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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 98 of 2015

- The Oriental Insurance Co. Ltd. Company Ltd., Branch Office, Jagdalpur, Distt. Bastar C.G., Chhattisgarh

----Appellant

Versus

1. Jhumuklal S/o Late Itwarilal Aged About 55 Years
2. Smt. Aghanteen W/o Jhumuklal Nirmalkar Aged About 50 Years

   Both are R/o Jamkotpara, Kondagaon, Distt. Kondagaon C.G.

3. Naresh Vasnikar S/o Sudar Vasnikar Aged About 27 Years R/o D.N.K. Kanera Road, Kondagaon C.G.
4. Tejas Kumar S/o Himmatlal Diwan R/o Near Ram Mandir, Main Road, Kondagaon C.G.

---- Respondents

For Appellant	Shri Raj Awasthi, Advocate.
For Respondents	Shri Praveen Dhurandhar, Shri Keshav Dewangan & Shri Shobhit Koshta, Advocate for the respective respondents.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

28.11.2018

1. This is insurer's appeal against the award dated 31.10.2014 passed by the Motor Accidents Claims Tribunal, Kondagaon, District Kondagaon C.G in claim case No.13/13.

2. As against compensation of Rs.44,09,000/- claimed by respondent Nos.1 & 2, i.e., claimants by filing claim petition under Section 166 of the Motor Vehicles Act, 1988 (henceforth 'the Act') for death of their son in the motor accident on 17.01.2013, the Tribunal awarded a total sum of Rs.7,12,000/- along with interest at the rate of 7.5% per annum from the date of claim

application till its actual payment.

3. The Tribunal, on a close scrutiny of the evidence led by the parties held that the accident had occurred due to rash and negligent driving of Tata Pick-up bearing registration No.CG17/H/0370 by its driver – Naresh Vasnikar, i.e. respondent No.3; as a result of which the deceased Dhaneshwar Nirmalkar, aged about 26 years, earing Rs.7,000/- working as Labour (Hamal) sustained grievous injuries in his body and after three days during treatment in Medical College Hospital, Raipur, he died in hospital; the appellant/insurance company liable for payment of compensation as it could not establish violation of policy conditions; assessed and awarded the aforesaid sum as compensation.

4. This appeal filed by the appellant/Insurance company is only on the grounds that the Tribunal has wrongly deducted 1/3 of the income of the deceased whereas as per ***Sarla Verma (Smt.) and Others*** **Vs.** ***Delhi Transport Corporation and Another, (2009) 6 SCC 121***, the deduction would be 1/2 towards personal and living expenses of the deceased. He also submits that Tribunal also erred in applying the multiplier of 17 instead of 11, which can be considered.

5. On the other hand, learned counsel appearing for the respondents would submit that the amount of compensation awarded by the Tribunal is just and proper compensation in the facts and circumstances of the case and needs no interference.

6. I have heard the learned counsel appearing for the parties and perused the impugned order including the records of the Claims Tribunal.

7. So far as the income of the deceased is concerned, the Tribunal has rightly considered the income of the deceased as Rs.4,500/- on notional basis considering the decision of Supreme Court in the matter of ***Rajesh v.***

Rajbir Singh, (2013) 9 SCC 54. In this case the age of the deceased was 26 years, so application of multiplier of 17 is correct. However, the Tribunal has fallen into error in deducting 1/3 towards personal and living expenses of the deceased whereas in view of judgment of Hon'ble Supreme Court in ***Smt. Sarla Verma and others*** v. ***Delhi Transport Corporation and another,*** **(2009) 6 SCC 121**, the deduction should have been ½ as the deceased was unmarried. Thus, the claimants are entitled for compensation in the following manner:

Head	Calculation
Income of the deceased	Rs.4,500/-x12 = Rs. 54,000/- per annum
1/2 deduction towards personal and living expenses of the deceased	Rs.27,000/-
Multiplier of 17 applied for assessing total loss of dependency	Rs.27,000 x 17 = Rs. 4,59,000/-
Conventional Heads (as awarded by the Tribunal for Funeral and Love and Affection)	Rs.1,00,000/-
Total	Rs.5,59,000/-

8. In the result, the appeal is allowed in part and the impugned award is modified to the extent that the claimants shall be entitled for compensation of Rs.5,59,000/- in place of Rs.7,12,000/- as awarded by the Tribunal. The amount, if any, has already been deposited by the Insurance Company shall be adjusted in the amount to be paid to the claimants. However, rest of the conditions shall remain intact.

Sd/-
Gautam Chourdiya
Judge

Akhilesh