NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 522 of 2016

- Branch Manager, United India Insurance Company Limited, Infront Of Aunupama Talkies, Jagdalpur, District Bastar, Chhattisgarh.

----Appellant

Versus

1. Smt. Chameli Bai Wd/o Late Lacchindar Kashyap, Aged About 38 Years
2. Ku. Chandramani D/o Late Lacchindar Kashyap, Aged About 17 Years Minor
3. Jitendra S/o Late Lacchindar Kashyap, Aged About 15 Years Minor
4. Ku. Tulsawati D/o Late Lacchindar Kashyap, Aged About 14 Years Minor
5. Ku. Kamali D/o Late Lacchindar Kashyap, Aged About 13 Years Minor
6. Jhumuk Lal S/o Late Lacchindar Kashyap, Aged About 10 Years Minor
7. All are R/o Village Nakapara, Negapar, Police Station Darbha, District Bastar, C.G.

   No.2 to 5 are minor through Natural Guardian Mother Smt. Chameli Bai Wd/o Late Lacchindar Kashyap, Aged About 38 Years, R/o Village Nakapara, Negapar, Police Station Darbha, District Bastar, Chhattisgarh.

7. A.V. Shrikant S/o A.V. Ramannartha, Aged About 28 Years R/o Near Balaji Mandir, Chitrakoot Road, Dharampura, Jagdalpur, District Bastar, Chhattisgarh.

---- Respondents

For Appellant	Shri H.B. Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate.
For Respondent nos. 1 to 6	Shri A.L. Singroul, Advocate.
For Respondent no.7	Shri P.K. Tulsyan, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

06/12/2018

1. This appeal is by the Insurance Company against the award dated 05.02.2016 passed by 2nd Additional Motor Accident Claims Tribunal, Bastar Place Jagdalpur, District Bastar, C.G. in Claim Case No.141/15 awarding total compensation of Rs.4,80,000/- with interest @ 9 per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.
2. As per claim petition, on 24.12.2014 deceased Lacchindar Kashyup, aged about 40 years, earning Rs.6,000/- per month as Mason died in the motor vehicular accident caused due to rash and negligent driving of vehicle of motorcycle bearing no. CG07-LX-8377 by its driver Sonaru, as a result of which deceased Lacchindar Kashyup as well as driver of the motorcycle died on the spot.
3. On claim petition being filed by the claimants i.e. wife and children under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.
4. Counsel for the appellant has assailed the award on two grounds firstly that the Tribunal was not justified in fastening the liability on the Insurance as Driver of the offending vehicle was not having a licence on the date of accident and secondly the compensation awarded by the Tribunal without there being any evidence is on the higher side and needs to be reduced suitably.

5. On the other hand learned counsel for the respondents/claimants submits that the Tribunal considering all the relevant aspects of the matter has rightly fastened the liability on the Insurance company and that the amount awarded by the Tribunal is not on the higher side, therefore, he has also filed cross objection in this appeal seeking enhancement of the same. He submits that the Tribunal wrongly deducted ¼ towards loss of personal and living expenses, whereas it should have been 1/5. He also submits that at the time of accident deceased was earning Rs.6000/- per month, but learned Tribunal only considered Rs.3000/- per month, whereas it should have been Rs.5,000/- as per minimum wages at the relevant time and that no amount towards future prospect has been granted to the claimants.

   In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680 & 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.***

6. Learned counsel for the respondent no.7 supports the impugned award.

7. Learned counsel for the appellant/Insurance Company submits that there is no need to enhance the award as per the cross

objection filed by the claimants.

8. Heard both the parties on appeal as well as on cross objection and perused the material available on record.

9. First this Court decides the issue of breach of policy raised in the appeal by the Insurance Company. Offending vehicle driver and deceased both died on the date of accident as per Ex.D-10. Learned counsel for the appellant submits that on the intimation given to the wife of the deceased Sonaru, no any driving licence was produced by wife of Sonaru, therefore, the Insurance Company could not get the particulars of driving licence of the Sonaru, driver of the offending vehicle and no any driving licence was produced by the owner or his wife after notice being given by the Insurance Company nor the police seized that document. Therefore, Insurance Company is helpless to prove this fact and particulars of the driving licence because the owner of the vehicle has not given any particulars of the driving licence before the Tribunal.

10. Entire evidence on record is considered in this case. NAW- 2 Muni Kashyap is wife of deceased Sonaru Kashyap, who is driver of the offending motorcycle. She stated specifically in paras 3 & 4 that her husband was having a motorcycle and he used to ride motorcycle prior to accident. She stated in paras 1 to 4 categorically this fact that her husband has a motorcycle and he had a driving licence which he used to keep in his pocket. NAW-1 A.V. Shrikant also stated this fact that after seeing the driving licence of Sonaru, he had handed over the

motorcycle to Sonaru. This contention was not rebutted in cross-examination.

11. NAW-3 B.K. Mandal states that he has no particular knowledge about the driving licence of Sonaru. NAW-4 Pramod Shrivastava, ASI stated that he seized RC book but due to death of Sonaru driving licence could not be seized. From the entire evidence, it is reflected that deceased had a driving licence, particulars of driving licence could not be obtained as Sonaru died. Therefore, it is very difficult for the claimants or owner of the vehicle to obtain the driving licence from the deceased person on the same date of accident. As per preponderance of probabilities, the evidence of NAW-1 and NAW-2, they proved this fact that deceased had a motorcycle driving licence, therefore, this Court finds no substance in appeal filed by the Insurance Company, insofar as it relates to fastening of liability on it by the Tribunal.

12. Now this Court considers the quantum of compensation which has been assailed by the Insurance Company as also by the claimants by way of filing cross objection.

13. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.6,000/- per month as Mason but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.5,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased

i.e. 40 years, the dependency i.e. 6, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi & Magma* (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.5,000/- per month.	Rs.60,000/- per annum
02.	25% of (i) above to be added towards future prospects.	Rs.15,000/- Rs.60,000/- + Rs.15,000/- = Rs.75,000/-
03.	1/4 deduction towards personal and living expenses of the deceased	Rs.18,750/- Rs.75,000 – Rs.18,750 = Rs.56,250/-
04.	Multiplier of 15 to be applied	Rs.8,43,750/-
05.	Towards loss of estate and love and affection	Rs.60,000/- (as awarded by the Tribunal)
06.	Towards funeral expenses	Rs.5,000/- (as awarded by the Tribunal)
07.	Towards loss of spousal consortium	Rs.10,000/- (as awarded by the Tribunal)
	Total Compensation	**Rs.9,18,750/-**

Since the Tribunal has already awarded Rs.4,80,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,38,750/- with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

14. In the result, the appeal filed by the Insurance Company being without any substance is hereby dismissed. However, the cross objection filed by the claimants is allowed with modification in the impugned award to the above extent.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh