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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 644 of 2014

- National Insurance Company Limited Through- The Branch Manager, Branch Office- Taha Complex, First Floor, Vyapar Vihar Road, Bilaspur, P.S Civil Line, Tah. And Distt. Bilaspur C.G., Chhattisgarh

---- Appellant

Versus

1. Smt. Uma Bai W/o Late Ramchandra Patel Aged About 30 Years R/o C/o Awadhram Patel Mata Chaura, Near Water Tank, Mangla, P.S. Civil Line, Bilaspur, Distt. Bilaspur, Chhattisgarh

2. Shailendra Kumar Patel S/o Late Ramchandra Patel Aged About 7 Years Minor, Thrugh- Mother Smt. Uma Bai Patel, R/o C/o Awadhram Patel Mata Chaura, Near Water Tank, Mangla, P.S. Civil Line, Bilaspur, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh

3. Ku. Ombika Patel D/o Late Ramchandra Patel Aged About 5 Years Minor, Thrugh- Mother Smt. Uma Bai Patel, R/o C/o Awadhram Patel Mata Chaura, Near Water Tank, Mangla, P.S. Civil Line, Bilaspur, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh

4. Gorelal Patel S/o Late Undram Patel Aged About 62 Years R/o Charpara Baloda, P.S. Baloda, Distt. Janjgir-Champa C.G., District : Janjgir-Champa, Chhattisgarh

5. Smt. Kaushilya Bai W/o Gorelal Patel Aged About 58 Years R/o Charpara Baloda, P.S. Baloda, Distt. Janjgir-Champa C.G., District : Janjgir-Champa, Chhattisgarh

6. Neelratan Yadav S/o Ramratan Yadav Aged About 32 Years R/o Lagra, P.S. Sarkanda, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh

7. Ashok Kumar Natthani S/o Late Aalamchand Natthani R/o Telephone Exchange Road, Behind Geeta Lodge, Sheetal Chhaya, P.S. Civil Line, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh

---- Respondents

For Appellant : Shri Gautam Khetrapal, Advocate
For Respondent Nos. 1 to 5 : Shri R. K. Jain, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

08.02.2019

1. This is insurer's appeal filed under section 173 of the Motor Vehicles Act, 1988 (henceforth “MV Act, 1988”) against the award dated 29.03.2014, passed by Additional Motor Accident Claims Tribunal (FTC), Bilaspur (for short 'the Claims Tribunal') in claim case No. 136/2013 awarding total compensation of Rs. 7,06,200/- alongwith interest @ 6% pa from the date of application till realisation, fastening liability on the Non-applicants jointly and severaly.

2. As per claim petition, on 20.04.2013 at about 12.30am Ramchandra Patel went from Charapara (Baloda) to Sakti to attend a marriage function when he was returning by the Bus bearing registration No. CG10-G/0905, near Village Kamreed Bus-stand, non-applicant No. 1 Neelratan Yadav by rash & negligent driving dashed the tree due to this accident Ramchandra Patel sustained grievous injuries and died on spot.

3. On claim petition being filed by the claimants/wife, Children & parents of the deceased- Ramchandra Patel 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. 2 and insured with non-applicant No. 3.

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 the Tribunal has wrongly assessed the income of the deceased as Rs. 4,500/-pm without any evidence in this regard and it should have been considered as Rs. 3,000/- on notional basis as the deceased was the labour at the time of accident. He further submits that the Tribunal was also not justified in deducting $1/5^{th}$ towards personal & living expenses of the deceased and considering the facts that the claimants No. 4 & 5 are the parents of the deceased who cannot be treated as dependent upon the deceased, the Tribunal should have been deducted $1/3^{rd}$ towards personal & living expenses. In support of the above contention he placed reliance upon the Apex Court judgment in the matter of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121.***

6. Also heard on cross-objection filed by the respondents No. 1 to 5/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 5/claimants while filing the cross-objection under Order 41 Rule 22 of the CPC submits that the deceased was the skilled labour but the Claims Tribunal has assessed the income of deceased as Rs. 4,500/- per month, which appears to be on lower side. The accident occurred on 20.04.2013, therefore, looking to the minimum wages prevailing at that time, the income of deceased may be considered as Rs. 5,000/-. 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 appellant/insurance Company submits that there is no need to enhance the award as per the cross-objection filed by the claimants.

9. Heard both the parties and perused the impugned award.

10. First this Court decides the issue raised by the appellant/Insurance Company regarding deduction part towards personal expenses deduction. In this case number of claimants are five including the claimants No. 4 & 5 who are the parents of the deceased. Considering the age of the parents of the deceased, they can safely be taken as dependent upon the deceased, therefore, in view of the Apex Court Judgment of the in the matter of **Sarla Verma(Smt),** there has to be $1/4^{th}$ deduction towards personal & living expenses of the deceased and the Tribunal was not justified in deducting $1/5^{th}$. The learned Tribunal considered the income of the deceased as Rs. 4,500/-pm, looking to the minimum wages prevailing at the time of accident, Rs. 5,000/-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.5,000/- per month.	Rs. 5,000x12= Rs. 60,000/- per annum
02.	40% of (i) above to be added towards future prospects.	Rs. 60,000+24,000= Rs. 84,000/-

03.	After 1/4th deduction towards personal and living expenses of the deceased	Rs. 84,000-21,000= Rs. 63,000/-
04.	Multiplier of 16 to be applied	Rs. 10,08,000/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
06	**Total compensation**	**Rs. 10,78,000/-**

11. Since the Tribunal has already awarded Rs.7,06,200/-, after deducting the same, the claimants are held entitled for additional compensation of Rs.3,71,800/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

12. 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.

Sd/-

(Gautam Chourdiya)
Judge

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