AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 962 of 2013

1. Suraj Lal Dehariya S/o Late Bharosa Dehariya Aged About 46 Years
2. Smt. Devki W/o Suraj Lal Dehariya Aged About 42 Years
3. Ku. Shaivya D/o Suraj Lal Dehariya Aged About 22 Years
4. Shobhit S/o Suraj Lal Dehariya Aged About 18 Years

All are R/o C/o M.C. Deshlahra, Near Saimangalam, Vidyut Nagar, Durg, Tah. And Distt. Durg C.G.

----Appellants

Versus

1. Namdev Joshi S/o Puranik Joshi R/o Itwari Bazar, Village- Anda, Distt. Durg C.G.
2. S.S. Shukla S/o R.P. Shukla R/o 220, Jawahar Nagar, Durg, Tah. And Distt. Durg C.G.
3. The Manager, The Oriental Insurance Company Ltd., Rajendra Parak Chowk, Durg, Tah. And Distt. Durg C.G.

---- Respondents

For Appellants	Shri P.R. Patankar, Advocate.
For Respondent Nos. 1 & 2	None.
For Respondent No.3	Smt. Chitra Shrivastava, Advocate.

MAC No. 948 of 2013

- The Oriental Insurance Company Ltd., Through- Divisional Manager, Rajendra Park Chowk, Malaviya Nagar, Durg, Tah. And Distt. Durg C.G.

----Appellant

Versus

1. Suraj Lal Deharia S/o Late Bhorasha Deharia
2. Smt. Devki W/o Suraj Lal Deharia Aged About 45 Years
3. Kumari Shavya D/o Suraj Lal Deharia Aged About 21 Years
4. Sobhit S/o Suraj Lal Deharia Aged About 17 Years

All are R/o C/o Shri M.P. Deshlahre, Near Sai Mangalam, Vidhyut Nagar, Durg, Tah. And Distt. Durg C.G.

5. Namdeo Joshi S/o Puranik Joshi R/o Itwari Bazar, Village- Aanda, Distt. Durg C.G.

6. S.S. Shukla S/o R.P. Shukla R/o 220, Jawahar Nagar, Durg, Distt. Durg C.G.

---- Respondents

For Appellant	Smt. Chitra Shrivastava, Advocate.
For Respondent Nos. 1 to 4	Shri P.R. Patankar, Advocate.
For Respondent Nos. 5 & 6	None.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

09/04/2019

1. As both these appeal arise out of the award dated 09.07.2013 passed by the 5th Additional Motor Accident Claims Tribunal, Durg, C.G. in Claim Case No.33/2012, they are being disposed of by this common judgment.

2. As per averments in the claim petition, on 23.01.2012 the deceased Soumya Dehariya, aged about 22 years, earning Rs.16,000/- per month by running tuition classes, died in the motor vehicular accident caused due to rash and negligent driving of truck bearing no.CG07-C-6039 by non-applicant No.1. At the time of accident, the offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.

3. On claim petition being filed by the claimants i.e. parents, brother and sister of deceased under Section 166 of the Motor Vehicles Act claiming compensation of Rs.2,39,78,000/- under various heads, the Tribunal considering the evidence led by both the parties, awarded a compensation of Rs.3,39,000/- with interest @ 7% per annum from the date of application till realization, fastening the liability on the

Insurance Company/non-applicant no.3.

4. **<u>MAC No.948/2013</u>**: This appeal has been filed by the Insurance Company challenging its liability and quantum. Learned counsel for the appellant/Insurance Company submits that the Tribunal has wrongly fastened liability of satisfying the award on the Insurance Company whereas according to the evidence adduced by the Insurance Company, on the date of accident deceased was himself riding the scooty in rash and negligent manner but learned Tribunal not considered any contributory negligence on the part of the deceased. He also submits that deceased was equally liable for 50% contributory negligence. He further submits that income of the deceased considered by the Tribunal is on higher side and needs to be reduced suitably.

5. On the other hand, learned counsel for respondents/claimants supports the impugned award insofar as it relates to fastening of liability on the insurance company. However, the claimants have also challenged the award on the point of quantum and liability and has filed a separate appeal i.e. MAC No.962/2013 for enhancement of compensation.

6. **<u>MAC No.962 of 2013</u>**: Learned counsel for the appellants/claimants submits as under:

   (i) that income of the deceased has wrongly been considered by the Tribunal as Rs.3,000/- whereas it should have been Rs.25,000/- per month looking to the bright future as the deceased was a brillant student and was a student of MBA 4^{th} Semester.

   (ii) that no amount towards future prospect has been granted to the claimants.

(iii) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. No amount towards loss of filial and other consortium has been granted.

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.***

7. On the other hand, learned counsel for the respondent/insurance company opposes the contention made by the claimants counsel and supports the compensation which needs no interference by this Court.

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

9. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.16,000/- per month by running tuition classes but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased considered by the Tribunal as Rs.3,000/- per month as per minimum wages at the relevant time is just and proper. Further, considering the age of the deceased i.e. 23 years, the dependency, the nature of her job and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi & Magma General Insurance Co. Ltd.* (supra), the claimants are held entitled for compensation in the following manner:

S.I. No.	Heads	Calculation (in rupees)
1.	Income of the deceased @ Rs.3,000/- per month (as assessed by the Tribunal)	Rs.36,000/- per annum
2.	40% of (i) above to be added towards future prospects.	Rs.14,400/- Rs.36,000 + Rs.14,400 = Rs.50,400/-
3.	½ deduction towards personal and living expenses of the deceased	Rs.25,200/-
4.	Multiplier of 18 to be applied	Rs.4,53,600/-
5.	Towards loss of estate and funeral expenses	Rs.30,000/-
6.	Towards loss of parental consortium	Rs.5,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.4,88,600/-

Since the Tribunal has already awarded Rs.3,39,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.1,49,600/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

10. As regards the contributory negligence, as per Ex.P-1 charge sheet was filed against the driver of the offending vehicle i.e. non-applicant no.1 under Sections 279, 337 and 304A of IPC. Immediately after the accident FIR was lodged against non-applicant no.1. As per the statement of AW-3 Puspendra Jain, eyewitness to the accident, it is non-applicant no.1, who was driving the offending vehicle in a rash and negligent manner and dashed the scooty of the deceased, as a result of which the deceased died. No evidence in the rebuttal of the aforesaid

oral and documentary evidence has been adduced by the Insurance Company to establish that the deceased was negligent in any manner for causing the accident. In these circumstances, the Tribunal was fully justified in not holding the deceased contributory negligent for causing the accident.

11. In the result:-

- MAC No.948 of 2013 filed by the Insurance Company being without any substance is liable to be dismissed and is, accordingly, dismissed.
- MAC No.962 of 2013 filed by the claimants is allowed in part with modification in the impugned award to the above extent.

Sd/-
Gautam Chourdiya
Judge

Akhilesh