NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 732 of 2014

1. Branch Manager, Reliance General Insurance Company Limited, Branch Office Plot No. 29, Nehru Nagar Complex, Durg,

At present- 5th Floor, National Corporate Park, G.E. Road, P.S. Saraswati Nagar, Civil and Revenue Dist. Raipur (C.G.) (Insurer of vehicle No. CG-17-H-1811)

---- Appellant/Claimant

Versus

1. Smt. Nirmala Jain W/o Late Kamal Vaidh (Jain), aged about 50 years.
2. Nishant Jain S/o Late Kamal Jain aged about 25 years. Both R/o of ward No. 15, College Road, PS Mahasamund. Civil and Revenue Dist. Mahasamund, (C.G.) (Claimants)
3. Mangauram S/o Muhra Ram Profession- Driver- R/o Vill. Sidawan, Thana Keskal, Civil and Revenue Dist. Bastar C.G. (Driver of vehicle No. CG 17-H-1811)
4. Sukhbir Singh S/o Diwan Singh

   All are R/o Ward No. 22, Gangamunda Ward, Gandhi Nagar, Jagdalpur. PS Jagdalpur Civil and Revenue Dist.- Jagdalpur (C.G.) (owner of vehicle No. CG17-H-1811)
5. Dipak Kothari S/o Late Dilip Kumar Kothari, R/o Gandhi Chowk, Mahsamund, Thana Mahasamund Civil & Revenue Dist. Sarguja C.G. (owner of Vehicle No. CG07 M9019)
6. United India Insurance Co. Ltd. Through Branch Manager, Branch Office, Tara Complex, G.E. Road, Power House Bhilai, Thala Bhilai, Civil and Revenue Dist. Durg C.G. (Insurer of vehicle No. CG07M9019).

---- Respondents

For Appellant	: Shri Rohitashav Singh, Advocate
For Respondent No. 1 & 2	: Shri Abhishekh Pandey, Advocate
For Respondent No.5	: Shri D. Kushwaha, Advocate

For Respondent No. 6 : Ms. Chitra Shrivastava, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

06.12. 2018

(1) This appeal is by Insurance Company challenging the award dated 14.08.2013 passed by Motor Accident Claims Tribunal, Mahasamund in Claim Case No. 71/2010.

(2) As per claim petition on the date of accident i.e. 23.10.2009 deceased Kamal Baid aged about 54 years was travelling in Tavera Jeep bearing registration No. CG 07 M/9019, which was being owned by respondent No. 5 - Dipak Kothari and when the vehicle (Tavera) reached in-front of Electricity Office, Truck (offending vehicle) being registration No. CG 17-H/1811, which was owned by respondent No. 4 – Sukhbir Singh, driven by respondent No. 3- Mangauram and insured with the appellant/Reliance General Insurance Company Ltd came from opposite side and dashed the vehicle Tavera, as a result thereof, deceased Kamal baid sustained grievous injuries and died on the spot. The claimants, who are unfortunate wife and son of the deceased, filed the claim petition under section 166 of the Motor Vehicle Act claiming compensation of Rs. 37,50,000/- for death of deceased in the motor accident occurred on 23.10.2009.

(3) Learned Claims Tribunal, after considering the evidence led by both the parties, has exonerated the respondent - Deepak Kothari and United Insurance Company Ltd., owner and insurer, respectively of the vehicle Tavera, in which deceased was travelling and liability fastened

upon the non applicant No. 1 to 3 driver, owner of the truck and insurer of the offending vehicle truck; and awarded Rs. 12,15,000/- alongwith 6 percent interest from the date of application till its reliazation.

(4) Being aggrieved and dissatisfied with the award, insurer of the offending vehicle (truck) filed this appeal only on the ground of quantum of compensation awarded to the claimants which is on higher-side.

(5) Learned counsel for parties submits there is no counter appeal filed by the other parties.

(6) Learned counsel for the appellant/Insurance Company submits that without any cogent evidence the learned Tribunal has wrongly assessed monthly income of deceased as Rs. 10,000/- per month. He further submits that the amount of compensation awarded by the Claims Tribunal towards incidental head is on higher, which needs to be reduced. He further submits that the since driver of Tavera vehicle was also driving the said vehicle rashly and negligently, therefore, the 50% liability should also be fastened upon the respondent No. 5 & 6 i.e. owner & Insurer of the Vehicle Tavera.

(7) Learned counsel for the respondents No. 1 and 2/claimants submitted that amount of compensation awarded by the Tribunal is just and proper which does not call for any interference. He submits that learned Tribunal has not considered the future prospect of the claimant in the light of decision rendered by the Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,***. He also submits Claims Tribunal has rightly awarded the amount towards incidental head in view of judgment rendered by the Supreme

Court in **Rajesh & others Vs. Rajbeer Singh, 2013 ACJ-1403** prevailing at that time, therefore, there is no need to reduce the amount of compensation awarded by the Tribunal and only future prospect should be considered in this case.

(8) Learned Counsel for the respondent No. 5/ owner of Tavera vehicle submits that learned Tribunal has rightly fastened the liability upon the driver, owner & insurer of the offending vehicle because no any evidence adduced by the parties to prove contributory negligence on the part the driver of Tavera vehicle, therefore, learned Tribunal has rightly exonerated the insurer of the Tavera Vehicle from the liability to pay compensation to the claimants.

(9) Learned counsel for the respondent No. 6/Insurer of Tavera submits that the AW-2 - Alok Malu was the only person who was sitting in the Tavera along with the deceased and he has stated in evidence that negligence was only on the part of driver of the offending vehicle Truck, who dashed the Tavera and no any fault of the driver of the Tavera therefore, learned Tribunal has rightly fastened the liability upon the driver, owner and insurer of the offending vehicle (truck).

(10) I have heard learned counsel appearing for the parties and perused the material available on record and the impugned award.

(11) Firstly considered the contention raised by learned counsel for the appellant that the monthly income of Rs.10,000/- assessed by the Tribunal is on higher side. Claimants witness (AW -1) Smt Nirmala Jain has stated in paragraph 9 of her statement that the Shubham Sari Centre belonged to her husband and he was the only proprietor of this firm and this contention was not rebutted by any of the parties. Learned

Tribunal not considered the other head income from the petty contractor only from the income coming from the sari center is considered by the learned Tribunal. Claimant witness No. 1- Smt Nirmala Jain also stated in her examination –in-chief that her husband was earning Rs. 3 lakh per year but the learned Tribunal did not consider the fact and circumstances of the business and assessed the income of Rs. 1,20,000/-, learned tribunal has rightly considered the income of the deceased and there is no need to reduce the Rs. 10,000/- monthly income of the deceased as assessed by the Tribunal.

(12) The second contention raised by the learned counsel for the appellant regarding contributory negligence part of the driver of the vehicle Tavera is concerned, the eyewitness No. 2- Alok Malu has categorically proved this fact that at the time of accident he was sitting in the Tavera with the deceased and no any negligence was occurred by the driver of Tavera only the driver of offending vehicle truck drive the vehicle very rashly and negligently and dashed the Tavera vehicle in the result the deceased sustained injuries and died on the spot. Only on the basis of head and collusion it cannot be considered that both the driver of the vehicle committed contributory negligence. Therefore, the learned Tribunal has rightly fastened the liability upon the owner/driver and insurer of the offending vehicle (truck).

(13) At this stage, learned counsel for the appellant/Insurance Company submits that since number of dependents/claimants are two, in view of decision rendered by the Supreme Court in **Sarla Verma (Smt.) & others V. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, deduction should be 1/3rd towards

personal expenses of the deceased in place of 1/4th as deducted by the Claims Tribunal for personal & living expenses of the deceased.

(14) Admittedly the deceased was running Shubham Sadi Centre and was aged about 55 years, therefore, in view of the decision of Supreme Court Judgment **National Insurance Co. Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680,** 10% of the annual income should be added thereto towards future prospect and so far as the amount awarded by the Tribunal for conventional heads is concerned keeping in view of the decision of Pranany Sethi (supra) & In the matter of **Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram & Ors. In civil appeal No. 9581 of 2018 arising out of SLP[Civil] No. 3192 of 2018** the Hon'ble Supreme Court has granted amount for loss of filial, apart from awarding towards other conventional heads therefore, in the instant case Rs. 2,00,000/- towards parental consortium can be considered the fact that the deceased died at the age of 54 to 55 years leaving behind his wife aged about 50 years and one son the amount so awarded by the Tribunal can not be said to be on the higher side and therefore the same is kept intact. Thus, claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased	Rs. 10,000 x 12 = Rs.1,20,000/- per annum
02.	10% of (i) above to be added towards future prospects.	Rs.1,20,000/- + Rs.12,000/- =1,32,000/-
03.	1/3rd deduction towards personal and living expenses of the deceased	Rs.1,32,000- Rs.44,000/-

		=Rs.88,000/-
04.	Multiplier of 11 to be applied (loss of dependency) (as applied by the Tribunal)	Rs.88,000x 11 =Rs.9,68,000/-
05.	Towards other heads (as awarded by the Tribunal)	Rs.2,00,000
06.	Towards loss of estate, funeral, spousal consortium in view of Pranay Sethi (supra)	Rs. 70,000/-
07.	**Total compensation**	**Rs.12,38,000/-**

15. Thus, the amount of compensation awarded by the Tribunal i.e. Rs. 12,15,000/- is enhanced to Rs. 12,38,000/-. The additional amount of compensation i.e. Rs. 23,000/- shall carry interest @ 6 percent per annum from the date of application till its actual payment. Rest of all the conditions mentioned in the award shall remain intact.

16. The appellant/Insurance Company Ltd. is directed to deposit aforesaid amount of Rs.23,000/- along with interest before the concerned Tribunal. No order as to costs.

17. The appeal filed by the Insurance Company challenging the liability and quantum of compensation, being devoid of merit, is liable to be and is hereby dismissed with modification in award impugned to the above extent.

Sd/-

(Gautam Chourdiya)

Judge

Amita