

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 43 of 2014

- ICICI Lombard General Insurance Co.Ltd. Through- Its Legal Manager, ICICI General Insu.Co.Ltd., Groung Floor, Vanijya Bhawan, Devendra Nagar Road, Raipur C.G.

---- Appellant

Insurer

Versus

1. Yamuneshwari widow of Late Hemsingh Verma Aged About 40 Years
2. Ku. Niyati D/o Late Hemsingh Verma Aged About 20 Years
3. Dayanand S/o Late Hemsingh Verma Aged About 18 Years
4. Draupati Widow of Late Beniram Verma Aged About 71 Years

Respondents No. 1 to 4 (claimants) residents of Vindhyavasini Nagar, Abhanpur, PS Abhanpur, Distt. Raipur (CG)

5. Sukhram S/o Banuram Dhruv R/o Near Sakin Railway Crossing, Mandir Hasaud, P.O. And P.S. Mandir Hasaud, Distt. Raipur C.G. (driver)
6. M/s. Hora Transport Company Ltd. S/o Through- Its Officer In Charge, Fafadih, Raipur, P.S. Ganjpara, Distt. Raipur C.G., (Owner)

---- Respondents

For Appellants	:	Shri P. Acharya, Advocate on behalf of Shri Amrito Das, Adv.
For Respondents No.1 to 4	:	Shri Amiyakant Tiwari, Adv.
For respondents No. 5 & 6	:	None.

MAC No. 956 of 2013

1. Yamuneshwari Wd/o Hemsingh Verma Aged About 38 Years
2. Ku. Nayati D/o Hemsingh Verma Aged About 18 Years
3. Dayanand S/o Hemsingh Verma Aged About 16 Years

4. Dorpati Wd/o Beniram Verma Aged About 69 Years

All R/o Vidhyavansini Nagar, Abhanpur, P.S. Abhanpur, Civil and Revenue Distt. Bilaspur C.G.,

---- Appellants

Claimants

Versus

1. Sukhram S/o Banuram Dhruv R/o Near Railway Crossing, Mandir Hasoud, P.O. And P.S. Mandir Hasoud, Civil and Revenue Distt. Raipur C.G. (driver of offending truck No. CG 04 G 0288)
2. M/s Hona Transport Company Ltd. S/o Thru- In Charge Officer, M/s Hora Transport Com. Ltd., Fafadeeh, Raipur, P.S. Ganjpara, Distt. Raipur C.G., (Owner of offending truck No. CG 04 G 0288)
3. ICICI Lombard General Insu.Co.Ltd. S/o Thru- In-Charge Officer, ICICI Lombard General Insu.Co.Ltd., Devendra Nagar Road, Vanijya Bhawan Ground Floor, Raipur, Distt. Raipur C.G.(Insurer of offending truck No. CG 04 G 0288)

---- Respondents

For Appellants	:	Shri Amiyakant Tiwari, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Shri P. Acharya, Advocate on behalf of Shri Amrito Das, Adv.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

10/12/2018

As both the above appeals arise out of the award dated 3.7.2013 passed by Chief Motor Accident Claims Tribunal, Raipur in Claim Case No.187/2011, they are being disposed of by this common judgment.

02. As per claim petition filed by the widow, daughter, son and mother of the deceased, on 17.6.2011 at about 8 pm while the deceased Hemsingh Verma, 43 years, earning Rs.30,000/- per month, was riding his motorcycle, his vehicle dashed against the truck No. CG 04 G 0288, parked on the middle of the road by non-applicant No.1

Sukhram without indicator or parking light, as a result of which the deceased suffered grievous injuries and ultimately succumbed to the same. On the date of accident, the offending vehicle truck was owned by non-applicant No.2 M/s Hona Transport Co. Ltd. and insured with non-applicant No.3/ICICI Lombard General Insurance Co. Ltd.

03. 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 held that the deceased was also equally negligent in causing the accident and thus awarded total compensation of Rs.22.66 lacs with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.

