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HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1638 of 2016**

ICICI Lombard General Insurance Company Limited Through Its Branch Manager, Ground Floor, Vanijya Bhawan, Devendra Nagar Road, Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Smt. Manki Bai Kevat W/o Late Shri Ramsahaye Kevat (Nishad), Aged About 45 Years.
2. Ku. Pooja Kevat D/o Late Shri Ramsahaye Kevat, Aged About 16 Years
3. Nutan Kumar Kevat D/o Late Shri Ramsahaye Kevat, Aged About 14 Years
4. Ku. Namrata Kevat D/o Shri Ramsahaye Kevat, Aged About 9 Years
Respondents No.2 to 4 are minor Represented Through Natural Guardian Mother Smt. Manki Bai Kevat, Respondent No.1, All R/o Jaithpur, Post Office Malhar, Tehsil And Thana Masturi, District Bilaspur, Chhattisgarh
5. Narayan Prasad Kevat S/o Late Shri Sahni Kevat, Aged About 40 Years R/o Mahuldeeh, Tehsil And Thana Bilaigarh, District Balodabazar-Bhatapara, Chhattisgarh (Driver And Owner Of Motorcycle Bearing No. C.G.04 K P 2195).
6. Purru @ Janiram Kashyap S/o Mannulal Kashyap, Aged About 28 Years R/o Village Misda, Thana Navagarh, District Janjgir-Champa, Chhattisgarh.
7. Dhaniram Kashyap S/o Mannulal Kashyap, R/o Village Misda, Thana Navagarh, District Janjgir-Champa, Chhattisgarh.

---- Respondents**MAC No. 1614 of 2016**

1. Smt. Manki Bai Kenwat Wd/o Late Ramsahay Kenwat (Nishad), Aged About 45
2. Kumari Pooja Kenwat D/o Late Ramsahay Kenwat, Aged About 16 Years
3. Nootan Kumar Kenwat S/o Late Ramsahay Kenwat, Aged About 14 Years
4. Kumari Namrata Kenwat D/o Late Ramsahay Kenwat, Aged About 9 Years
Appellants No.2 to 4 are minor Through The Mother (Natural Guardian) Appellant No.01 Smt. Manki Bai, R/o Village Jaitpur, Post Malhar, Tahsil & Police Station Masturi, District (Revenue & Civil) Bilaspur, Chhattisgarh.

---- Appellants**Versus**

1. Narayan Prasad Kenwat S/o Late Shri Sahni Kevat, Aged About 40 Years R/o Mahuldeeh, Tehsil And Thana Bilaigarh, District

- Balodabazar-Bhatapara, Chhattisgarh (Driver And Owner Of Motorcycle Bearing No. C.G.04 K P 2195)
2. I.C.I.C.I. Lombard General Insurance Company Limited, Through: Branch Manager, Branch Office- Ground Floor, Vanijya Bhawan, Devendra Nagar Road, Raipur, District (Revenue & Civil)- Raipur, Chhattisgarh, Pin- 492001(Insurer Of The Vehicle Hero Splendor Plus No. C.G.-04/ K 0 P 0/2195)
 3. Puru @ Janiram Kashyap S/o Mannul Kashyap, Aged About 28 Years R/o Village- Misda, Police Station- Nawagarh, District (Revenue & Civil) Janjgir-Champa, Chhattisgarh
 4. Dhaniram Kashyap S/o Mannul Kashyap, R/o Village- Misda, Police Station- Nawagarh, District (Revenue & Civil) Janjgir-Champa, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Amrito Das and Shri P. Acharya, Advocates (In MAC No.1638 of 2016)
For Claimants	:	Shri Anand Kesharwani, Advocate. (In MAC No.1614 of 2016).
For respondents No.6&7	:	Shri Vivek Tripathi on behalf of Shri UKS Chandel, Advocate (In MAC No.1638 of 2016 and for Res. No.3&4 in MAC No.1614 of 2016)
For Respondent No.2	:	Shri Tarkeshwar Nande along with Shri Sourabh Sharma, Advocates (In MAC No.1614 of 2016)

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

24/07/2017

1. By this common order the two appeals are being disposed of as common facts & issues are involved in these appeals and arise out of the same accident. For the purpose of convenience so far as facts are concerned, MAC No.1638 of 2016 is taken as lead case.
2. Both the appeals under Section 173 of the Motor Vehicles Act are filed against the award dated 16.06.2016 passed by the 5th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.148/2014. Vide the said impugned award the Tribunal in a death case of one Shri Ramsahay who died in an accident on 30/01/2013

has granted compensation of Rs.3,17,000/- along with interest @ 6% per annum from the date of application. The claimant are the widow as well as minor daughters of the deceased.

3. MAC No. 1638 of 2016 has been filed by the insurance company challenging liability part whereas, MAC No.1614 of 2016 has been filed by the claimants seeking for enhancement of compensation.
4. The accident arose on 30/01/2013 when Ramsahay was travelling on motorcycle bearing Registration No.CG-04-KP-2195 as a pillion rider dashed with a tractor bearing Registration No.CG-11-A-4731 and the trolley bearing Registration No.CG-11-JG-2601. As a result of said accident Ramsahay is said to have come under the wheels of the tractor-trolley resulting in his death on the spot. The claimant had filed a Claim Application under section 166 of the Motor Vehicles Act and the Tribunal after consideration of the evidence and the pleadings, granted compensation of Rs.3,17,000/- to the claimants. While granting the award the Tribunal has also fastened the liability upon the present appellant i.e. Insurance Company which had insured the motorcycle on which the deceased was sitting as pillion rider. It is this award which is under challenge in this appeal.
5. The contention of the appellant-insurance company is that the Insurance Company has been falsely saddled with the liability as the accident arose because of the dash of the motorcycle with the tractor and that the deceased was travelling on the motorcycle as a pillion rider. There was also breach of policy condition in as much as 3 persons were travelling on the motorcycle and therefore the

Insurance Company should not have been saddled with the liability. He further submits that the liability ought to have been fastened upon the owner of the Tractor. Counsel for the appellant further submits that deceased would not fall within the ambit of third party and therefore also the liability should not have been fastened upon the Insurance Company.

6. Counsel for the claimants in MAC No.1614 of 2016 submits that the Tribunal has erred in taking into consideration the notional income of the deceased at Rs.3000/- per month for the purpose of quantification of the compensation. The same is on the lower side. Therefore, the award be enhanced suitably.
7. Having heard learned counsel appearing for either side and on perusal of record what is primarily reflected from the record and the pleading is that to substantiate the contention which has been raised by the Appellant Insurance Company, they have not led any evidence in support of their contention. In the absence of any evidence to prove their contention, the findings arrived at by the Tribunal cannot be faulted at. Furthermore, even if the argument of the Appellant is to be accepted that three persons travelling on the motorcycle on the date of accident, it would only to be a violation of the provision of the rules for driving on the public road. The same cannot absolve the Insurance Company of its liability.
8. Further, the evidence also reflects that accident occurred primarily on account of the negligent driving of the driver of the motorcycle and that there was also no element of contributory negligence on the part

of driver of the Tractor being involve in the accident. This court does not have any hesitation in affirming the award of the Tribunal, holding the appellant to be liable for the payment of compensation as awarded by the Tribunal.

9. So far as the appeal of the claimants seeking for enhancement is concerned, undisputedly the accident occurred on 30.01.2013, the appellant was working as a Mason at the relevant point of time. It was anybody's guess that even an unskilled labour in the year, 2013, was being paid Rs.150-200 per day i.e. Rs.4500-6000/- per month. Therefore, the finding of the Tribunal accepting notional income of Rs.3000/- for the purpose of quantifying the compensation is extremely on lower side. This court is of the opinion that the compensation ought to have been calculated accepting the monthly wages at Rs.4500/- in place of Rs.3000/-. It is ordered accordingly.
10. If Rs. 4500/- is accepted as monthly wages, the annual income would be Rs.54000/-. If 1/4th of said amount is deducted towards personal expenses, the balance amount comes to Rs.40,500/-. After multiplying 11 as applied by the Tribunal, the amount comes to Rs.4,45,000/-. Thus, it is ordered that the claimants are entitled for compensation for loss of income at Rs.4,45,000/- in place of Rs.2,97,000/- as awarded by the Tribunal. So far as compensation under other heads are concerned, considering the decisions rendered by the Supreme Court in cases of *Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.*, 2009 (6)SCC 121, and *Rajesh & Others Vs. Rajbir Singh & Others*, 2013 (9)SCC-54, the

compensation awarded under the heads of loss of love and affection, consortium as also funeral expenses are on lower side. The same deserves to be and is hereby enhanced from Rs.20,000/- to a lump sum amount of Rs.1,50,000/-.

11. Thus, MAC No.1638 of 2016 filed by the Insurance Company is dismissed.
12. MAC No.1614 of 2016 filed by the claimants is allowed. The claimants shall be entitled for a total compensation of Rs.5,95,500/- in place of Rs.3,17,000/- as awarded by the Tribunal i.e. Rs.2,78,500/- over and above.
13. The above enhanced amount of compensation of Rs.2,78,500/- shall carry interest at the same rate as quantified in the award. Rest of the conditions mentioned in the award shall remain intact.
14. The ICICI Lombard General Insurance Company Ltd. is granted two months time to deposit the above enhanced amount of compensation before the concerned claims Tribunal.

Sd/-
(P. Sam Koshy)
Judge

inder