NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 738 of 2017

1. Smt. Mongara Bai Wd/o Late Rajkumar Bhaskar, Aged About 34 Years
2. Pratima Wd/o Late Rajkumar Bhaskar, Aged About 30 Years
3. Anil Kumar S/o Late Rajkumar Bhaskar, Aged About 18 Years
4. Ku. Parwati D/o Late Rajkumar Bhaskar, Aged About 15 Years
5. Ku. Sarita D/o Late Rajkumar Bhaskar, Aged About 13 Years
6. Sunil Kumar S/o Late Rajkumar Bhaskar, Aged About 7 Years
7. Ku. Kavita D/o Late Rajkumar Bhaskar, Aged About 12 Years
8. Ku. Sulekha D/o Late Rajkumar Bhaskar, Aged About 9 Years
9. Ugesh S/o Late Rajkumar Bhaskar, Aged About 5 Years

Appellants No. 4 to 6 are minor through her legal guardian mother Mongara Bai.
Appellant No. 7 to 9 are minor through her legal guardian mother Pratima.
All are R/o Village-Dabari, Thana Kunda, Tahsil Pandariya, Distt. Kabirdham (CG)

---- Appellants
Claimants

Versus

1. Rajendra Singh S/o Non Singh, Aged About 36 Years R/o Village Katra Ward Sager M.P. Hall Mukam H.I.G.35 Arya Colony Tifra Bilaspur, Chhattisgarh ....Driver Of The Offending Vehicle Truck No. C.G.10 C 1917.
2. Baljeet Singh S/o Late Baryam Singh Domir, Aged About 38 Years R/o H.I.G.35 Arya Colony Tifra Bilaspur, Chhattisgarh ....Owner Of The Offending Vehicle Truck No. C.G.10 C 1917.
3. Bajaj Alliance General Insurance Company Limited, Branch Shiv Mohan Bhawan Vidhan Shabha Marg Pandri Raipur, Chhattisgarh ....Insurer.

---- Respondent

For Appellants	:	Shri A.L. Singroul, Advocate.
For Respondent No.3	:	Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board

05/10/2018 :

The claimants by filing this appeal are challenging the award dated 19th February, 2013 passed by Additional Motor Accident Claims Tribunal, Mungeli, Distt. Bilaspur (in short “the Tribunal”) in Claim Case

No.96/2011 whereby the Tribunal has awarded a total compensation of Rs.4.47 lacs along with interest @ 6% per annum thereon from the date of application till realization in favour of the claimants, and seeking enhancement of the same.

02. Claimants' case in brief is that on 24.1.2011 at around 4-5 am while deceased Rajkumar was going on his bullock-cart, he was dashed by Truck bearing registration No. CG 10C/1917 (hereinafter shall be referred to as “offending vehicle”) which was being driven by respondent No.1 in a rash and negligent manner as a result of which Rajkumar died on the spot itself. According to the claimants, at the relevant time the deceased was 39 years of age and was earning Rs.9,000/- per month by selling clothes. Thus, the claimants being dependents on the deceased, by filing application under Section 166 of the Motor Vehicles Act, 1988 (in short “the Act”) claimed a total sum of Rs.30 lacs under various heads as compensation against the death of Rajkumar.

03. Respondents No.1 & 2/driver & owner of the offending vehicle filed their written statement, denied all the adverse averments made in the claim petition and stated that since at the relevant time the offending vehicle was insured with respondent No.3/insurance company, liability, if any, to pay compensation is of respondent No.3.

04. On the other hand, respondent No.3 in its written statement though admitted that the offending vehicle was insured with it during the relevant period but denied that any accident was caused by the said vehicle and stated that the accident occurred due to negligent act

of the deceased. It also pleaded that the offending vehicle was being driven in violation of the policy conditions.

05. The Tribunal after hearing counsel for the respective parties and considering the material available on record by the impugned award granted a total compensation of Rs.4.47 lacs in favour of the claimants with interest @ 6% per annum from the date of application till realization, fastening the liability to satisfy the award on respondent No.3/insurance company. No appeal has been filed by the insurance company challenging the above award and only the claimants have filed appeal seeking enhancement of the compensation awarded by the Tribunal.

06. Learned counsel for the appellants submits that the Tribunal has erred in assessing the monthly income of the deceased at Rs.3000/- whereas the deceased being a cloth merchant was earning Rs.9000/- per month. Further, the Tribunal has committed an error by not granting any amount towards future prospects whereas considering the age of the deceased, which was held by the Tribunal to be 40 years, 40% of his monthly income was to be added thereto towards future prospects in view of judgment of the Hon'ble Apex Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***. Lastly, he submits that the Tribunal has also awarded a meager amount under the conventional heads and the same is liable to be enhanced to Rs.70,000/- in light of law laid down by the Hon'ble Apex Court in *Pranay Sethi* (supra)

07. Per contra, learned counsel appearing for the insurance

company has vehemently opposed the contentions raised by the appellants and submitted that the impugned award has been passed by the Tribunal keeping in view all the relevant aspects of the matter including the income of the deceased because there is no certificate or document with respect to earning of the deceased. Being so, there is no need to interference with the award impugned.

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

09. So far as determination of age of the deceased to be 40 years is concerned, the same appears to be just and proper. Further, the Tribunal was justified in making 1/5th deduction from the income of the deceased towards his personal and living expenses as the number of dependents in this case are nine as also in applying multiplier of 15. However, it appears to have fallen in error in assessing the income of the deceased at Rs.3000/- per month. From the pleadings of the claimants as also the evidence of AW-1 Anil Kumar & AW-2 Ganesh, the monthly income of the deceased, who was engaged in the business of selling of clothes, can safely be taken at Rs.4,500/- i.e. Rs.54,000/- per annum. Considering the age of the deceased i.e. 40 years and the nature of his job i.e. self-employment, in view of judgment in ***Pranay Sethi*** (supra), 25% of his annual income is to be added thereto towards future prospects. Having done so, the annual income of the deceased comes to Rs.67,500/-. After deducting 1/5th from it towards personal and living expenses of the deceased, the annual loss of dependency comes to Rs.54,000/-. After applying

multiplier of 15, the total loss of dependency is worked out to Rs.8,10,000/-. As regards the amount of Rs. 15,000/- awarded under the conventional heads by the Tribunal, the same is liable to be enhanced to Rs.70,000/- in view of decision of the Hon'ble Supreme Court in ***Pranay Sethi*** (supra). Thus, the claimants are held entitled for a total compensation of Rs.8,80,000/- with interest @ 6% p.a. from the date of claim petition till realization.

10. In the result, the appeal is allowed in part. The appellants/claimants are held entitled for a total compensation of Rs.8,80,000/-. Since the Tribunal has already awarded Rs.4.47 lacs, after deducting the same, the claimants are held entitled for additional compensation of Rs.4.33 lacs with interest @ 6% p.a. from the date of claim petition till its realization. The impugned award stands modified to the above extent. However, apportionment of the enhanced amount shall be in the same proportion as has been done by the Tribunal.

Sd/-

(Gautam Chourdiya)

Judge

Khan