AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 245 of 2014

- The United India Insurance Co. Ltd. Through Divisional manager, Near Post Office, Station Road Bhatapara, (C.G.).

---- Appellant

Versus

1. Smt. Savita Bai W/o Ramswarup Patel, aged about 27 years.
2. Kumari Nandani D/o Ramswarup Patel, aged about 8 years.
3. Vikash S/o Ramswrup Patel aged about- 6 years. Respondent No. 2 & 3 are under guardianship of Mother Smt. Savitri Bai. All are Resident of Village Ghotabhat Thana and Tahsil- Navagarh Zilla Bemetra (C.G.).
4. Tulsi Ram S/o Santosh Sahu aged about 22 years, Owner and driver of Motorcycle bearing registration No. C.G.- 10 E.A.- 7990 resident of village- Puran Thana and Tahsil- Mungeli, Zilla Mungeli (C.G.) and Tulsi Ram Sahu S/o Santosh Sahu at Puran Tehsil Mungeli Dist.- Bilaspur, Chhattisgarh- 495004.

---- Respondents

For Appellant	:	Ms. Chitra Shrivastava, Advocate
For Respondent Nos. 1 to 3	:	Shri A. L. Singroul, Advocate.
For Respondent No. 4	:	Shri Aashish Shrivastava, Advocate

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Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

14.02.2019

1. This is insurer's appeal filed under section 173 of the Motor Vehicles Act, 1988 (henceforth "MV Act, 1988") against the award dated 19.12.2013, passed by the Additional Motor Accident Claims Tribunal Mungeli (for short 'the Claims Tribunal') in claim case No. 45/2012

awarding total compensation of Rs. 4,18,000/- alongwith interest @ 6% pa from the date of application till realisation, fastening liability on the Non-applicants jointly and severally.

2. As per claim petition, on 24.04.2012, Ramswarup aged about 30 years earning Rs. 200 to 250/-per day by working as mason (laying of tiles) was coming from village Jhalam to village Puran on motorcycle bearing registration No. CG10-EA/7990 as pillion rider. On the way non-applicant No. 1 Tulsiram by rash & negligent riding lost the control over the said motorcycle due to which accident occurred and Ramswarup sustained grievous injuries and during treatment he died.

3. On claim petition being filed by the claimants/wife & Children of the deceased- Ramswarup under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above. The vehicle is owned by Non-applicant No. 1 and insured with Non-applicant No. 2.

4. Being aggrieved & dissatisfied with the aforesaid award, the instant appeal has been preferred by the appellant/Insurance Company.

5. Learned counsel for the appellant/Insurance Company assailed the award on the ground that at the time of accident the deceased was the pillion rider and the learned Tribunal erred in fastening the liability on the insurance company as the offending vehicle is insured under the liability only policy in favour of the owner and it is not the comprehensive policy. Therefore, the finding recorded by the learned Tribunal that the policy covers risk of two persons deserves to be set aside. He placed reliance upon the judgment of Supreme Court in the matter of **National Insurance Company Ltd. V. Balakrishnan and Anr.**, reported in **2012**

AIR SCW 6286 in support of his submission.

6. Also heard on cross-objection filed by the respondents No. 1 to 3/claimants under Order 41 Rule 22 of the Code of Civil of Procedure seeking enhancement of amount under award.

7. Learned counsel for the respondents No. 1 to 3/claimants submits that the deceased was the skilled labour but the Claims Tribunal has assessed the income of deceased as Rs. 3,000/- per month, which appears to be on lower side. The accident occurred on 24.04.2012, therefore, looking to the minimum wages prevailing at that time, the income of deceased may be considered as Rs. 4,000/-. He also submits that no amount towards future prospect has been granted to the claimants. He further submits that Tribunal has also awarded insufficient amount under the conventional heads. In support of the above contention he placed reliance upon the Apex Court judgment in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***,

8. Learned counsel for the claimants further submits that till now no amount of compensation is received by the claimants, therefore he prays for order of pay & recover in this case in the event the Insurance Company is exonerated of its liability. Reliance has been placed on the decision of Hon'ble Supreme Court In the matter of ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796.***

9. Learned counsel for the appellant/insurance Company submits that there is no need to enhance the award as per the cross-objection filed by

the claimants.

10. Heard both the parties on appeal as well as on cross-objection and perused the impugned award.

11. So far as the issue of liability is concerned, admittedly the deceased was pillion rider in the motorcycle being ridden by non-applicant No. 1- Tulsiram and due to his rash and negligent riding of the vehicle, the pillion rider/deceased sustained grievous injuries and ultimately succumbed to the same. It is also not in dispute that the said motorcycle was insured by non-applicant No. 2 under a liability only policy. Thus considering the terms and conditions of the insurance policy which is liability only policy, keeping in view the decision of the Hon'ble Supreme Court in **Balakrishnan (supra),** this Court is of the opinion that the Tribunal was not justified in fastening the liability on non-applicant No. 2/Insurance Company for paying compensation to the claimants against the death of pillion rider-Ramswarup.

12. As regards the cross objections filed by the claimants/respondents Nos. 1 to 3, at the time of accident, the deceased was the skilled labour, considering the minimum wages prevailing at the time of accident, Rs. 4,000/-pm income can safely be considered. Further, considering the age of the deceased i.e. 35 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in ***Pranay Sethi,*** **(supra),** the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.4,000/- per month.	Rs. 4,000x12= Rs. 48,000/- per annum
02.	40% of (1) above to be added towards future prospects.	Rs. 48,000+19200= Rs. 67,200/-
03.	After 1/3rd deduction towards personal	Rs. 67,200-22,400=

	and living expenses of the deceased	Rs. 44,800/-
04.	Multiplier of 17 to be applied	Rs. 7,61,600/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
06	**Total compensation**	**Rs. 831,600/-**

13. Since the Tribunal has already awarded Rs.4,18,000/-, after deducting the same, the claimants are held entitled for additional compensation of Rs.4,13,600/- with interest @ 6% per annum from the date of application till realization.

14. However, considering the facts & circumstances of the case, the fact that on the date of accident, the vehicle in question was duly insured with non-applicant No. 2 keeping in view of the Hon'ble Court decision in the matter of ***Manuara Khatun(supra)*** Insurance Company is directed to first pay the entire amount of compensation to the claimants and then recover the same from Non-applicant No. 1 in accordance with law.

15. In the result, the appeal filed by the Insurance Company and the cross objection filed by the respondents/claimants are allowed in part with the modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/-

(Gautam Chourdiya)
Judge

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