04. **MAC No.43/2014**: Learned counsel for the appellant/insurance company submits that the amount awarded towards loss of consortium and for love and affection is very much on the higher side. Likewise, the Tribunal has also committed error by not deducting the amount being received by son of the deceased after getting compassionate appointment from the income of the deceased for the purposes of determining the loss of dependency. Therefore, the impugned award deserves to be modified to the above extent.

05. **MAC No.956/2013**: Learned counsel for the appellants/claimants submits that the Tribunal has wrongly applied multiplier of 12 whereas considering the age of the deceased i.e. 48 years, in view of decision in ***Smt. Sarla Verma and others Vs. Delhi Transport Corpn. & another, (2009) 6 SCC 121***, multiplier of 13 should have been applied. Further, the Tribunal has committed error in holding the deceased negligent to the extent of 50% without there being specific and cogent evidence in this regard merely on the basis of presumption. Alternatively he argues that if this Court ultimately finds the deceased negligent, the same may be considered on lower side and not 50% as held by the Tribunal.

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

07. So far as appeal MAC No.43/2014 preferred by the insurance

company is concerned, considering the fact that the deceased died at the age of 48 years leaving behind his wife aged 38 years, minor daughter 18 years, minor son 16 years and old widow mother 69 years, who were fully dependent upon him, they were deprived from spousal, parental and filial consortium, keeping in view the decision of Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, in Civil Appeal No. 9581 of 2018 arising out of SLP (Civil) No.3192 of 2018***, this Court is of the opinion that the amount awarded by the Tribunal under the head of loss of consortium and for love and affection is just and proper and cannot be said to be excessive or exorbitant.

As regards the other contention of the insurance company that the amount being received by son of the deceased on account of getting compassionate appointment is liable to be deducted from the income of the deceased, as per settled view of the Hon'ble Supreme Court in this regard, the Tribunal was fully justified in not deducting any amount on this count from the income of the deceased for assessing the loss of dependency. In view of above, the appeal preferred by the insurance company being bereft of any substance is liable to be dismissed.

08. So far appeal MAC No.956/2013 preferred by the claimants for enhancement is concerned, considering the pleadings of the parties and evidence adduced by them it is seen that the deceased was 48 years of age at the time of accident and as such, in view of decision in *Sarla Verma* (supra), the Tribunal was not justified in applying multiplier of 12 and it should have been 13.

09. As for contributory negligence, considering the facts and circumstances of the case, the manner in which the accident occurred i.e. the deceased dashed the offending vehicle truck while it was in stationary condition on the middle of the road without any indicator or parking light, the fact that charge sheet was filed against non-applicant No.1/driver, this Court is of the opinion that the deceased was equally responsible for causing the accident. While riding motorcycle at night, the deceased was expected to be more careful, however, he dashed

the truck which was in stationary condition. In this view of the matter, the finding of the Tribunal holding the deceased contributory negligent to the extent of 50% cannot be faulted with.

10. Hence, the appeal preferred by the appellants/claimants is to be considered only on the point of multiplier. Thus, after applying multiplier of 13 to the annual income of the deceased i.e. Rs.3,38,487/-, the total loss of dependency comes to Rs.44,00,331/-. After deducting 50% from the said amount towards contributory negligence of the deceased, it comes to Rs.22,00,165/-. The other amount of Rs.25,000/- towards funeral expenses; Rs.1 lac for loss of consortium; Rs.1 lac for loss of parental consortium; and Rs.10,000/- for loss of love and affection i.e. total Rs.2.35 lacs awarded by the Tribunal is kept intact. As such, the claimants are held entitled for a total compensation of Rs.24,35,165/- with interest as awarded by the Tribunal.

Since the Tribunal has already awarded Rs.22,66,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.1,69,165/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

11. In the result,

- MAC No.43/2014 preferred by the appellant/insurance company being without any substance is hereby dismissed.
- MAC No.956/2013 filed by the appellants/claimants is allowed in part with modification in the award impugned to the above extent. Insurance company is granted one month's time from today to deposit the above amount with the concerned Tribunal.

Sd/

(Gautam Chourdiya)

Judge