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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 828 of 2015

1. Smt. Rampayari Yadav aged about 41 years, W/o Shri Pardeshi Yadav, Occupation- House wife, R/o Village- gali No. 12 Vivekanand Aashram, Thana Aajad Chouk, Tahshil & District Raipur (C.G.).

---- Appellants/Claimants

Versus

1. Ramesh Bondekar aged about 31 years, S/o Kapurchand- Bodekar Occupation- Driver, Thana-Mohkheda District-Chhindwada(MP).

2. Veenit Miglani aged about 48 years. S/o Late Shyam Sunder Miglani Occupation- Owner of vehicle R/o- Village, Puranan, Narshing Naka Chhindwada Tahshil and District- Chhindwada (MP).

3. The Reliance General Insurance Company Limited Through Branch Manager, Branch Office Shop No. 412-413, 4th Mala Ravi Bhawan Jai Stambh Chouk Raipur (C.G.).

---- Respondents

For Appellants : Shri A. L. Singrol, Advocate
For Respondent No.3 :Shri Sangeet K. Kushwaha, Advocate on behalf of Shri S. S. Rajput, Advocate

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Hon'ble Shri Gautam Chourdiya, J.

Judgment On Board

05.12. 2018

This appeal is by the claimant, who is unfortunate mother of deceased –Satish Yadav, against the award dated 30.04.2015, passed by Chief Motor Accident Claims Tribunal, Raipur in Claim Case No.145/2011 awarding total compensation of Rs. 3,85,000/- with interest @ 6% per annum from the date of application till realization, fastening liability upon the respondents/driver, owner & Insurance Company jointly and severely.

02. As per claim petition, on 27.05.2011 deceased – Satish Yadav,

aged about 22 years, who was earning Rs.5,000/- per month as driver, was going in the Tavera vehicle bearing registration No. CG04-CR/2200 from Raipur to Chhindwada, on the way near village Khutana met with an accident with the vehicle (bus) bearing registration No. MP28-P/0219 by rash and negligent driving of respondent No.1-Ramesh Bondekar, he sustained injuries on head and other part of the body and died on the spot. The offending vehicle was owned by respondent No. 2-Veenit Minglani and insured with Non-applicant No. 3- Reliance General Insurance Company Limited.

03. On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act, the Tribunal, after considering contributory negligence on the part of deceased to the extent of 25 % awarded aforesaid sum as compensation to the claimant for the death of deceased.

04. Learned counsel for the appellant/claimant submits that on going through the evidence adduced by parties, it clearly shows that there is no contributory negligence has occurred on the part of the deceased at the time of accident as the deceased was driving Tavera slowly on his side but the respondent No. 1 by driving the Bus rashly & negligently, dashed the vehicle of deceased and this fact is also proved by examining the independent witness. He further submits that learned Tribunal has wrongly been applied multiplier of 14 in place of 18 looking to the age of the mother of deceased whereas it should be considered looking to the age of the deceased. He also submits that learned Tribunal erred in assessing the income of the deceased as Rs. 3,000/- per month whereas it should be Rs. 5,000/- per month looking to the minimum wages at the relevant time. Lastly he submits that no amount towards future prospect has been given to the claimant and the amount awarded under the conventional heads also appears to be on the lower side, which deserves to be enhanced suitably and no amount towards loss of filial has been granted to the claimant.

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***,

05. 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.

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

07. In this case facts of the case is not disputed by both the parties. Regarding the income of the deceased, the learned Tribunal has rightly considered the income of the deceased i.e. Rs. 5,000/- per month looking to the minimum wages at the relevant time. Learned Tribunal has also been considered contributory negligence of the deceased to the extent of 25% as the Tavera Vehicle was going down side of the hill and it was the duty of his driver to take proper care and caution but he could not do so and on this fact, the learned Tribunal has fastened 25% contributory negligence on the part of deceased but according to the statement of independent witness of this case claimant witness No. 2-Bhagela Das Manikpuri, who was just behind the Tavera going from another vehicle seen that deceased was going very slowly on his side but respondent No. 1 was driving the vehicle rashly and negligently and dashed Sateesh Yadav, due to which he sustained multiple injuries and died. As per Ex. P/1 chargesheet filed against the respondent No. 1 under section 279 337, 338 & 304-A of IPC for rashly and negligently driving of the vehicle as per Ex. P/2 FIR also contend this fact and the vehicle of the deceased also seized. Non applicant witness No. 1 Ramesh Badekar first time disclosed this fact before the Tribunal that the deceased was driving the vehicle rashly and negligently but when the chargesheet was filed he never disclosed this fact to anybody; this witness also admitted that he never disclosed this fact ever before

recording his statement before the Tribunal, therefore, considering the document produced by the claimant and the statement of independent witness No. 2 –Bhagela Das Manikpuri, the findings recorded by the Tribunal regarding 25 percent deduction from the compensation awarded to the claimant on account of contributory negligence on the part of the deceased is set aside and there is no need to deduct any amount under this head from the compensation payable to the claimant.

08 The learned Tribunal has rightly been considered the income of the deceased as Rs. 5,000/- per month looking to the minimum wages at the relevant time. As far as the multiplier is concerned, the mother was mentioned that at the time of accident the deceased was aged about 22 years but as per Postmortem report vide Ex. P-3, it proves that the deceased was aged about 28 years, therefore looking to the age of the deceased the multiplier of 17 would be applicable in view of Sarla Verma (Supra) Further, considering the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi* and *Magma General Insurance Co. Ltd.(supra)* the claimant is held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.5,000per month.	Rs. 5,000x12= Rs. 60,000/- per annum
02.	40% of (i) above to be added towards future prospects.	Rs. 60,000+24,000/-= Rs. 84,000/-
03.	1/2 deduction towards personal and living expenses of the deceased	Rs. 42,000/-
04.	Multiplier of 17 to be applied	Rs. 7,14,000/-
05.	Towards loss of estate, funeral expenses and towards filial consortium	Rs. 30,000+ 40,000/-= Rs. 70,000/-
	Total compensation	**Rs. 7,84,000/-**

Since the Tribunal has already awarded Rs. 3,85,000/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.3,99,000/- with interest @ 6% per annum from the date of application till realization. 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

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