NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 38 of 2014

1. Narbad Bai, aged about 26 years, W/o Late Mahesh Korram,
2. Rupesh Kumar, aged about 9 months, S/o Late Mesh Korram
3. Dayalal, aged abouit 45 years, S/o Maghsingh
4. Bhagvantin aged about 40 years, W/o Dayalal

Appellant No.2 being minor through mother Narbad Bai, W/o Late Mahesh Korram,

All are R/o Village Bendadhi, Thana Churiya, Tahsil Dongargaon, District Rajnandgaon,

---Appellants/Claimants

Versus

1. Gopi Bohra, aged about 35 years,

   S/o Morkha Singh Bohra, R/o Tatiband Raipur
2. Narendra Singh, S/o Amar Singh, Thourgh B.M.R. Roadwage, Tatiband, Raipur.
3. Branch Manager, The New India Assurance Company Limited, Branch Office, Raipur

---- Respondents

For Appellants	Shri Shalvik Tiwari, Advocate.
For Respondent No.3	Shri Sudhir Agrawal, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

03.12.2018

1. This appeal is by the claimants against the award dated 12.12.2013 passed by the Additional Motor Accident Claims Tribunal, Khairagarh, Circuit Court Dongargarh in Claim Case No.16/2011awarding total compensation of Rs.5,00,500/- with interest @ 6 per annum from the date of

application till realization, fastening liability on the non-applicants no.1 & 2 jointly and severely while exonerating non-applicant no.3/Insurance company on the ground of breach of policy conditions.

2. As per claim petition, on 15.03.2011 deceased Mahesh Korram aged about 24 years, earning Rs.5,000./- per month working as Driver, died in the motor vehicular accident caused due to rash and negligent driving of Truck bearing registration no. CG04-J-8849 by non-applicant No.1, owned by non-applicant no.2 and insured with non-applicant no.3.

3. On claim petition being filed by the claimants 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. Learned counsel for the appellants/claimants submits as under:

(i) that income of the deceased has wrongly been considered by the Tribunal as Rs.3,000/- whereas it should have been Rs.5,000/-

(ii) that no amount towards future prospect has been granted to the claimants.

(iii) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

(iv) that Tribunal has awarded meager amount towards loss of filial and other consortium which also needs to be enhanced.

(v) that in this case order of pay and recover may be passed.

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, Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796*** *and* ***Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762.***

5. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court. Since the Insurance Company has been exonerated on the ground of breach of policy conditions, there can be no order of pay and recover in this case.

06. Heard learned counsel for the parties and perused the material available on record.

07.As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.5,000/- per month as Driver but no documentary or oral 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.4,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi & Magma General Insurance Co. Ltd.* (supra), the claimants are held entitled for compensation in the following manner:

S.I. No.	**Heads**	**Calculation (in rupees)**
1.	Income of the deceased	Rs.4,000/- x 12 = Rs.48,000/-
2.	40% towards future prospect	Rs.19,200/- Rs.48,000 + Rs.19,200/- = Rs.67,200/-
3.	¼ deduction towards personal and living expenses of the deceased	Rs.16,800/- Rs.67,200/- - Rs.16,800/- = Rs.50,400/-
4.	Multiplier of 18 to be applied	Rs.9,07,200/-
5.	Towards loss of estate, loss of spousal consortium and funeral expenses	Rs.70,000/-
6.	Towards loss of filial consortium to appellant nos. 3 & 4.	Rs.20,000/-
7.	Towards loss of parental consortium to appellant no.2	Rs.10,000/-
	Total Compensation	**Rs.10,07,200/-**

Since the Tribunal has already awarded Rs.5,00,500/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.5,06,700/- with interest @ 6% per annum from the date of application till realization.

08. Considering the facts and circumstances of the case, keeping in view the decision of the Hon'ble Supreme Court in the matters of ***Manuara Khatum and others and Shivawwa and another*** (supra), this Court feels it proper to order for pay and recover in this case. Accordingly, non-applicant no.3/ Insurance Company is directed to pay the total amount of compensation to the claimants and then recover the same from non-applicant no.2/owner of the offending vehicle in accordance with law. However, rest of the conditions of the impugned award shall remain intact.

09. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh