NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.1539 of 2008

1. Smt.Rameshrin Bai W/o Late Juthel Verma, aged about 26 years.
2. Manish Verma S/o Late Juthel Verma, aged about 4 years.
3. Anish Verma S/o Late Juthel Verma, aged about 2 years.
4. Tanish Verma S/o Late Juthel Verma, aged about 25 days.

   Appellant Nos.2 to 4 are minor and represented by there natural guardian Mother Rameshrin Bai W/o Late Judhel Verma.

   All are R/o Bazar Chowk, Sipat, P.S.Sipat, District Bilaspur (C.G.).

---Appellants

Versus

1. Santosh Kumar Gond S/o Sahorik Ram Gond, aged about 30 years, R/o Village Sipat, P.S.Sipat, District Bilaspur (C.G.).
2. Smt.Samiksha Gupta W/o Devendar Gupta, aged about 23 years, R/o Hatari Chouk, Juna Bilaspur, P.S.City Kotwali, Bilaspur, At present Village Balouda, District Janjgir-Champa (C.G.).
3. Branch Manager, The Oriental Insurance Company Limited, Branch Office, near New Bus Stand, Bilaspur, Tahsil and District Bilaspur (C.G.).

---Respondents

For appellants	:	Shri R.K.Jain, Advocate.
For respondent No.3/Insurance Company	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/11/2017

1. Present is an appeal by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 31/07/2008 passed by the learned 3rd Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Motor Accident Claim Case No.04/2008.

2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded the compensation of Rs.2,97,500/- along with interest @ 7% per annum from the date of application.

3. Vide the said impugned award, the Tribunal has exonerated the Insurance Company of its liability and have saddled the responsibility of payment of compensation upon the respondent Nos. 1 & 2 – the owner and the driver of the offending vehicle.

4. The brief facts of the case is that, the deceased in the instant case Juthel Verma, aged around 30 years met with an accident on 22/10/2007 and sustained grievous injuries to which he succumbed on the next day i.e. on 23/10/2007. The legal representatives of the deceased filed the claim application before the Tribunal.

5. The deceased in the instant case was a pillion rider traveling on the Motorcycle when the Motorcycle skidded and both the persons traveling on the Motorcycle fell down as a result of which the deceased received grievous injuries. The Motorcycle on which the deceased was traveling bearing registration No. CG-10-BA-6029 was insured with the respondent No.3/Insurance Company. The policy was an act only policy and covered the risk of only third party and the driver of the vehicle. No extra premium was paid by the owner covering the risk of any pillion rider or occupants to travel on the Motorcycle. Since, there was no such premium paid by the owner, the Insurance Company has been exonerated by the Tribunal and the liability of payment of compensation has been fastened upon the owner.

6. The owner in the instant case had also preferred an appeal i.e. MAC No.1460/2008 which stood dismissed by this court vide order dated 06/01/2012. Thus, the finding so far as the liability being fastened upon the owner stands affirmed.

7. The core issue now left to be decided in the instant case is whether the award passed by the Tribunal is just and reasonable or not?

8. The deceased in the instant case was aged around 30 years and he was working as a Hamaal (Coolie). The period of accident is October-2007. Undisputedly, during the relevant time, even an unskilled labour would had been earning more than Rs.100/- a day that would make it Rs.3,000/- per month and Rs.36,000/- yearly.

9. The Tribunal in the instant case has assessed the income at Rs.2,000/- which is unreasonably low and has no basis for reaching to the said

assessment. Thus, this court assesses the monthly income of the deceased at Rs.3,000/- per month instead of Rs.2,000/- as assessed by the Tribunal.

10. Accepting Rs.3,000/- as the monthly income of the deceased, the yearly income would become Rs.36,000/-. In the light of the recent larger bench decision of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors. (SLP Civil No. 25590/2014, decided on 31/10/2017)***, the claimants would be entitled for future prospects to the extent of 40% of the income which in the instant case would come to Rs.14,400/- which if added to the yearly income would make it Rs.50,400/-. Considering the total number of claimants to be 4, the deduction towards personal expenses would be 1-4th and after deducting 1/4th from Rs.50,400/-, the amount left would be Rs.37,800/- which if multiplied by applying multiplier of 17, the amount would come to Rs.6,42,600/-. It is ordered accordingly that the claimants shall be entitled for the compensation of Rs.6,42,600/- towards loss of dependency.

11. So far as the compensation under the conventional head is concerned, again considering the principles of law laid down by the Supreme Court in the case of Pranay Sethi (Supra), this court quantifies the compensation under the conventional head at Rs.70,000/-. Thus, making total compensation payable to the claimants at Rs.7,12,600/- instead of Rs.2,97,500/-. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal. The responsibility of payment of compensation shall remain upon the owner and the driver of the offending vehicle as has been assessed by the Tribunal.

12. The appeal of the claimants thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Sumit