granted by the learned Tribunal. Learned counsel for the appellant has further submitted that under the conventional head, learned Tribunal has wrongly granted Rs.25,000/- towards funeral expenses, Rs.50,000/- towards loss of Estate, love and care and Rs.1,00,000/- as loss of consortium contrary to the judgment passed by the Hon'ble Apex Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in (***2017) 16 SCC 680*** para 59.8 whereunder loss of Estate Rs.15,000/-, loss of consortium Rs.40,000/- and funeral expenses Rs.15,000/- should be awarded.

Learned counsel for the appellant has further submitted that the learned Tribunal has exorbitantly granted interest @ 9% and penal interest @ 12%, which is contrary to the judgment passed by the Hon'ble Apex Court in the case of ***Dharmpal and Sons Vs. UP State Road Transport Corporation,*** reported in ***2008 (4) JCR 79 SC,*** where interest should be 7.5% from the date of institution of the claim application or prevalent rate of interest of bank on the date of award**,** as such, there shall be deduction in compensation amount against the claimants-respondents also.

6. Learned counsel for the claimants-respondents has fairly submitted that he has to submit in accordance with the fact and relevant laws. He has fairly submitted that 50% of the future prospect granted by the learned Tribunal is contrary to the judgment passed by the Hon'ble Apex Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in (***2017) 16 SCC 680***, which ought to have been 40%. Learned counsel for the claimants-respondents has fairly submitted that under the conventional head Rs.70,000/- in total, (loss of Estate as Rs.15,000/-, loss of consortium as Rs.40,000/- and funeral expenses as Rs.40,000/-) should have been awarded in view of the judgment passed by the Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)*** which has been wrongly awarded by the learned Tribunal as Rs.1,75,000/-.

7. Learned counsel for the respondents-claimants has further submitted that so far the multiplier is concerned, the learned Tribunal has rightly considered the same in para 18 of the impugned award although admittedly the deceased was more than 25 years, but he was admittedly less than 26 years as he was 25 years 8 months, admittedly less than 26 years and in a benevolent legislation like Motor Vehicles Act, the presumption will always be in favour of the claimants, as such, the learned Tribunal has rightly considered multiplier as 18.

8. So far the interest is concerned, learned counsel for the respondents-claimants has submitted that the courts have taken different views, as such, it may not be interfered by this Court.

9. Learned counsel for the respondents/claimants has further submitted that the deceased had earning of Rs.3,000/- per month and Rs.30/- as Khuraki which the learned Tribunal has not considered rather it ought to have been considered the income of the deceased as Rs.3900/- per month (Rs.3000/- + Rs.30x30).

Learned counsel for the respondents in support of his submission has relied upon the judgment in the case of ***Jaya Biswal & Ors. vs. Branch Manager, IFFCO Tokio General Insurance Co. Ltd***., reported in ***(2016) 11 SCC 201***.

Learned counsel for the respondents has fairly submitted that though judgment has been passed in a case of Workmen Compensation Act but the principle has to be followed in the MV Act also to consider the khurakhi of Rs.30/- per day and Rs.900/- per month and thereafter deduction has to be made as per the standard deduction laid down by the Hon'ble Apex Court.

10. Learned counsel for the appellant, Mr. Alok Lal has submitted that the court of appeal has ample power, even if there is no cross appeal to consider and adjudicate the compensation this view has been taken by the Hon'ble Apex Court in the case of ***Ranjana Prakash & Ors. vs. Divisional Manager & Anr.***, reported in ***2011 (14) SCC 639***.

11. Under the aforesaid circumstances, learned counsel for the respondents/claimants has submitted that this Court may reconsider the entire computation of award payable to the claimants.

12. Learned counsel for the respondents/claimants on query has categorically stated that so far apportionment of compensation is concerned, in view of the judgment passed by the Hon'ble Supreme Court in the case of ***Khennei (supra) at Para 15*** and he has no objection**.**

13. After hearing the counsel for the parties and perusing the materials brought on record, it appears that the appellant has preferred this appeal on two grounds :-

(i)The apportionment of the liability between the owner or insurer of both the vehicles, which collided because of composite negligence causing death of the deceased- Sagir Ansari, who was working as Cleaner (Khalasi) in one of the offending vehicles bearing Registration No.JH08A 1542 insured before the appellant- National Insurance Company Limited.

(ii)The second ground has been assailed by the learned counsel for the appellant is with regard to computation of compensation in favour of the claimants.

14. This Court will re-examine the computation of compensation, as the second issue is relevant for both the owners of the offending vehicles and the Insurance Companies of the offending vehicles. The claimants are sufferer since long i.e. 19.12.2003 i.e. more than 17 years, as such, this issue is taken up first.

15. It appears that admitted position is that the deceased had income of Rs.3,000/- per month with a Khurakhi of Rs.30/- per day, which comes to Rs.3900/- (i.e. Rs.3000/- + Rs.30x30). Learned Tribunal has committed error in not considering the khurakhi on the one hand and deduction of 1/3rd, on the other hand, as such, in view of the judgment passed by the Hon'ble Apex Court in the case of ***Ranjana Prakash (Supra),*** this Court is exercising its power while computing the compensation afresh.

16. A fresh chart of calculation of compensation is given hereunder :-

1. Income	=	Rs.3000/- + Rs.30 x 30 (khuraki)=Rs.3900/- per month
2. Deduction Towards Personal expenses	=	Rs.3900 - 1/3 of Rs.3900/- = Rs.2600/- per month
3. Future Prospect	=	(40%) of Rs. 26,00/- = Rs.1040/-
4. Total Income	=	Rs.2600/- + Rs.1,040/-
Total	=	Rs.3640/- x 12 = Rs.43,680/- per annum
5. Multiplier	=	18
6. Loss of Future Income	=	Rs.43,680/- x 18 = Rs.7,86,240/-
7. Total Income	=	Rs.7,86,240/-
8. Total Compensation	=	Rs.7,86,240/- + 70,000 = Rs.8,56,240/- and interest @ 7.5 % per annum from the date of institution of claim cases.

17. So far this amount and interest upon the same is concerned, Section 171 of the MV Act says as follows:-

> "***171. Award of interest where any claim is allowed-*** *Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."*

18. The claimants have preferred the claim case in the year, 2005, for an occurrence dated 19.12.2003, but as per the impugned award as discussed in para 2, the case was admitted on 07.03.2009, but no reason has been assigned

by the learned Tribunal causing any delay on the part of the claimants-respondents, as such, the interest ought to have been given from the date of institution of the claim application i.e. 7.5 % per annum simple in view of the judgment passed by the Hon'ble Apex Court in the case of ***Dharmpal and Sons (Supra).***

19. This Court has found several discrepancies in considering the interest i.e. from the date of institution or the admission or the appearance of parties or settlement of issue. Different Tribunals in the State of Jharkhand are passing different orders.

20. This Court has requested the Director, Judicial Academy, State of Jharkhand, Ranchi to consider all the judgments passed by the Hon'ble Apex Court and prepare a curriculum so as to have uniformity in awarding the interest upon the award. The reason must be there for doing so.

21. As such, appellant- Insurance Company is directed to indemnify the award of Rs.8,56,240/- along with interest @7.5 per annum simple to the claimants-respondents from the date of institution of the claim application before the learned Tribunal to the date of actual payment.

22. So far the first issue is concerned, with regard to the apportionment of shares between two owners of the offending vehicles, as police has submitted charge-sheet against both the drivers of the offending vehicles and in view of the judgment passed by Hon'ble Apex Court in the case of ***Khennei (Supra)*** para 17, it was duty of the learned Tribunal to apportion the liability upon both the Insurance Companies under the composite negligence.

23. Under the aforesaid circumstances, the appellant is at liberty to raise this issue before the learned Tribunal, who after due notice will record evidence and decide the apportionment of the shares between the parties, in accordance with law, but such exercise must be done within six months from the date of appearance of both the Insurance Companies or both the owners of the offending vehicles. Appellant is at liberty to implead the owner of the bus insured before him or he may exonerate respondent No.4- Bagha Motor Pariwahan Swalambi Sahkari Samiti, if he is not a necessary party in such adjudication.

24. Under the aforesaid circumstances, the instant appeal is allowed in the aforesaid terms.

25. The Director, Judicial Academy, State of Jharkhand is directed to look into the matter and prepare such curriculum, so that consistency i.e. sacrosanct of the judicial system should be followed by all the learned Tribunals in future.

26. However, Rs.25,000/-, which has been deposited by the appellant for preferring an appeal under Section 173(1) of the MV Act shall be remitted to the learned Tribunal. The Insurance Company has already deposited the entire amount before the learned Tribunal in compliance of the order dated 29.09.2016 passed by Co-ordinate Bench of this Court which shall be reimbursed to the claimants-respondents by the learned Tribunal after due notice and verification.

27. However, the interest shall be calculated by the Insurance Company @ 7.5% per annum as granted by this Court from the date of institution till the actual payment made to the claimants-respondents.

28. Appellant- Insurance Company shall re-validate the cheque and pay the same to the claimants-respondents, who are sufferer for more than 17 years.

29. Let the Lower Court Records be sent down at once.

(Kailash Prasad Deo, J.)

Sandeep/R.S.