

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1085 of 2015

Reserved on 26-7-2018

Decided on 27 -8-2018

- Magma H. D. I. General Insurance Company Ltd. Wrongly Mentioned As Through Regional Officer Shri Ram General Insurance Company Ltd., Maruti Business Park G. E. Road Near Dhuppad Petrol Pump Raipur, Tehsil And District Raipur, Chhattisgarh Insurer, Chhattisgarh

---- Appellant

Versus

1. Deepak Kumar Yadav S/o Late Kheduram Yadav, Aged About 25 Years R/o Shukrawari Bazar Gudiyari, P. S. Gudiyari, District Raipur, Chhattisgarh, Chhattisgarh
2. Ku. Jyoti Yadav D/o Kheduram Yadav Aged About 28 Years R/o Shukrawari Bazar Gudiyari, P. S. Gudiyari, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
3. Ku. Roshni Yadav D/o Kheduram Yadav Aged About 17 Years R/o Shukrawari Bazar Gudiyari, P. S. Gudiyari, District Raipur, Chhattisgarh Claimant, District : Raipur, Chhattisgarh
4. Manoj Soni S/o Devanand Soni R/o Shukrawari Bazar Near Shankar Mandir Gudiyari, Raipur, Chhattisgarh Driver / Owner, District : Raipur, Chhattisgarh

---- Respondents

For the appellant : Mr. Ghanshyam Patel, Advocate.
For respondents No. 1 to 3 : Ms. Aparna Singh, Advocate.
For respondenet No.4 : Mr. Shivendu Pandya, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Order

1. The appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 against the award dated 30-6-2015 passed by the 5th Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No. 53 of 2013, wherein the said Tribunal awarded compensation of Rs.8,44,000- on account of

death of one Prakash Yadav in a motor accident occurred on 9-1-2013.

2. The facts, in brief, are that on 9-1-2013 deceased Prakash Yadav along with his friend Raj Kumar Sahu and Manoj Soni was going to village Khorha in a car bearing registration No. CG-04 KP 7111 and it was driven by respondent No.4 Manoj Soni. Due to rash and negligent driving of said driver the vehicle dashed electric pole near village Kumhari due to which the deceased sustained grievous injuries and succumbed to injuries on the spot. After recording the evidence and after hearing the parties, the Tribunal awarded compensation of Rs.35,000/- in favour of respondent No.1 and awarded rest of the amount in favour of respondents No. 2 and 3.
3. Learned counsel for the appellant would submit that the respondent No.2 Ku. Jyoti Yadav and respondent No.3 Ku. Roshni Yadav were not dependants on the deceased, therefore, they are not entitled for compensation as per law laid down by Hon'ble the Apex Court in the matter of **Amrit Bhanu Shali vs. National Insurance Co. Ltd.**, reported in 2012 (11) SCC 738.
4. On the other hand, learned counsel for respondents No. 1 to 3 would submit that the finding arrived at by the Tribunal is based on proper appreciation of the evidence which does not call for any interference by this court.

5. I have heard learned counsel for the parties and have gone through the record including the impugned award passed by the Tribunal.
6. In the present case, it is established on the basis of evidence of Deepak Kumar Yadav (AW/1) that respondents No.2 and 3 being unmarried sisters were dependants on the deceased and no one rebutted the same before the Tribunal, therefore, it cannot be said that both the respondents No. 2 and 3 were not dependants on the deceased. Considering the facts and the evidence available on record, this court is of the opinion that the case law cited by learned counsel for the appellant is distinguishable from the facts of the present case.
7. Learned counsel for the appellant further submits that the award amount on account of future prospects is against settled principles of law.
8. The Tribunal awarded 50% for future prospects as the age of the deceased at the time of incident was 22 years and the same is based on the pronouncement by Hon'ble Apex Court in the matter of **Santoshi Devi vs. National Insurance Company Ltd, reported in AIR 2012 SC 2185**. The Tribunal has deducted 50% as personal expenses of the deceased as he was bachelor which is also based on settled principles of law. The tribunal assessed Rs.4,500/- per month as monthly income of the deceased while

the minimum wages prevailing in the year 2013 was Rs.200/- per day which comes to Rs.6000/- per month and 72,000/- per annum., therefore, what is assessed by the Tribunal cannot be termed on higher side, but it is less than minimum wages per day prevailing at that time.

9. Learned counsel for the appellant would further submit that the amount on convention head is Rs.1,15,000/- which is against the principles of law laid down by Hon'ble the Apex Court in the matter of **National Insurance Company Limited vs. Pranay Sethi, reported in AIR 2017 SC 5157.**
10. In view of this Court, the amount of monthly income is assessed on lower side and if it would have been assessed as per minimum wages, the total amount of compensation awarded must have been increased to what is awarded.
11. On over-all assessment of the entire record, this court is of the opinion that the awarded sum is not liable to be reduced while invoking jurisdiction of the appeal.
12. Accordingly, the appeal *sans* merits is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju