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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1365 of 2015

- Shri Ram General Insurance Co. Ltd. Office E-08, EPIP, RIICO, Sitapur, Jaipur Rajasthan 302022

---- Petitioner

Versus

1. Shashi Bai W/o Late Santosh Soni, Aged About 20 Years Occupation House Wife, R/o Rajmahal Chowk, In Front Of Chandrawanshi Dairy Ward No. 07 Kawardha, Thana & Tahsil Kawardha, District Kabirdham (Chhattisgarh)

2. Ku. Jhalak D/o Late Santosh Kumar Soni, Aged About 10 Months, Through Natural Guardian Smt Shashi Bai (Mother) Wd/o Santosh Kumar Soni R/o Rajmahal Chowk In Front Of Chandrawanshi Dairy, Ward No. 07, Kawardha, Thana & Tahsil Kawardha, District Kabirdham (Chhattisgarh).......... (Claimants)

3. Baldau Ram S/o Manglu Ram, Aged About 30 Years Cast Gond, R/o Gram Parsaha, Thana & Tahsil Bodla, District Kabirdham (Chhattisgarh)........(Driver Of Truck No. CG09B 0426)

4. Nur Hamid Ali S/o Mohd Gafur Ali, Occupation Transporting, Resident Nutan Chowk, Podi, P. O. Podi, Thana And Tahsil Bodla, District Kabirdham (Chhattisgarh)

5. Janki Bai W/o Late Ram Kumar Soni, Aged About 55 Years, Occupation Labour, R/o In Front Of Chandravanshi Dairy Near Phoolwari Ward No.07, Kawardha, District Kabirdham (Chhattisgarh)

---- Respondents

For Appellant	Shri Deepak Gupta, Advocate
For Respondent Nos.1 & 2	Shri R. K. Pali, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

13/07/2017

1. The present is an appeal preferred under Section 173 of the Motor Vehicles Act, 1988 by the Insurance Company. Challenge in the present appeal is the award dated 30.06.2015 passed by the Additional Motor Accident Claims Tribunal (FTC), Kabirdham in Motor Accident Claim Case No.116/2013. Vide the said award, the Tribunal has granted compensation of Rs.8,92,400/- to the respondent Nos.1 and 2 (hereinafter would be referred to as the claimants) on the death of the deceased Santosh Soni, aged around 22 years, the husband of the respondent No.1, the father of the respondent No.2 and the son of the respondent No.5. It is also relevant to mention at this juncture that the claimants in the instant case have also filed a cross objection/appeal under Order 41 Rule 22 of the CPC seeking enhancement of the compensation awarded.

2. So far as the appeal of the appellant Insurance Company is concerned, the Insurance Company assails the impugned order on two counts, firstly there being a breach of policy condition to the extent that the driver of the offending vehicle at the relevant point of time did not have any valid driving licence. Secondly the challenge to the award by the Insurance Company is also of the quantum part. According to the Insurance Company, the assessment of compensation taking the wages of the deceased at

Rs.4,500/- per month and also granting the compensation under future prospects is erroneous, as there is no sufficient evidence to establish the employment of the deceased.

3. Thus, again on perusal of the records, there does not appear any strong evidence led by the Insurance Company before the Tribunal to prove the aforesaid contentions, they have raised and which they have also raised in the present appeal. On the contrary, there is evidence led by the claimants that the deceased Santosh Soni was working as Labourer and was earning salary of Rs.150/- per day, which comes around 4,500/- per month. Likewise, there is no doubt in the mind of the Court that the amount of wages, which he was getting of Rs.150/- a day on the date of incident, with the efflux of time would have definitely been enhanced subsequently and taking this into consideration, if the Tribunal has quantified the compensation by taking the wages of the deceased at Rs.4,500/- per month and 30% has been awarded under future prospects, then it cannot be said to be either perverse or contrary to the law. Thus, appeal of the Insurance Company being devoid of merit is rejected.

4. So far as the cross objection/appeal preferred by the claimants is concerned, the counsel for the claimants submits that the compensation given by the Tribunal on the

other heads is considerably low and it requires modification to the extent it being enhanced. He further submits that the loss of consortium given to the wife of Rs.10,000/- is too small an amount. According to the claimants, the deceased at the time of incident was 22 years of age and the wife at the relevant point of time was around 20 years of age. She has a small child with her to take care of and in the circumstances, the consortium given as Rs.10,000/- is too meager an amount and as per the judgment of the Supreme Court in the case of **Sarla Verma (Smt) and others vs Delhi Transport Corporation and another**[1], the loss of consortium should be reasonably provided and accordingly, it deserves to be enhanced. Likewise, it is also the contention of the claimants that the amount given to the miner daughter for the loss of love and affection of the father of Rs.5,000/- is again too small an amount and the same also deserves to be enhanced. Likewise also, the amount of loss of love and affection to the mother, the respondent No.5, also is on the lower side and it deserves enhancement.

5. Having considered the rival contentions on either side and on perusal of the records, the death of the deceased from the accident with the offending vehicle, being insured by Shri Ram General Insurance Company Ltd., is not in dispute.

1 (2009) 6 SCC 121

The age of the deceased also is not in dispute of being 22 years on the date of incident. Considering the age of widow of 20 years at the time of incident, the loss of consortium amount of Rs.10,000/- definitely is on the lower side and deserves enhancement and the amount is enhanced to Rs.1 Lakh instead of Rs.10,000/-. Likewise, the loss of love and affection to the daughter on the death of the father of Rs.5,000/- is also on the lower side and taking into account the judgment of the Supreme Court in **Sarla Verma** (supra) as also in the case of **Rajesh and others vs Rajbir Singh and others**[2], the compensation payable to the daughter for the loss of love and affection also deserves enhancement. It is ordered that the daughter be paid compensation of Rs.1 Lakh towards love and affection. Similarly, the mother also having lost a young son so early in the life and loss of love and affection of the son, the amount so awarded by the Tribunal deserves enhancement and it is ordered to be enhanced to Rs.50,000/- in place of Rs.5,000/-. The rest of the amount awarded by the Tribunal inclusive that of the interest shall remain intact. It is ordered that the Insurance Company shall pay an amount of Rs.1 Lakh as compensation for loss of consortium to the widow, the respondent No.1 instead of Rs.10,000/-. Further Rs.1 Lakh for loss of love and affection of daughter, the respondent No.2 and Rs.50,000/- towards the loss of love and affection

2 (2013) 9 SCC 54

to the mother, the respondent No.5 instead of Rs.5,000/- and Rs.10,000/- as awarded by the Tribunal on each of the counts. Let this amount be deposited with interest as quantified by the Tribunal within a period of 2 months from the date of receipt of the certified copy of this order.

6. The appeal is disposed of accordingly.

Sd/-
P. Sam Koshy
Judge

Nirala