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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 527 of 2013

1. Smt.Bela Bai, W/o Late Rajkumar Karsh Aged About 23 Years R/o Giroudpuri, Tah. Bilaigarh, Tah. Kasdol, Distt. Raipur, Now Distt. Baloda Bazar-Bhatapara C.G.

2. Pradeep Kumar S/o Late Rajkumar Karsh Aged About 3 Years Minor, Thru- Mother Smt. Bela Bai, R/o Giroudpuri, Tah. Bilaigarh, Tah. Kasdol, Distt. Raipur, Now Distt. Baloda Bazar-Bhatapara C.G.

3. Pramod Kumar S/o Late Rajkumar Karsh Aged About 1 Years Minor, Thru- Mother Smt. Bela Bai, R/o Giroudpuri, Tah. Bilaigarh, Tah. Kasdol, Distt. Raipur, Now Distt. Baloda Bazar-Bhatapara C.G.

4. Badku Ram S/o Sukhram Karsh Aged About 55 Years R/o Giroudpuri, Tah. Bilaigarh, Tah. Kasdol, Distt. Raipur, Now Distt. Baloda Bazar-Bhatapara CG.

5. Smt. Kanti Bai W/o Badku Ram Karsh Aged About 50 Years R/o Giroudpuri, Tah. Bilaigarh, Tah. Kasdol, Distt. Raipur, Now Distt. Baloda Bazar-Bhatapara C.G.

---- Appellants/Claimants

Versus

1. Nandu Chandrakar And Anr. S/o Radheshyam Chandrakar Aged About 21 Years R/o Damru, P.S. & Tah. Baloda Bazar, Distt. Raipur, Now Distt. Baloda Bazar-Bhatapara C.G.

2. The Oriental Insurance Company Ltd. Divisional Office-1, Post Box No. 49, Kachhari Chowk, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellants	:	Shri Anil Gulati, Advocate
For Respondent No.1	:	None
For Respondent No.2	:	Shri Raj Awasthi, Advocate

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

JUDGMENT

Per P.Diwaker, J.

19/07/2017

1. This appeal filed by the claimants/appellants arises out of the award dated

30.3.2013 passed by the 2nd Motor Accident Claims Tribunal, Balodabazar, (for short 'the Claims Tribunal') in Claim Case No. 68/2012 awarding compensation of Rs.3,53,000/- in an accidental death of Rajkumar Karsh.

2. Facts of the case, in brief are that on 6.4.2011 when deceased Rajkumar Karsh was riding his motorcycle bearing Registration No.CG04-CW -6207, the same was dashed by a Maruti Van bearing Registration No. CG04-ZD 8002, which was driven in rash and negligent manner by respondent No.1. The offending vehicle was duly insured with respondent No.2-Insurance Company. At the time of death, the deceased was aged about 45 years and was working as Mason. A claim was filed by the claimants/appellants, who are widow, two minor children & parents of the deceased respectively seeking compensation of Rs.12,45,000/- under various heads, inter alia, pleading that monthly income of the deceased was Rs.9,000/-, they were dependent on him and on account of his sudden death, they have suffered loss of income and therefore, they are entitled for the compensation as claimed by them.

3. Respondent No.1 filed his written statement before the Claims Tribunal denying the averments made in the claim application. Respondent No. 2-Insurance Company contested the claim case and denied its liability on the ground that the accident occurred due to rash and negligent driving of respondent No.1 himself and there was breach of insurance policy as the offending vehicle was being plied without any valid documents like driving license, permit, fitness certificate.

4. The Claims Tribunal by the impugned award has awarded a compensation of Rs.3,53,000/- to the appellants under various heads such as loss of estate, loss of love and affection, loss of income and funeral expenses. It is this award which has been challenged by the appellants in this appeal.

5. Learned counsel for the appellants submits that :

    - the Claims Tribunal has erred in law in not accepting the claimants' evidence about the income of the deceased and in assessing his monthly income at Rs.3,000/-, whereas, it ought to have been Rs.6,000/- even treating the same to be notional income;
    - the sum awarded under the conventional heads are also on the lower side;
    - the rate of interest awarded at the rate of 6% per annum from the date of application till payment is also very low and it requires upward revision and enhancement.
    - since the deceased had family consisting of wife, two children and parents, the Claims Tribunal ought to have deducted only one-fourth for personal expenses and Tribunal erred in deducting one-third towards personal expenses.
    - the Claims Tribunal has not added any amount towards the future prospects.

6. On the other hand, learned counsel for the Insurance Company submits that the compensation awarded by the Claims Tribunal is just and proper and as such, the same is not required to be enhanced at all.

7. We have heard learned counsel for the parties and perused the material available 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.2 and was being driven respondent No.1.

Evidence further goes to show that after being hit by the offending vehicle, Rajkumar Karsh was taken to the hospital where he succumbed to his injuries. True, the claimants/appellants pleaded that the deceased used to earn Rs.9,000/- per month by working as a Meson, no cogent and reliable evidence was led before the Tribunal to establish the income of the deceased to the extent of Rs.9,000/- as well as no evidence has been produced regarding age of the deceased. Therefore, we do not find any fault in the approach of the Tribunal in discarding the appellants' evidence about the income of the deceased. Nevertheless, the income of the deceased assessed by the Tribunal at Rs.3,000/- per month in the year 2012 is certainly on the lower side and requires reconsideration. Likewise, 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 that time of accident i.e. 25 years, loss of future income can be assessed to be 30% of the total income which comes to Rs.21,600/- p.a. After deducting one-fourth from Rs.93,600/- (72000+21600) towards personal expenses of the deceased, the annual loss of dependency would come to Rs.70,200/- (93600-23400), and by applying multiplier of 14 to it, the total loss of dependency would come to Rs.9,82,800/- (70200 x 14). Besides this amount, the appellant No.1 is entitled for a sum of Rs.1,00,000/- for loss of consortium; Rs.50,000/- each for appellants No.2 & 3 for loss of love & affection and Rs.50,000/- for funeral expenses. The appellants-claimants, thus, become entitled to receive a total sum of Rs.11,82,800/- (9,82,800+2,00,000) as compensation for the death of deceased Rajkumar Karsh in the motor accident. Since the Claims Tribunal has already awarded Rs.3,53,000/-, after deducting the said amount the claimant/appellants are

entitled for enhanced amount of Rs.8,29,800/- (11,82,800 - 3,53,000). This additional amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till realization.

10. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

(Pritinker Diwaker)
Judge

(Ram Prasanna Sharma)
Judge

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