

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 385 of 2012

ICICI Lombard General Insurance Co.Ltd., through its legal manager,
ICICI General Insurance Co.Ltd., Ground Floor, Vanijya Bhawan,
Devendra Nagar Road, Raipur, Chhattisgarh.

---Appellant

Versus

1. Smt.Parmeshwari Devi W/o Late Shri Vijay Suryawanshi, aged about 29 years.
2. Manish S/o Late Shri Vijay Suryawanshi, aged about 10 years, minor through mother presented Smt.Parmeshwari Devi, W/o Late Shri Vijay Suryawanshi.

Both are R/o Kanhaiband, Chowki Naila, Tehsil Janjgir, District Janjgir Champa, Chhattisgarh. (Claimants).

3. Shivshankar Patle S/o Shri Sabarsai Patle, age not known to the appellant.
4. Dilip Kumar S/o Shri Ramsai, age not known to the appellant.

Respondents No. 3 & 4 are R/o village Baitukri, Post Khisora, Thana Baloda, District Janjgir-Champa, Chhattisgarh.

---Respondents

MAC No. 156 of 2012

1. Parmeshwari Devi W/o Vijay Suryavanshi, aged about 26 years.
2. Manish S/o Late Shri Vijay Suryawanshi, aged about 07 years.

Both are by caste Suryawanshi, R/o village Kanhaiband, Out post Naila, Tahsil Janjgir, District Janjgir-Champa (C.G.). (Claimants).

---Appellants

Versus

1. Shivshankar Patle S/o Shri Sabarsai Patle.
2. Dilip Kumar S/o Shri Ramsai.

Both are R/o village Baitukri, Post Khisora, Thana Baloda, District Janjgir-Champa, Chhattisgarh.

3. ICICI Lombard Motor Insurance Company, City Branch, Raipur, District Raipur (C.G.).

---Respondents

For Insurance Company	:	Shri P.Acharya along with Shri Amrito Das, Advocates.
For claimants	:	Shri Basant Kaiwartya, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/02/2018

1. These are the two appeals filed under Section 173 of the Motor Vehicles Act arising out of a common award dated 10/10/2011 passed by the learned Additional Motor Accident Claims Tribunal, Janjgir, District Janjgir-Champa, Chhattisgarh in Motor Accident Claim Case No.12/2009.
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.3,91,000/- with interest @ 7% per annum from the date of application.
3. MAC No.385/2012 is an appeal filed by the Insurance Company assailing the liability part and MAC No.156/2012 is an appeal filed by the claimants seeking for enhancement of the compensation awarded. For convenience sake, we take the appeal of the Insurance Company first.
4. The contention of the counsel for the Insurance Company is that, the driver of the offending vehicle at the relevant point of time did not have a valid license. It was also his contention that, the Tribunal has not properly appreciated the aspect of contributory negligence. He further submits that, the driver of the offending vehicle did not have a valid license stands proved from Ex-A/2 which they have produced in this appeal. It was further contended that, there is a clear finding before the Tribunal that, the

deceased was travelling on a Motorcycle when he was dashed by the vehicle coming from the opposite direction and there was a head on collision. Since there was a head on collision, the aspect of contributory negligence stands proved from its facts itself. No fresh evidence needs to be proved.

5. However, this Court is of the opinion that, both these grounds have not been sufficiently proved or established before the Tribunal by the Insurance Company in as much as in spite of sufficient opportunity being granted, the Insurance Company has not led evidence of any of the witness to prove these aspect. Further, as regards head on collision, there is no evidence come on record which shows that, the accident occurred on the center of the road or the deceased who was traveling on a Motorcycle had crossed the wrong side of the road when the accident occurred. On the contrary, the claimants have examined an eye witness namely Bhagirathi-AW/2 who have said that, it was the negligence on part of the driver of the offending vehicle which resulted in the accident.

6. Given the facts and circumstances of the case, 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.

7. So far as the appeal of the claimants is concerned, the counsel for the claimants submits that, the income assessed by the Tribunal is on the lower side in as much as the accident is of April-2009 and the income assessed by the Tribunal is only Rs.3,000/- per month i.e. Rs.100/- per day which is

unreasonably low. It was further contended that, the claimants were also entitled for compensation under the future prospects while quantifying the compensation and thus prayed for suitable enhancement of the award.

8. Given the facts and circumstances of the case, this Court has no hesitation in accepting both these grounds raised by the counsel for the claimants for the reason that, in April-2009, even an unskilled labour would had been earning more than Rs.150-200/- per day i.e. Rs.4,500-6,000/- per month.

9. Therefore, this Court assesses the monthly income of the deceased at Rs.4,500/- and proceeds to quantify the compensation accordingly. The claimants would also be entitled for 40% of the income towards future prospects which come to Rs.1,800/-. If Rs.1,800/- is added to the monthly income, the figure would become Rs.6,300/- per month i.e. Rs.75,600/- yearly of which if 1/3rd is deducted towards personal expenses, the amount left would be Rs.50,400/- which if multiplied by applying multiplier of 16, the amount would come to Rs.8,06,400/-. Thus, the claimants shall be entitled for a compensation of Rs.8,06,400/- towards loss of dependency. In addition, the claimants would also be entitled for an additional amount of Rs.70,000/- towards the conventional head which would make the total compensation payable to the claimants at Rs.8,76,400/- instead of Rs.3,91,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

10. As a consequence, the appeal of Insurance Company i.e. MAC No. 385/2012 stands rejected and the appeal of claimants i.e. MAC No.156/2012 stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit