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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 748 of 2014

- The Oriental Insurance Co. Ltd. Through its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Revenue and Civil District Bilaspur (C.G.) PIN - 495001

---- Appellant/Non-applicant No.3/Insurer

Versus

1. Radha Bai, Wd/o late Balakram Sidar, aged about 57 years, Occupation- Nil
2. Maniram, aged about 39 years, Occupation- Labourer
3. Pitarlal, aged 37 years, Occupation- Labourer
4. Heeralal, aged about 36 years, Occupation- Labourer
5. Shyam Kumari, aged about 22 years, Occupation- Nil
6. Kaushal Prasad, aged about 19 years, Occupation- Nil
7. Ku. Laxmin Bai, Minor, aged about 12 years, Student, represented through mother and natural guardian Radha Bai, Wd/o Balakram

(Claimants)

Note: The Respondents No. 2, 3, 4 & 6 are Sons of & Respondents No. 5 & 7 are daughters of late Balakram, Caste Sidar, R/o Village Kachanda, P.S. Jaijaipur, Civil and Revenue District Janjgir-Champa (C.G.)

8. Meghnath Yadav, S/o Nankiram, aged about 41 years, Caste Yadav, R/o Bade Seepat, P.S. Malkharauda, Civil and Revenue District Janjgir-Champa (C.G.)

(Driver/Non-applicant No.1)

9. Pawan Kumar Agrawal S/o Sahil Agrawal R/o Bus Stand, Baradwar, Tahsil Sakti, Civil & Revenue District Janjgir-Champa (C.G.)

(Owner/Non-applicant No.2)

---- Respondents

And

Miscellaneous Appeal (Civil) No. 1047 of 2014

1. Radha Bai, W/o Late Balakram Sidar, Aged about 57 years
2. Maniram, Aged about 39 years, Occupation- Labour
3. Pitarlal, Aged about 37 years, Occupation- Labour
4. Hiralal, Aged about 36 years, Occupation- Labour
5. Shyam Kumari, Aged about 22 years,
6. Kaushal Prasad, Aged about 19 years, Occupation- Student
7. Kumari Laxmin Bai, Aged about 12 years, Occupation- Student

Respondent No. 7 is a minor and is represented by her natural guardian (mother) Radha Bai, W/o Late Balakram

All the above Appellants No. 2 to 4 & 6 are S/o Late Balakram Sidar and Appellants No. 5 & 7 are D/o Late Balakram Sidar

All the above appellants are Sidar by Caste and are R/o Village & Post-Kachanda, P.S. & Tehsil- Jaijaipur, Revenue & Civil District- Janjgir-Champa (C.G.)

(As the appellants No. 2, 3 & 4 are majors, then the entry describing in cause title of award as guardian has no connection and has no connection to the present case, it is a cut, copy and paste of some other case)

---- Appellants/Claimants

Versus

1. Meghnath Yadav, S/o Nankiram, Aged about 41 years, Caste- Yadav, R/o Bade Seepat, P.S. & Tehsil- Malkharoda, Revenue & Civil District- Janjgir-Champa (C.G.)
(Driver of the offending vehicle/Non-applicant No.1)
2. Pawan Kumar Agrawal, S/o Shri Sahil Agrawal, R/o Bus Stand Baradwar, P.S. Baradwar, Tehsil- Sakti, Revenue & Civil District- Janjgir-Champa (C.G.)
(Owner of the offending vehicle/Non-applicant No.2)
3. Branch Manager, Oriental Insurance Company Limited, Geetanjali Building Main Road, Old Bus Stand Korba, Revenue & Civil District- Korba (C.G.)
(Insurer of the offending vehicle/Non-applicant No.3)

---- Respondents

For Claimants	:	Shri Surfaraj Khan, Advocate
For Driver/ Non-applicant No.1	:	None
For Owner/ Non-applicant No.2	:	Shri Deepak Kumar Singh, Advocate
For Insurance Company/ Non-applicant No.3	:	Shri R.N. Pusty, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

20.02.2019

1. As both above appeals arise out of the accident occurred on 27.10.2012 involving the vehicle Bus bearing registration No. CG-11/A/6496 (hereinafter referred to as the 'offending vehicle'), they are being disposed of by this common judgment.

2. M.A.(C) No. 748 of 2014 has been filed by the Insurance Company/non-applicant No.3 challenging the liability fastened upon it. M.A.(C) No. 1047 of 2014 has been filed the Claimants for seeking enhancement of compensation. Both appeals arise out of common award dated 21.04.2014 passed by the First

Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa in Claim Case No. 43/2013 awarding compensation in favour of the Claimants of Rs.3,44,000/- with interest @ 6% per annum from the date of claim application till realization and has fastened the liability upon the non-applicant No.3/Insurance Company alongwith non-applicants No. 1 & 2/Driver & owner jointly and severally to pay compensation to the Claimants No. 1 and 7.

3. Claimant No.1 – mother; Claimants No. 2 to 4 & 6 – major brothers; Claimant No.5 – major sister and Claimant No.7 – minor sister of deceased- Dinbhandu Sidar.

4. Brief facts of the case are that deceased- Dinbhandu, aged about 19 years, was working as a Khalasi/Helper in the offending vehicle and was earning Rs.6,000/- per month. On 27.10.2012, deceased was travelling in the offending vehicle from Village Kachanda to Champa. On the way, when the offending vehicle reached Village Darrabhatha, non-applicant No. 1 driving the same in a rash and negligent manner turned turtle the offending vehicle. As a result thereof, deceased fell down from the bus and got pressed under the offending vehicle and died on spot.

5. At the time of accident, non-applicant No. 1 was driver, non-applicant No. 2 was owner of the offending vehicle which was insured with non-applicant No.3.

6. Learned counsel for the Insurance Company submits that the deceased was working as helper in the offending vehicle and no any premium was taken for helper by the Insurance Company, therefore, the claim petition filed the Claimants before the Tribunal was not tenable. He further submits that the claim in respect of death of deceased was tenable before the Employee's Compensation Commissioner which would have been appropriate forum. He also submits that the offending vehicle is passenger carrying vehicle and there is no premium taken for helper, therefore, the Tribunal has wrongly fastened liability upon the Insurance Company.

7. Learned counsel for the Claimants as well as learned counsel for the Owner

oppose the contention made by learned counsel for the Insurance Company.

8. Learned counsel for the Claimants submits that there is no difference between the helper and cleaner in village area, therefore, the Claimants have pleaded that the deceased was helper in the offending vehicle. He further submits that the income of the deceased is considered by the Tribunal as Rs.3,000/-, but in fact he was working as helper in the offending vehicle and was earning Rs.6,000/- per month. He also submits that the deceased was aged about 19 years and no amount towards future prospects has been granted to the Claimants by the Tribunal, in view of the decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, the Claimants are entitled to 40% future prospects.

9. Learned counsel for the Insurance Company opposes the contention made by learned counsel for the Claimants. He submits that the Tribunal has rightly considered the income of the deceased as Rs.3,000/- per month. He also submits that in Claimants' appeal, no ground has been raised regarding future prospects, therefore, without mentioning of such ground in appeal, it may not be considered by this Court.

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

11. It is not disputed that the deceased was helper in the offending vehicle Bus bearing registration No. CG-11/A/6496. In village the person working in a travel agency is called as helper or cleaner in travel agency, therefore, the Claimants have pleaded that the deceased was helper in the offending vehicle. As per Ex.-D/1, insurance policy is for passenger carrying vehicle, package policy and it has been proved by the Insurance Company itself that the premium was taken for helper/cleaner, conductor of the Bus, therefore, no any scope for exonerating the Insurance Company of its liability to pay compensation. As per statement of Sandeep Kumar Sinha (NAW-1), Assistant Manager, he admits in para-6 that Ex.-D/1 is package policy which covers the risk of owner-cum-driver and cleaner and

premium was also taken by the Insurance Company. The dispute is only regarding the fact whether the deceased was helper or cleaner, but that was not challenged before Tribunal by the Insurance Company and the Tribunal was justified in fastening the liability upon Insurance Company along with driver & owner of the offending vehicle. Therefore, the appeal filed by the Insurance Company deserves to be dismissed.

12. As regards income of the deceased, the Claimants have pleaded that the deceased was earning Rs.6,000/- per month as helper in the offending vehicle, 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 is considered as Rs.4,500/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 19 years and he was unmarried at the time of accident, the dependency, the nature of his job and the decisions of the Hon'ble Supreme in *Pranay Sethi* (supra) and ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, the Claimants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.4,500/- per month	Rs.54,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.54,000/- + Rs.21,600/-) Rs.75,600/-
3.	50% deduction towards personal and living expenses of Deceased	(Rs.75,600/- – Rs.37,800/-) Rs.37,800/-
4.	Multiplier of 18 applied (as applied by the Tribunal)	Rs.37,800/- x 18 = Rs.6,80,400/-
5.	Conventional heads:- Towards funeral expenses, love & affection and loss of estate	Rs.20,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.7,00,400/-

13. Since the Tribunal has already awarded Rs.3,44,000/-, after deducting the same from the above amount, the Claimants No. 1 & 7 are held entitled for additional compensation of Rs.3,56,400/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

14. In the result, the appeal i.e. M.A.(C) No. 1047 of 2014 filed by the Claimants is allowed in part with modification in the impugned award to the above extent and the appeal i.e. M.A.(C) No. 748 of 2014 filed by the Insurance Company/non-applicant No.3 is dismissed.

15. No order as to cost.

Sd/-
(Gautam Chourdiya)
Judge

vatti