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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 873 of 2014

- Iffco Tokio General Insurance Company Limited 3rd Floor, Shop No. 345-347 Ganga Shopping, G.E. Road, Raipur, Tah. And Distt. Raipur C.G.

----Appellant

Versus

1. Rajukumar S/o Pan Singh Thakur Aged About 44 Years
2. Smt. Karabai W/o Rajkumar Aged About 42 Years
3. Ku. Khemlata D/o Rajkumar Aged About 23 Years
4. Ku. Fuleshwari D/o Rajkumar Aged About 17 Years

   Respondent No.4 being a minor represented by her natural guardian, respondent no.1 father.

   All respondents- resident of village Birajpali, post Badarsi, Thana, Bagbahra, District Mahasamund, C.G.

5. Dumanlal Sahu S/o Shankarlal Sahu Aged About 25 Years R/o Birajpali, Post- Badarsi, Thana- Bagbahra, Distt. Mahasamund C.G.

---- Respondents

For Appellant	Shri Amrito Das, Advocate.
For Respondent Nos.1 to 4	Shri Shivendu Pandya, Advocate.
For Respondent No.5	Shri A.L. Singroul, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

08/02/2019

1. Heard on **I.A. No.1**
2. This is an application for condonation of delay of 11 days in filing the MAC.
3. For the reasons mentioned in the application which is duly supported by affidavit, the same is allowed and delay in filing the MAC is condoned.

4. Also, heard on admission.

5. The appeal being arguable on merits is admitted for hearing.

6. With the consent of the parties, the matter is heard finally.

7. This appeal is by the Insurance Company/non-applicant no.2 against the award dated 08.05.2014 passed by the Motor Accident Claims Tribunal, Mahasamund, District Mahasamund, C.G. in Claim Case No.29/13 awarding total compensation of Rs.10,45,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant nos. 1 & 2 jointly and severally.

8. As per claim petition, on 29.12.2012 when deceased Parmanand Thakur, aged about 21 years, earning Rs.10,000/- per month as Mason was going on motorcycle bearing no.CG06-PA-2226 as a pillion rider. On the way due to sudden rash and negligent ridding of non-applicant no.1, the motorcycle got uncontrolled and dashed against the tree, resulting in his death. At the time of accident, the offending vehicle was owned by non-applicant no.1 and insured with non-applicant no.2.

9. On claim petition being filed by the claimants i.e. Parents and Sisters of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.22,00,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 7 of this judgment.

10. Counsel for the appellant submits that though he has raised the issue of contributory negligence on the part of the deceased but he is not pressing the same. He submits that the Tribunal has awarded a compensation very much on higher side by wrongly considering the income of the deceased as Rs.10,000/- per month without there being

any evidence to this effect on record and further the amount awarded under the conventional heads is shockingly on the higher side which needs to be reduced suitably.

11. On the other hand, counsel for the respondent nos. 1 to 3 submits that the Tribunal has rightly considered the income of the deceased as Rs.10,000/- per month on the basis of evidence adduced by them. However, the Tribunal has not awarded any amount towards future prospect which should have been 40% in the present case considering the age of the deceased i.e. 21 years, in view of decision of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.*** He submits that the amount awarded under the conventional heads can also not be said to be on the higher side, in view of decision of Hon'ble Supreme Court in ***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.***

12. Counsel for the respondent no.5 has duly assisted the Court.

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

14. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.10,000/- per month as Mason 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.5,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 21 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, Magma General Insurance (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.60,000/- per annum
02.	40% of (i) above to be added towards future prospects.	Rs.24,000/- Rs.60,000 + Rs.24,000 = Rs.84,000/-
03.	1/2 deduction towards personal and living expenses of the deceased	Rs.42,000/-
04.	Multiplier of 18 to be applied	Rs.7,56,000/-
05.	Towards loss of estate & funeral expenses	Rs.30,000/-
06.	Towards loss of filial consortium @ Rs.20,000/- each to claimants no. 1 & 2 (Parents)	Rs.40,000/-
07.	Towards loss of love and affection @ Rs.20,000/- each to claimants no. 3 & 4	Rs.40,000/-
	Total Compensation	**Rs.8,66,000/-**

13. In the result, the appeal is allowed in part with modification in the impugned award to the extent that appellant is liable to pay a sum of Rs.8,66,000/- with interest @ 6% per annum as awarded by the Tribunal to the claimants. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh