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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 150 of 2015

- Shri Ram General Assurance Co. Ltd. Maruti Height 4th Floor Mahoba Bazar, G.E. Road, Raipur, Distt. Raipur C.G.

---- Appellant

Versus

1. Smt. Sushma Sao W/o Late Shiv Lal Sao Aged About 23 Years Occupation House wife

2. Ku. Mandakani D/o Late Shiv Lal Sao Aged About 2 Years

   Appellant No.2 is minor, Through their Mother Smt. Sushma Sao, Widow of Shiv Lal aged about 23 years, Occupation House wife.

3. Smt. Gauri Sao W/o Sudarshan Sao Aged About 45 Years

4. Sudarshan Sao S/o Bhog Nath Sao Aged About 50 Years

   All R/o Gram- Chirachua (Ghirachua), Post- Baradoli, Tah. And Thana- Basna, Distt. Mahasamund C.G., District : Mahasamund, Chhattisgarh

5. Bhishma Lal Sahu S/o Nandan Lal Sahu Aged About 28 Years R/o Professor Colony, Raipur C.G., At Bada Saja Pali, Thana- Basna, Distt. Mahasamund C.G.

---- Respondents

For Appellant	Shri Deepak Gupta, Advocate.
For Respective Respondents	Shri Sumit Shrivastava, Shri Sunil Sahu & Shri Shivendu Pandya, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

27/11/2018

1. This appeal has been filed by the Insurance Company under Section 173 of the Motor Vehicles Act against the award dated 19.09.2014 passed in claim case No. 161/2013 by the

Motor Accident Claims Tribunal, Mahasamund, CG awarding total compensation of Rs. 13,49,800/- with interest at the rate of 6% per annum from the date of application till its realization, fastening liability on the Appellant/Insurance Company jointly and severely along with respondent No.5/Driver & Owner of the offending vehicle.

2. As per averments in the claim petition, on 24.02.2013 while deceased Shiv Lal was going on his motorcycle, his vehicle was dashed by Bolero bearing registration No. CG04/HC/2435 driven by non-applicant No.1 in rash and negligent manner. As a result therefore, Shiv Lal suffered grievous injuries and died during treatment in the hospital.

3. On claim petition being filed under Section 166 of the Motor Vehicles Act, Tribunal considering the evidence led by parties awarded compensation in favour of the claimants as mentioned above.

4. Learned counsel for the appellant submits that the Tribunal has wrongly fastened liability on the insurance company as the non-applicant No.1, driver of the offending vehicle, was not having a valid and effective driving licence on the date of accident to drive the offending vehicle. He further submits that the Tribunal was not justified in applying the multiplier of 18 because the deceased was 27 years of age on the date of accident. Further, the Tribunal has awarded

Rs. 3,25,000/- towards loss of love and affection, loss of consortium, mental agony and funeral expenses which is very much on the higher side and needs to be reduced suitably. Lastly, he submits that the Tribunal was not justified in awarding 50% towards future prospect and at the most it should have been 40% as the deceased was in the self-employment and below 40 years of age.

5. On the other hand, learned counsel for the respondents No. 1 to 4/claimants submits that the Tribunal has wrongly held the deceased negligent to the extent of 10% without there being any evidence to this effect by the insurance company. As regards the amount of Rs. 3,25,000/- awarded by the Tribunal under the conventional heads, the same cannot be faulted with as the Tribunal awarded the said amount in view of judgment in ***Rajesh and others v. Rajbeer and others, 2013 ACJ 1403 (SC)*** which was applicable at that time. Learned counsel for the claimants submits that the claimants have not filed any appeal for enhancement as the claimants are poor villagers, claimants No. 3 & 4 are old persons and they were not financially capable of filing appeal. However, he submits that in the given facts and circumstances of this case, the amount awarded by the Tribunal may not be reduced.

6. Heard learned counsel for the parties and perused the

material available on record.

7. Regarding the liability of the Insurance Company though the Insurance Company has pleaded that non-applicant No.1/driver and owner of the offending vehicle was not having a valid and effective license on the date of accident. However, no evidence to substantiate the said pleading has been adduced by the Insurance Company. The Tribunal considering the said fact has fastened the liability on the Insurance Company. This Court finds no illegality or perversity in the finding so recorded by the Tribunal. So far fas the age of the deceased is concerned, the claimants in their claim petition have themselves pleaded that the deceased was 28 years of age at the time of accident. In the Ex.P-4 i.e. MLC of the deceased his age is shown as 30 years. In the Postmortem Report Ex.P-5 the age of the is mentioned as 27 years. As per Ex.P-6, the certificate issued by Naryana Hrudayalaya MMI Hospital, the deceased is said to be 28 years of age. The Tribunal considering all these documents has recorded a finding that at the time of accident the deceased was 27 years of age. However, it has wrongly applied multiplier of 18 whereas according to Judgment of the Hon'ble Supreme Court in the matter of ***Smt. Sarla Verma and others*** v. ***Delhi Transport Corporation and another,*** **(2009) 6 SCC 121**, the applicable multiplier is 17. Further, the Tribunal has fallen in

error in deducting 1/3 towards personal and living expenses of the deceased and considering the number of dependents i.e. 4, the Tribunal should have deducted ¼ under this head. The Tribunal was justified in assessing the income of the deceased as Rs.4,500/- on notional basis. However, the Tribunal was not justified in granting 50% towards future prospect and in view of decision of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, it should have been 40%. The amount of Rs. 1,50,000/- granted towards medical expenses also appears to be just and proper and based on due appreciation of the evidence available on record. As for the amount of Rs. 3,25,000/- towards loss of love and affection, loss of consortium, mental agony, loss of estate and funeral expenses, considering the facts and circumstances of the case and the judgments of the Hon'ble Supreme Court in the matters of ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018*** and Pranay Sethi (supra), the aforesaid amount appears to be on higher side and, therefore, the claimants are entitled for compensation in the following manner:-

Head	Calculation
Income of the deceased	Rs.4,500/- x 12 = Rs. 54,000/- per annum.

40% towards future prospect	Rs.21,600/- Rs.54,000/- + Rs. 21,600/- = Rs.75,600/-
¼ deduction towards personal and living expenses of the deceased.	Rs. 75,600 - Rs.18,900 = Rs.56,700/-
Multiplier of 17 applied (For assessing loss of dependency)	Rs. 56,700/- x 17 = Rs. 9,63,900/-
For Medical (as awarded by the Tribunal	Rs. 1,50,000/-
Towards loss of estate	Rs.15,000/-
Towards funeral	Rs.15,000/-
Loss of spousal consortium to claimant no.1	Rs.40,000/-
Loss of parental consortium to claimant no.2	Rs.40,000/-
Loss of filial consortium to claimant no.3 & 4 @ Rs.40,000/- each	Rs.80,000/-
Total Compensation	**Rs.13,03,900/-**

8. So far as contributory negligence at the rate of 10% on the part of the deceased is concerned, the Tribunal has held the deceased contributory negligence only on the ground that he was not having any licence to drive the offending vehicle on the date of accident. However, the said finding is not sustainable as no evidence whatsoever has been adduced by the Insurance Company to prove that the deceased was

negligent in any manner which contributed to the unfortunate accident. Rather, from the FIR and the charge sheet filed against non applicant No.1, it appears that the entire negligence which resulted into the accident. Therefore, considering the nature and quality of evidence adduced by the parties, their pleadings and the law in respect of contributory negligence, this Court is of opinion that the Tribunal was not justified in holding that the deceased was contributory negligent to the extent of 10% and deducting amount on that ground from the compensation assessed by it.

9. The Tribunal has awarded compensation of Rs. 13,49,800/- to the claimants whereas this Court has assessed the same as Rs.13,03,900/-. As per order dated 19.06.2015, this Court had ordered that on appellant's depositing sum of Rs.10,00,000/- before the Tribunal recovery of the remaining amount of the award shall remain stayed and the claimants shall be entitled to receive the amount from the Tribunal on furnishing the security.

10. In the result, the appeal is allowed in part. The Insurance company to pay compensation of Rs. 13,03,900/- to the claimants with interest as awarded by the Tribunal. The amount, if any, already paid by the Insurance Company shall be adjusted accordingly. However, rest of the conditions of the impugned award shall remain intact. Ordered

accordingly.

11. With the aforesaid modification in the award impugned, the appeal stands disposed of.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh