

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 243 of 2018

Branch Manager, Cholamandlam M S General Insurance Company,
Second Floor, Sriram Tower, Opposite Life Insurance Corporation
Pandri, Police Station Pandri District Raipur, Chhattisgarh. (Insurer).

---Appellant

Versus

1. Smt. Lokbai Wd/o Late Tekram Verma, Aged About 23 Years.
2. Minor Mokshnarayan S/o Late Tekram Verma, Aged About 5 Years.
3. Minor Ku. Lakshmin D/o Late Tekram Verma, Aged About 3 Years.
4. Minor Ku. Lalli D/o Late Tekram Verma, Aged About 2 Years.
Respondents No. 2 to 4 are Minors Represented Through Their Mother
Smt. Lok Bai W/o Late Tekram Verma.
5. Smt Satrupa Wd/o Jhamulal Verma, Aged About 55 Years.
6. Minor Rameshwar S/o Late Jhamulal Verma, Aged About 14 Years,
represented by his Mother Smt. Satrupa, Wd/o Late Jhamulal.
All are R/o Village Dongra, Police Station Kasdol, District Baloda Bazar-
Bhatapara, Chhattisgarh.
7. Gajanand Sahu S/o Dilharan Sahu, Aged About 25 Years, R/o Village
Kantiyadhi, Police Station Gidhour, District Baloda Bazar - Bhat,
Chhattisgarh. (Driver Of Truck No. CG-11-A H-1951).
8. Maheshwar Prasad Yadav S/o Shri Gorellal Yadav, Aged About 55
Years, R/o Village Sukulpara Kharoud, Police Station Shivrinarayan,
District Janjgir- Champa, Chhattisgarh. (Registered Owner Of Truck No.
CG-11-AH-1951)

---Respondents

For appellant/Insurance Company : Shri Ghanshyam Patel under
instructions of Shri Abhishek
Sinha, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/02/2018

1. Present is an appeal filed by the Insurance Company under Section 173
of the Motor Vehicles Act, 1988 challenging the award dated 10/10/2017

passed by the learned Motor Accident Claims Tribunal, Baloda Bazar, Bhatapara (C.G.) in Motor Accident Claim Case No.112/2016.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.11,53,000/- with interest @ 9% per annum from the date application.

3. The challenge in the present appeal is on two grounds. Firstly, there is an element of contributory negligence on part of the deceased in the accident to occur. Secondly, the quantum of compensation awarded by the Tribunal is on the higher side.

4. So far as the contributory negligence is concerned, the said submission made by the counsel for the Insurance Company cannot be accepted for the simple reason that, the Insurance Company has not led any evidence to substantiate their contention. Even otherwise, the said ground may not be sustainable for the reason that, though the Insurance Company has pleaded that it was an head on collision, but the contents of the F.I.R. shows that, the deceased while traveling on a Motorcycle was hit by the offending vehicle from behind.

5. For the aforesaid reasons, the ground of contributory negligence is not established before the Tribunal.

6. So far as the quantum of compensation is concerned, the contention of the appellant/Insurance Company is that, the amount of compensation under the conventional head is on the higher side in as much as the Tribunal has

awarded a compensation of Rs.2,35,000/-. It was also contended that, the monthly income assessed by the Tribunal also is on the higher side.

7. So far as the compensation under the conventional head is concerned, the deceased in the instant case was aged around 28 years. Considering the fact that, there were six dependents on the deceased and out of six, three are minor childrens, if we take into consideration the distribution of the compensation under the conventional head in paragraph 15 of the impugned award, by no stretch of imagination can it be said to be either excessive, exorbitant or on the higher side. Thus the compensation under the conventional head also does not warrant any interference.

8. So far as the income of the deceased is concerned, since the date of accident is November-2016, the monthly income of the deceased assessed by the Tribunal is Rs.6,000/- per month i.e. Rs.200/- per day. It is anybody's guess that in November-2016, the minimum income of even an unskilled labour would be somewhere between Rs.200-300/- per day.

9. Given the facts if the Tribunal has taken Rs.200/- per day as the monthly income of the deceased, the same cannot be said to be in any manner either excessive or on the higher side. Therefore, the said ground of the Insurance Company also is not sustainable.

10. So far as the judgment of 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) is concerned, the impugned award in the instant case was passed prior to the judgment of

the Pranay Sethi (Supra) and the award was passed relying upon the judgment of the Supreme Court in the case of **Rajesh & Ors. Vs. Rajbir Singh & Ors. [2013 {9} SCC 54]** which was holding the field till the judgment of Pranay Sethi (Supra) was pronounced.

11. In view of the same, this Court does not find any strong case made out by the counsel for the Insurance Company calling for an interference with the impugned award.

12. The appeal thus fails and is accordingly rejected.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit