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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1201 of 2013

1. Smt. Mamta Thakur Wd/o Late Tarun Singh Rajput, aged about 23 years.
2. Lal Singh Rajput S/o Sunder Singh Rajput, aged about 63 years.
3. Smt. Gendi Bai W/o Lal Singh Rajput, aged about 55 years.

   All are R/o village Machandur, Post Charama, Police Station and Tahsil Charama, District Kanker (C.G.)

---- Appellants

Versus

1. Ramjan Khan S/o Galsher Khan, R/o village Jalampur, Nagri Road, Dhamtari, Police Station, Tahsil and District - Dhamtari (C.G.)

   (Driver of alleged vehicle bearing registration No.CG-05-F-0741)
2. Mohammad Javed S/o Haji Mohammad Daud Khan, R/o Simna Salector Industries, Salhewarpara, Tahsil and District - Dhamtari (C.G.)

   (Owner of alleged vehicle bearing registration No.CG-05-F-0741)
3. The Oriental Insurance Company Limited, through Branch manager, Branch Office M.B. Trade Centre, 2nd Floor, Ghadi Chowk, Dhamtari, District Dhamtari (C.G.)

   (Insurer of alleged vehicle bearing registration No.CG-05-F-0741)

---- Respondents

For Appellants	:	Shri Anil Gulati, Advocate.
For Respondents 1&2	:	None.
For Respondent No.3	:	Shri Sandeep Shrivastava, Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

By Pritinker Diwaker, J
03/08/2017

1. This appeal arises out of the award dated 09.10.2013 passed by Motor Accident Claims Tribunal (for short the "Tribunal") North Bastar Kanker, in Claim Case No.28/2013 awarding a compensation of Rs.5,06,250/- in favour of the appellants/claimants for the death of Tarun Singh Rajput.

2. Facts of the case in brief are that on 20.12.2012 when the deceased was parking his motorcycle bearing registration No.CG-19-BA-0802 for checking petrol outside the road, Innova car bearing registration number CG-05-F-0741 driven by respondent No.1 herein in a rash and negligent manner came from Dhamtari side and hit him as a result of which he died on the spot. A claim petition was filed by the appellants/claimants who happen to be the legal heirs of the deceased claiming a compensation of Rs.36,50,000/- *inter alia* pleading that the deceased at the relevant time was aged about 32 years, he was journalist by profession and earing about Rs.8,000/- per month.

3. Pleading of the claimants have, however, been denied by the respondent/insurance company.

4. After evaluating the evidence available on record, the Tribunal has though assessed the compensation at Rs.6,75,000/- but after holding the deceased having contributory negligence, awarded Rs.5,06,250/- to the

appellants/claimants as compensation along with interest at the rate of 6% per annum from the date of application. Hence this appeal for enhancement.

5. Counsel for the appellants/claimants submits that the finding recorded by the Tribunal holding the deceased to have contributory negligence is not in accordance with law as no evidence has been adduced in this regard by the Insurance Company or even by the owner and the driver. He submits that the Tribunal has committed an error in taking the monthly income of the deceased as Rs.5,000/- because even if the notional income is taken into consideration, his monthly income comes to Rs.6,000/-. He further submits that future prospects have not been considered by the Tribunal and the amount awarded under the conventional heads is also quite inadequate.

6. On the other hand, counsel for the respondent No.3 support the award impugned and submit that the accident occurred on account of the negligence of the deceased himself and therefore the claimants are not entitled for any enhancement in the awarded sum.

7. Heard counsel for the parties and perused the documents on record.

8. From the pleadings of the respective parties and the overall evidence on record it is clear that the accident occurred with the offending vehicle which was insured with

respondent No.3 and was being driven by respondent No.1. Evidence further goes to show that the insurance company has examined respondent No.1-Ramjan Khan, Driver to prove that it is the deceased who was negligent and the said driver has stated that the deceased was in drunken condition, however, there is no medical document on record proving that at the time of accident the deceased had consumed liquor. Merely saying by the Doctor that the deceased had consumed liquor is not good enough unless there is cogent evidence available on record. Furthermore, it is not necessary that if somebody consumes liquor, he can be held negligent for the accident. The finding recorded by the Tribunal holding the deceased to have contributory negligence for the accident is quite erroneous as it has neither been proved by the insurance company nor even by the driver or the owner by leading cogent and reliable evidence. In respect of contributory negligence on the part of the victim the law holding the field is that the burden of proof regarding breach of policy conditions or contributory negligence lies on the insurance company as has been held by the Apex Court in the case of ***Usha Rajkhowa V. Paramount Industries (2009) 14 SCC 71*** and also in the case of ***Minu Rout v. Satya Pradyumna Mohapatra (2013) 10 SCC 695.*** In this case though the insurance company has pleaded that the accident took place due to negligence on the part of the deceased but no evidence in support of such pleading has been adduced by it and in these circumstances and the law laid down by the Apex Court referred to above, it cannot be said that the victim was having contributory negligence leading to the accident and the resultant death. Therefore, such finding being against the settled legal position is not sustainable in the eye of law and accordingly it is hereby set aside. The Tribunal has further erred in law in assessing the monthly income of the deceased as Rs.5,000/- because even if the notional income is taken into consideration the monthly income of the deceased comes to Rs.6,000/-. In addition to this, the amount awarded under the conventional heads also appears to be inadequate and requires suitable enhancement in this appeal.

9. Accordingly, the monthly income of the deceased is taken to be Rs.6,000/- which makes the annual income as Rs.72,000/- and likewise, looking to the age of the deceased at the time of accident, loss of future income can be assessed to be 50% of the total income which comes to Rs.36,000/- and after deducting 1/3rd towards his personal expenses the annual loss of dependency comes to Rs.72,000/-. After applying the multiplier of 16, the total loss of dependency is assessed at Rs.11,52,000/- (72,000x16) on the basis of guidelines/principles adopted in the case of ***Sarla Verma v. Delhi Transport Corporation and another - (2009) 6 SCC 121.*** At the same time, the amount awarded under the conventional heads also appears to be insufficient and being

so is required to be enhanced suitably. The amount awarded by the Tribunal and the one enhanced by this Court are clear from the following table.

Head	:	Amount enhanced
Loss of consortium	:	1,00,000/-
Funeral Expenses	:	25,000/-
Love and Affection	:	50,000/-
Loss of Estate	:	25,000/-
		2,00,000/-

10. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.13,52,000/- (11,52,000 + 2,00,000/-) for which the claimants are entitled to receive as compensation for the death of deceased Tarun Singh Rajput. Since the Tribunal has already awarded Rs.5,06,250/-, after deducting the same the claimants/appellants are entitled for enhanced amount of Rs.8,45,750/-. This additional amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till realization. The amount received by the claimants, if any, shall be adjusted in the enhanced sum.

11. Appeal is thus allowed in part with the modification in the award impugned as indicated above.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge

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