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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No.567 of 2015

- Reliance General Insurance Company Limited A 1st Floor, MS Tower, OT Road, Kharagpur (W.B.) Local Branch Office-Shop No. 412-413, 4th Floor, Ravi Bhawan, Jaistambh Chowk, Raipur- At Present- 5th Floor, National Corporate Park, G.E. Road, P.S. Saraswati Nagar, Civil And Revenue Distt.- Raipur, Chhattisgarh

---- Appellant

Versus

1. Smt. Babita Bhagat, W/o Late Rantharam Bhagat, Aged About 34 Years, R/o Village Bankitoli, Jashpur Nagar, Police Station Jashpur, District Jashpur Civil And Revenue District Jashpur, Chhattisgarh.
2. Minor Sameer Bhagat, S/o Late Rantharam Bhagat, Aged About 10 Years, Minor And Representing Through His Mother Smt. Babita Bhagat, R/o Village Bankitoli, Jashpur Nagar, Police Station, Jashpur, District Jashpur Civil And Revenue District Jashpur, Chhattisgarh.
3. Virendra Bhagat, S/o Bana Ram Bhagat, Aged About 20 Years R/o Village Bankitoli, Jashpur Nagar, Police Station, Jashpur, District Jashpur Civil And Revenue District Jashpur, Chhattisgarh. **(Respondents 1 to 3 - Claimants)**
4. S.K. Mojammel Hossain, S/o S.K. Muiddun Ahamed, R/o Panchberia Rahman Nagar, P.O. Inda, P.S. Kharagpur, (T) Distt.- Paschim Midnapur Civil And Revenue Distt.- Midnapur, (West Bengal). **(Owner)**
5. Bistu Panda S/o Gayadhar Panda Aged About 33 Years, Occupation Driver, R/o Village Dharma, Police Station Kotwali, Near Hanuman Temple, Distt.- Paschim Midnapur Civil And Revenue Distt.- Midnapur, (West Bengal**) (Driver)**

---- Respondents

AND

Misc. Appeal (C) No.512 of 2015

1. Smt. Babita Bhagat W/o Late Rantha Ram Bhagat Aged About 34 Years Village Bankitoli, Jashpur Nagar, P.S. - Jashpur, Tahsil And District- Jashpur, Civil And Revenue District- Jashpur, Chhattisgarh.
2. Minor Samir Bhagat S/o Late Rantha Ram Bhagat Aged About 10 Years Minor Through His Mother Next Friend Smt. Babita Bhagat Wd/o Late Rantha Ram Bhagat, R/o Village Bankitoli, Jashpur Nagar, P.S. - Jashpur, Tahsil And District- Jashpur, Civil And Revenue District- Jashpur, Chhattisgarh, District : Jashpur, Chhattisgarh
3. Virendra Ram Bhagat S/o Bana Ram Bhagat Aged About 20 Years Village Bankitoli, Jashpur Nagar, P.S. - Jashpur, Tahsil And District- Jashpur, Civil And Revenue District- Jashpur, Chhattisgarh, District : Jashpur, Chhattisgarh

---- Appellants

Versus

1. S. K. Mojammel Hossain And Ors. S/o S.K. Muiddun Ahamed R/o Panchberia Rahman Nagar, P.O.- Inda, Police Station- Kharagpur T, Disttrict- West Medinipur West Bengal, West Bengal **(Owner)**
2. Bistu Panda S/o Gayadhar Panda Aged About 33 Years R/o Village Dharma, Police Station- Kotwali, Near Hanuman Mandir, District- West Medinipur, West Bengal, District : Paschim Medinipur, West Bengal **(Driver)**
3. Reliance General Insurance Company Limited A 1st Floor Ms Tower Of Road Kharagpur, West Bengal Local Branch Office Shop No. 412-413, 4th Floor Ravi Bhawan, Jaistambh Chowk, Raipur, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondents

For Appellant/ Reliance General Insurance Company Limited : Shri Rohitashva Singh, Advocate
For respondents 1 to 3/Claimants : Shri Ravikant Mahobia, Advocate
For respondent No.4/Owner : Shri Akhilesh Kumar, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Order

16.02.2018.

1. As both above mentioned appeals arise out of same judgment, both are being heard and disposed of by a common order.

2. These two miscellaneous civil appeals have been preferred against award dated 24.02.2015 passed by Additional Motor Accident Claims Tribunal, Jashpur (CG) in Claim Case No.15/2014 wherein the learned Tribunal has awarded compensation of Rs.41,01,728/- for death of Rantharam Bhagat and Rs.2,80,000/- for death of Ankit Kumar Bhagat in favour of respondents 1 to 3/claimants. Through the appeal of Insurance

Company, the award is assailed while claimants' appeal is for enhancement of the award amount.

3. Facts of the case in brief are that on 17.10.2013 deceased Ramtharam was going to village Rajouti from Jashpur by driving a motor cycle in which his wife Babita Bhagat and children namely Ankit and Samir were sitting. At that time, respondent No.5 by negligently driving vehicle Bolero Pickup bearing registration No.WB 33B 0090 dashed the motor cycle, due to which Rantharam sustained head injuries and succumbed to the injuries on the spot. Smt. Babita Bhagat, Ankit and Samir also sustained injuries. Ankit was first admitted in Holycross Hospital, Kunkuri and thereafter shifted to Jeevan Jyoti Hospital, Ambikapur where he succumbed to the injuries on 18.10.2013. Deceased Rantharam was Accountant in Chhattisgarh State Electricity Board, posted at Jashpur Division and was getting a salary of Rs.38,382/- per month. Deceased Ankit was a student of Class-9. The Claim petition was filed by respondents 1 to 3 who happened to be the legal heirs/legal representatives of deceased Rantharam and Ankit.

4. Pleadings of the claimants have however denied by the appellant/Insurance Company.

5. After evaluating the evidence adduced on record, the Tribunal assessed the compensation for death of Rantharam Bhagat @ 41,01,728/- and Rs.2,80,000/- for death of Ankit Bhagat.

6. Learned counsel for the appellant submits that no proper enquiry under Section 168/169 of the Motor Vehicles Act, 1988 and Rule 226 of the Chhattisgarh Motor Vehicles Rules, 1994 was conducted, therefore, finding arrived at by the Tribunal is erroneous. He further submits that deceased Rantharam was driving the motor cycle by violating the provision of Section 128 of the Act and he was liable for the alleged accident. As four persons were travelling in the two wheeler negative finding relating to contributory negligence is bad in law. The Tribunal awarded compensation on the basis of gross income which is on higher side. The Tribunal fail to deduct income tax, therefore award is not just and proper. The Tribunal has adopted multiplier of 13 which is also on higher side. The Tribunal has also ignored Section 149(2) of the Act.

7. On the other hand, learned counsel for respondents 1 to 3/ claimants submits that the accident occurred due to negligence of respondent No.5 for which the owner and the insurance company are liable to pay compensation.

8. Heard learned counsel for the parties and perused the documents on record.

9. From the pleadings of the respective parties and overall assessment of evidence on record, specially the evidence of Smt. Babita (AW-1), who was also injured in the accident, evidence of Ramlal and documents produced by the claimants, it is clear that the offending vehicle was insured with the appellant and same was driven by respondent No.5 negligently.

10. In respect of contributory negligence on the part of the victim, the law holding the field is that the burden of proof regarding breach of policy conditions or contributory negligence lies on the insurance company as has been held by the Apex Court in the case of **Usha Rajkhowa V. Paramount Industries (2009) 14 SCC 71** and also in the case of **Minu Rout v. Satya Pradyumna Mohapatra (2013) 10 SCC 695.** In this case though the insurance company has pleaded that the accident took place due to negligence on the part of the deceased but no evidence in support of such pleading has been adduced by it and in the circumstances and the law laid down by the Apex Court referred to above, it cannot be said that the victim was having contributory negligence leading to the accident and the resultant death.

11. In the instant case, the insurance company has laid down no evidence regarding contributory negligence of the deceased and therefore, the Tribunal is right in holding that the accident occurred due to sole negligence of respondent No.5.

12. It has come on record that deceased was getting a monthly salary of Rs.38,382/- and for establishing this fact, Sanjay Kumar Bhagat, Asst. Engineer of the department was examined who proved the regular salary of deceased as Rs.38,382/- per month. Learned counsel for the appellant submits that the Tribunal overlooked the deduction made in the salary and awarded compensation on the basis of gross income. As per the record, deduction was made on account of provident fund, life insurance premium which are the part of the salary and the amount deposited in provident fund or premium of life insurance are returnable to Rantharam and the same is not liable to be excluded while calculating the compensation for dependency. Therefore, the Tribunal was right in awarding compensation on the basis of gross monthly income. Again earned income is always taxable. Considering the income of Ramtharam @ Rs.38,382/- per month and Rs.4,60,584/- per annum and after deducting 1/3rd towards his personal expenses, the annual loss of dependency come to Rs.3,07,056/-. After applying the multiplier of 13, the total loss of dependency is assessed at Rs.39,91,728/-. The Tribunal has awarded Rs.1,00,000/- for loss of consortium and Rs.10,000/- for funeral expenses. As per the driving licence of Randharam, he was below 50 years of age and multiplier of 13 is applicable as per law laid down in **Sarla Verma Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121.**

13. Rantharam was a regular employee of the Electricity Department having regular income. But the Tribunal has not awarded any sum for future prospects as laid down in Sarla Verma (Supra). As he is the victim of below 50 years, 30% of amount of total dependency will be added for future prospectus. In the present case, total dependency is Rs.39,91,728/- and 30% of the said amount comes to Rs.11,97,520/-.

14. So far as the enhancement of awarded amount in relation to death of Ankit Bhagat is concerned, he was a minor boy having no income. Theory of future prospects is applied for persons who are earning members and have regular income. This theory is not available for a minor boy, therefore, the appeal for enhancement on account of death of Ankit Bhagat is rejected.

15. The appeal filed by the Insurance Company (MAC No.567 of 2015) is without substance and the same is liable to be and is hereby dismissed while appeal filed by the claimants (MAC No.512 of 2015) is partly allowed. It is directed that the appellant/Reliance General Insurance Company Ltd. shall pay the claimants (respondents 1 to 3 in MAC No.567/2015) an additional sum of Rs.11,97,520/- (Rupees Eleven Lakh Ninety Seven Thousand Five Hundred and Twenty only) excluding the amount already awarded by the Tribunal within 60 days from the date of this order, failing which 9% simple interest will be chargeable.

Sd/-
(Ram Prasanna Sharma)
JUDGE

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