AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1492 of 2015

- The Oriental Insurance Company Ltd. Katcheri Chowk Jail Road, Raipur, District Raipur Chhattisgarh.

---- Appellant

Versus

1. Smt. Usha Bai Wd/o Himit Kumar @ Hemit, Aged About 19 Years Occupation Housewife,
2. Ku. Sakun Miri D/o Sukhchand Miri, Aged About 16 Years
3. Ku. Pushpa Miri D/o Sukhchand Miri, Aged About 13 Years
4. Ku. Komal Miri D/o Sukhchand Miri, Aged About 10 Years
5. Ku. Purnima Miri D/o Sukhchand Miri, Aged About 3 Years
6. Sukhchand Miri S/o Late Jugru Ram Miri, Aged About 55 Years

   Nos. 2, 3, 4 & 5 are minor through natural guardian father Sukhchand Miri S/o Jugru Ram Miri.

   All are r/9o Village Khokhali, post Jaroud, Police Station Tahsil and District Baloda Bazar, Bhatapara, C.G.

7. Ashok Kumhar S/o Dashrath Kumhar, Aged About 30 Years Occupation Driver, R/o Ward No. 02, Tilda, Police Station Newra, District Raipur Chhattisgarh.
8. Ramesh Sharma S/o Gulabchand Sharma, Aged About 40 Years .Registered Owner Of Truck Bearing No. C G04 ZC 5896, R/o Transpor Nagar, Raipur Chhattisgarh.

---- Respondents

For Appellant	Shri Raj Awasthi, Advocate.
For Respondent Nos. 1 to 6	Shri A.L. Singroul, Advocate.
For Respondent Nos. 7 & 8	Shri F.S. Khare, Advocate.

MAC No. 293 of 2016

1. Smt. Usha Bai W/o Late Himeet Kumar @ Himit, Aged About 19 Years Occupation- House Wife,

2. Kumari Sakun Miri D/o Sukhchand Miri, Aged About 16 Years
3. Kumari Pushpa Miri D/o Sukhchand Miri, Aged About 13 Years
4. Kumari Komal Miri D/o Sukhchand Miri, Aged About 10 Years
5. Kumari Purnima Miri D/o Sukhchand Miri, Aged About 3 Years
6. Sukhchand Miri S/o Late Jugru Ram Miri, Aged About 55 Years

   Appellant nos. 2,3,4 & 5 are minor thorugh her legal Guardian Sukhchand Miri S/o Late Jugru Ram Miri

   All R/o Village- Khokhali, Post- Jaroad P.S. And Tahsil And District- Balouda Bazar/ Bhathapara, Chhattisgarh.

---Appellants

Versus

1. Ashok Kumhar S/o Dashrath Kumhar, Aged About 30 Years Occupation- Driver, R/o Village- Ward No.2 Tilda Thana- Nevara, District- Raipur, Chhattisgarh Driver Of Offending Vehicle Truck No. C.G.04/ ZC/ 5896
2. Ramesh Sharma S/o Gulab Chand Sharma, Aged About 40 Years Occupation- Owner Of Offendingh Vehicle Truck No. C.G.04/ ZC/ 5896 Of Registered Owner, R/o Transport Nagar Raipur, Chhattisgarh.
3. The Oriental Insurance Company Limited, Kachhehari Chouk Jel Road Raipur, Distt.- Raipur, Chhattisgarh Insurer Of Offending Vehicle Truck No. C.G.04/ ZC/5896.

---- Respondents

For Appellants	Shri A.L. Singroul, Advocate.
For Respondent Nos. 1& 2	Shri F.S. Khare, Advocate.
For Respondent No.3	Shri Raj Awasthi, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

20/02/2019

01. As both these appeal arise out of the award dated 04.09.2015 passed by Chief Motor Accident Claims Tribunal, Raipur, District Raipur, Chhattisgarh, in Claim Case No.303/14, they are being disposed of by this common judgment.

02.As per averments in the claim petition, on 26.10.2013, deceased Himeet Kumar @ Himit, aged 21 years, earning Rs.8,000/- by working as Khalasi, died in the motor vehicular accident caused due to rash and negligent driving of the Truck bearing no.CG04-ZC-5896 by non-applicant no.1 Ashok Kumhar. At the time of accident, offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.

03. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act claiming compensation of Rs.40,00,000/- under various heads, the Tribunal considering the evidence led by both the parties, by the impugned award granted a total compensation of Rs.11,78,591/- with interest @ 6% per annum from the date of application till its realization, fastening liability on non-applicant no.3 jointly and severally along with non-applicant nos. 1 & 2

04.**MAC No.1492/2015**: Learned counsel for the appellant/Insurance Company submits that the Tribunal was not justified in fastening liability on the Insurance Company without considering the fact that the offending vehicle was being driven by non-applicant no.1 in breach of policy conditions. Further, the Tribunal has committed an error by not considering the fact the deceased himself was liable for the accident and as such there was contributory negligence on the part of the deceased. He submits that the Tribunal has wrongly considered respondent nos. 2 to 6 as dependent upon the income of the deceased as respondent nos. 2 to 5 are minor daughters of respondent no.6.

05. 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 has filed a separate appeal i.e. MAC No.293/2016 for enhancement of compensation.

06. **<u>MAC No.293/2016</u>**: This appeal has been filed by the claimants for enhancement of compensation. Learned counsel for the claimants submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds:-

(i) that income of the deceased has wrongly been considered by the Tribunal as Rs.6,000/- per month whereas it should have been Rs.8,000/- per month looking to the job of the deceased.

(ii) that 1/3rd deduction towards personal and living is also against the law and it should have been ¼ as the dependents are 6.

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

(iv) 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.***

07. Opposing the above contention, learned counsel for the respondents submit that the Tribunal has already awarded compensation on the higher side and therefore, there is no need for its enhancement by this Court.

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

09. So far as appeal i.e. MAC No.1492/2015 preferred by the insurance company is concerned, though the Insurance Company has contented that there was breach of policy conditions on the part of the driver and owner of the offending vehicle but it has not pleaded specifically as to what kind of breach of policy conditions was there on the part of the driver and owner of the vehicle. No evidence has been adduced by the Insurance Company to substantiate its plea of breach of policy conditions. Likewise, on the issue of contributory negligence, no such evidence has been adduced by the Insurance Company which could lead to an inference that the deceased was also negligent in any manner in causing the accident. No counter report was lodged against the deceased whereas from the evidence oral and documentary available on record, it is clear that crime was registered against non-applicant no.1, vide Ex.P-2 FIR and charge sheet Ex.P-1 was filed against him. As regards the issue of dependency, Smt. Usha Bai AW-1 has categorically stated that her husband/deceased was earning Rs.8,000/- per month by working as Khalasi, he was the only earning member of their family. The said statement remains uncontroverted in the cross-examination. In cross-examination, she has specifically

denied the suggestion that the other claimants i.e. sisters of deceased were not dependent upon him. Nothing has been brought on record by the non-applicants to show that the claimants nos. 2 to 6 were not dependent upon the income of the deceased. In these circumstances, the Tribunal was fully justified in holding that all the claimants dependent upon the deceased.

In view of the matter, this Court finds no substance in the appeal filed by the Insurance Company and the same is, accordingly, dismissed.

10. As regards the appeal filed by the claimants for enhancement, the Tribunal was justified in assessing the income of the claimant as Rs.6000/- per month on notional basis considering the minimum wages at the relevant time as the claimants could not prove deceased's income as Rs.8000/- by any documentary evidence. However, no amount towards future prospect has been granted by the Tribunal. Therefore, considering the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, 40% of the annual income is to be added thereto towards future prospect. Further, considering the age of the deceased i.e. 21 years, the dependency i.e. 6, the nature of his 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:

Sl. No.	**Heads**	**Calculation (in rupees)**

01.	Income of the deceased @ Rs.6,000/- per month.	Rs.72,000/-per annum
02.	40% of (i) above to be added towards future prospects.	Rs.28,800/- Rs.72,000 + Rs.28,800 = Rs.1,00,800/-
03.	1/4 deduction towards personal and living expenses of the deceased	Rs.25,200/- Rs.1,00,800 – Rs.25,200 = Rs.75,600/-
04.	Multiplier of 18 to be applied	Rs.13,60,800/-
05.	Towards loss of estate, loss of spousal consortium and funeral expenses	Rs.70,000/-
06.	Towards loss of love and affection to claimants 2 to 5 @ Rs.10,000/- each	Rs.40,000/-
07.	Towards loss of filial consortium to claimant no.6	Rs.10,000/-
08.	Towards medical bill	Rs.2,39,591/- (as awarded by the Tribunal)
	Total Compensation	**Rs.17,20,391/-**

Since the Tribunal has already awarded Rs.11,78,591/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.5,41,800/- with interest as awarded by the Tribunal.

11. In the result:

- MAC No.1492/2015 preferred by the insurance company being without any substance is hereby dismissed.

- MAC No.293/2016 filed by the claimants is allowed with modification in the impugned to the above extent that the claimants shall be entitled for additional compensation of Rs.5,41,800/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh