AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 598 of 2014

1 Oriental Insurance company Ltd. Branch Manager, Madina Building, Jail Road, Tahsil and District Raipur, C.G.

---- Appellant

Versus

1 Smt. Ram Bai W/o Late Komal Sahu, aged about 33 years,

2 Ravi Sahu, S/o Late Komal Sahu, aged about 17 years,

3 Raju Sahu, S/o Late Komal Sahu, aged about 15 years,

4 Ku. Babita, D/o Late Komal Sahu, aged about 13 years,

All are resident of near Kukri Talab, Gudhiyari, Police Station Budhiyari, District Raipur, C.G. {Respondents no. 2, 3 & 4 represented by respondent their natural guardian]

Dhani Kol. S/o Kashi Kol, aged about 33 years, R/o Village Ghonghapani, Dumar, Kachhar, Tahan and District Annupur, M.P.

Vikram Singh, S/o Ajit Singh, aged about 32 years, R/o Village Khongapani, Thana Jhagrakhan, District Koria, C.G.

---- Respondents

For Appellant	:	Shri Anumeh Shrivastava, Advocate.
For Respondents	:	Shri A.L. Singroul, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment on Board

08.02.2019

1. This appeal is by the Insurance Company against the award dated 18.02.2014 passed by the 7th Additional Motor

Accident Claims Tribunal, Raipur, C.G. in Claim Case No.147/13 awarding total compensation of Rs.10,38,112/- with interest @ 6% per annum from the date of application till realization, fastening liability on the Insurance Company along with non-applicants.

2. Respondents/Claimants have filed cross objection under Order 41 Rule 22 of CPC seeking enhancement of compensation.

3. As per claim petition, on 05.06.2012, deceased Komal Sahu, aged about 40 years, earning Rs.200/- per day as Labour, died in the motor vehicular accident caused due to rash and negligent driving of vehicle Truck bearing registration no.CG04 JA 3494 by non-applicant No.1. At the time of accident, vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.

4. On claim petition being filed by the claimants i.e. wife and children of the deceased under Section 166 of the Motor Vehicles Act to the tune of Rs.18,00,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

5. Learned counsel for the appellant/Insurance Company submits that the Tribunal was not justified in ignoring the aspect of contributory negligence on the part of the

deceased. As per charge sheet Ex.P-4 crime was registered against non-applicant no.1 under Sections 279, 337 and 338 of IPC and not under Section 304 which itself shows that the death of the deceased was not due to rash and negligent driving by non-applicant no.1. Further, the deceased died after being discharged from the hospital and as such there was no nexus between the death of the deceased and the injuries suffered by him. He further submits that the quantum of compensation awarded by the Tribunal is also not based on proper appreciation of the evidence available on record, therefore, the same is liable to be reduced suitably.

6. Learned counsel for the respondents support the impugned award in respect of liability and filed cross objection for enhancement of compensation on the following grounds:-

(i) that income of the deceased has wrongly been considered as Rs.5000/- per month whereas he being driver was earning Rs.6500/- per month.

(ii) that the Tribunal has wrongly awarded 30% future prospect whereas it should have been 50%.that the multiplier of 14 has wrongly been applied whereas it should have been 15 considering the age of the deceased as 40 years.

(iii) that the amount under the conventional heads including the medical expenses is also on the lower side.

(iv) that 1/3rd deduction towards personal and living is also against the law and it should have been 1/4.

7. As per the evidence of eyewitness AW-2 Raja Ram Sinha, he has categorically stated on oath before the Tribunal that on the date of accident while he was coming to Raipur in vehicle TATA Magic bearing no.CG04-JB-6859 driven by deceased Komal Sahu on the way non-applicant no.1 by driving the vehicle Truck bearing registration no.CG04 JA 3494 came from wrong side and dashed their vehicle, as a result of which Komal Sahu suffered grievous injuries, he was taken to hospital for treatment and subsequently he died. In cross-examination, this witness has denied all the adverse suggestions put to him regarding contributory negligence or sole negligence on the part of the deceased. Name of this witness also finds place in the final report submitted by the police in the criminal case against non-applicant no.1. Nothing could be elicited from this witness in the cross-examination by the Insurance Company which could suggest that there was any contributory negligence on the part of the deceased. As per FIR Ex.P-1 and Dehati Nalishi Ex.P-2 offence under Sections 279 and 337 was registered against non-applicant no. As per Final Report Ex.P-4 offence under Sections 279, 337 and 338 of IPC was registered against non-applicant no.1. As per documents medical documents, it seen that the deceased took continuous treatment for the injuries suffered by him in the

accident. As per Ex.P11C death certificate, the deceased Komal Sahu died on 31.07.2012. Thus, considering the over all and documentary evidence adduced by the claimants which remained uncontroverted by the non-applicants it is proved that the deceased died due to injuries suffered by him in the accident occurred on 05.06.2012 caused by rash and negligent driving of the offending vehicle by non-applicant no.1 and there was no contributory negligence on the part of the deceased. Even the driver of the offending vehicle non-applicant no.1 was not examined before the Tribunal. In these circumstances, this Court is of the opinion that the Tribunal was fully justified in holding that there was no contributory negligence on the part of the deceased and the death of the deceased was a result of injuries suffered by him in the said accident.

8. So far as quantum of compensation is concerned, though the claimants have pleaded that the deceased was earning Rs.200/- per day as a Labour and AW-2 Raja Ram Sinha before the Tribunal has stated that the deceased was earning Rs.6,000/- per month as Driver 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 as Rs.5000/- per month considered by the Tribunal is just and proper as per minimum wages at the relevant time. However, considering

the age of the deceased i.e. 45 years, the nature of his job in view of decision of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,*** the claimant is entitled for 25% towards future prospect whereas the Tribunal has awarded 30% future prospect, therefore, the same needs to be modified. Thus, keeping in view the age of the deceased i.e. 45 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, ***Pranay Sethi*** (supra) ***& 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***, the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.5,000/- per month.	Rs.60,000/- per annum
02.	25% of (i) above to be added towards future prospects.	Rs.15,000/- Rs.60,000 + Rs.15,000 = Rs.75,000/-
03.	1/4 deduction towards personal and living expenses of the deceased	Rs.18,750/- Rs.75,000 – Rs.18,750 = Rs.56,250/-
04.	Multiplier of 14 to be applied	Rs.7,87,500/-

05.	Towards loss of funeral	Rs.25,000/- (as awarded by the Tribunal)
06.	Towards loss of consortium	Rs.1,00,000/- (as awarded by the Tribunal)
07.	Towards loss of parental consortium to claimants 2 to 4 @ Rs.50,000/- each	Rs.1,50,000/- (as awarded by the Tribunal)
08.	Towards loss of estate	Rs.10,000/- (as awarded by the Tribunal)
09.	Towards attendant, special diet and conveyance	Rs.25,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.10,97,500/-

Since the Tribunal has already awarded Rs.10,38,112/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.59,388/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

09. In the result, the appeal filed by the Insurance Company as well as cross objection filed by the claimants stand allowed with modification in the impugned award to the above extent.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh