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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 317 of 2015

- Smt. Madwi Bandi W/o Late Madwi Pojja Aged About 32 Years Caste Goand, R/o Village- Gondpalli, Tahsil Sukma, Police Station Gadiras, District Sukma, Chhattisgarh

---- Appellant/claimant

Versus

1. Amjad Khan @ Salim S/o Ajmal Khan Driver Aged About 29 Years R/o Patnampara Sukma, Tahsil Sukma, Police Station Gadiras, District-Sukma, Chhattisgarh

2. Rejo Khan S/o Abdul Rajjak (Vehicle) Owner) Aged About 35 Years R/o Patnampara Sukma, Tahsil Sukma, Police Station Gadiras, District Sukma, Chhattisgarh

3. The Oriental Insurance Company Limited Address Main Road Jagdalpur, District Bastar, Chhattisgarh

---- Respondents

MAC No. 318 of 2015

1. Smt. Wetti Hungi W/o Late Wetti Sukka Aged About 35 Years Caste Goand

2. Wetti Raja S/o Late Wetti Sukka Aged About 15 Years Minor, Caste Goand

3. Wetti Mangda S/o Late Wetti Sukka Aged About 12 Years Caste – Goand

All three are resident of Village Gondpalli, Tahsil Sukma, Police Station Gadiram, Distt. Sukma (CG)

Appellants No. 2 & 3 are minor, on their behalf their Natural Guardian (Mother) Smt. Vetti Hungi, W/o Wetti Sukka, aged about 35 years.

---- Appellants/claimants

Versus

1. Amjad Khan @ Salim S/o Ajmal Khan Driver Aged About 29 Years R/o Patnampara Sukma, Tahsil Sukma, Police Station Gadiras, District-Sukma, Chhattisgarh

2. Rejo Khan S/o Abdul Rajjak (Vehicle) Owner) Aged About 35

Years R/o Patnampara Sukma, Tahsil Sukma, Police Station Gadiras, District Sukma, Chhattisgarh

3. The Oriental Insurance Company Limited Address Main Road Jagdalpur, District Bastar, Chhattisgarh

---- Respondents

MAC No. 334 of 2015

1. Gonche Bhima S/o Late Deva Aged About 60 Years, Caste Goand

2. Gonche Dhuruwa S/o Late Gonche Ganga Aged About 15 Years, Caste Goand,

Both are resident of Village Gondpalli, Tahsil Sukma, Police Station Gadiram, Distt. Sukma (CG)

Appellant No.2 is minor, on his behalf his Guardian (Grandfather) Gonche Bhima, Son of Late Deva, aged about 60 years.

---- Appellants/claimants

Versus

1. Amjad Khan @ Salim S/o Ajmal Khan Driver Aged About 29 Years R/o Patnampara Sukma, Tahsil Sukma, Police Station Gadiras, District-Sukma, Chhattisgarh

2. Rejo Khan S/o Abdul Rajjak (Vehicle) Owner) Aged About 35 Years R/o Patnampara Sukma, Tahsil Sukma, Police Station Gadiras, District Sukma, Chhattisgarh

3. The Oriental Insurance Company Limited Address Main Road Jagdalpur, District Bastar, Chhattisgarh

---- Respondents

MAC No. 335 of 2015

1. Smt. Malle Sodi W/o Late Chula Sodi Aged About 31 Years, Caste Goand,

2. Hidama Sodi S/o Late Bandi Aged About 55 Years, Caste Goand

3. Deva Sodi S/o Late Chula Sodi Aged About 12 Years, Caste Goand

All three are resident of Village Gondpalli, Tahsil Sukma, Police Station Gadiram, Distt. Sukma (CG)

Appellant No.3 is minor, on his behalf his Guardian (Mother) Smt. Malle Sodi, w/o Late Chula Sodi, aged about 31 years.

---- Appellants

Versus

1. Amjad Khan @ Salim S/o Ajmal Khan Driver Aged About 29 Years R/o Patnampara Sukma, Tahsil Sukma, Police Station Gadiras, District-Sukma, Chhattisgarh

2. Rejo Khan S/o Abdul Rajjak (Vehicle) Owner) Aged About 35 Years R/o Patnampara Sukma, Tahsil Sukma, Police Station Gadiras, District Sukma, Chhattisgarh

3. The Oriental Insurance Company Limited Address Main Road Jagdalpur, District Bastar, Chhattisgarh

---- Respondents

For Appellants/claimants	:	Shri P. Dhurandhar, Advocate.
For Respondent Nos. 1 & 2	:	None though served.
For Respondent No.3	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

17/01/2019

As all these above appeals filed under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") arise out of the common award dated 22.12.2014 passed by Additional Motor Accident Claims Tribunal (FTC), South Bastar, Dantewada, in Claim Cases No.102, 103, 104 & 105 of 2013, they are being disposed of by this common judgment.

02. As per claim case No.102/13, on 6.11.2017 Madvi Pojja, husband of the claimant, was travelling in Pickup bearing No. CG 17 H 1786 (hereinafter referred to as "offending vehicle") as a Helper. However, due to rash and negligent driving of the offending vehicle by non-applicant No.1, the said vehicle turned turtle as a result of which Madvi Pojja suffered grievous injuries and died on the spot. Hence, the claimant filed an application under Section 166 of the Act and claimed compensation of Rs.5.80 lacs from the non-applicants.

03. As per claim case No.103/13, in the same accident Chula Sodi who was sitting the offending vehicle as Hamal also suffered grievous injuries and died. Hence, the claimants, who are widow, father and son of the deceased Chula Sodi, filed application under Section 166 of the Act and claimed Rs.8.20 lacs as compensation from the non-applicants.

04. As per claim case No.104/13, in the said accident Wetti Sukka who was sitting in the offending vehicle as Hamal suffered severe injuries and died. Therefore, for his death, the claimants who are widow and children of the deceased by filing application under Section 166 of the Act claimed compensation of Rs.5.80 lacs from the non-applicants.

05. As per claim case No.105/13, in the same accident Smt. Gonchi who was sitting in the offending vehicle as Hamal also sustained grievous injuries and died. Hence the claimants, who are daughter-in-law and father of the deceased by filing application under Section 166 of the Act claimed compensation of Rs.7 lacs from the non-applicants.

06. The Tribunal considering the facts and circumstances of the case, the evidence available on record, by the impugned award granted compensation of Rs.3.80 lacs in claim case No.102/13; Rs.4.38 lacs in claim case No.103/13; Rs.3.90 in claim case No.104/13 and Rs.4.09 lacs in claim case No.105/13, with interest @ 6% per annum from the date of claim application till realization fastening liability on non-applicants No. 1 & 2/driver and owner while exonerating non-applicant No.3/insurance company.

07. Being aggrieved by the impugned award, the claimants have filed appeals seeking enhancement of compensation as also challenging exoneration of the insurance company of its liability.

08. Learned counsel for the appellants/claimants submits that the compensation awarded by the Tribunal in the respective claim cases is not just and proper. The Tribunal has not granted any amount towards future prospect and further, the amount awarded under the conventional heads is also very meager. Therefore, the compensation is required to be enhanced suitably in view of decision of the Hon'ble

Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***.

As regards the liability, learned counsel for the appellants submits that the Tribunal has wrongly exonerated the insurance company on the ground that on the date of accident, the insurance policy was not in force as the same was cancelled much prior to the date of accident and despite intimation in this regard being sent to the owner of the offending vehicle, no premium was deposited by him. He submits that there is no specific evidence by the insurance company that information regarding cancellation of insurance policy was duly served upon the owner. There is no acknowledgement proved by the insurance company which could show that information regarding cancellation of insurance policy was duly served upon the owner. He submits that even if the information was served upon the owner, the insurance company cannot be absolved of its liability as per decision of the Hon'ble Supreme Court in ***Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and others, (1998) 1 SCC 371*** and ***New India Assurance Co. Ltd. Vs. Rula and others, (2000) 3 SCC 195***.

09. On the other hand, learned counsel for respondent No.3/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter including the pleadings and the evidence adduced in support thereof, has rightly exonerated the insurance company of its liability. Therefore, there is no need to interfere with the award impugned.

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

11. Considering the pleadings of the respective parties, the evidence adduced by them and appreciation thereof by the Tribunal, this Court is of the opinion that the Tribunal was justified in assessing income and age of the deceased, making deduction towards personal and living expenses and applying the multiplier. However, it has erred in not granting any amount towards future prospect and further, erred in granting meager amount under the conventional heads. Therefore,

keeping in view the decision of the Hon'ble Apex Court in *Pranay Sethi* (supra), this Court re-computes the compensation in the respective claim cases as under:

12. Claim Case No.102/2013:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.3000/- per month.	36,000/- per annum
02.	25% of (i) above to be added towards future prospects.	36,000 + 9,000 = 45,000/-
03.	1/3rd deduction towards personal and living expenses of the deceased.	45,000 – 15,000 = 30,000/-
04.	Multiplier of 15 to be applied	4,50,000/-
05.	Towards loss of estate, loss of consortium and funeral expenses	70,000/-
	Total compensation	**5,20,000/-**

Since the Tribunal has already awarded Rs. 3.80 lacs, after deducting the same from the above amount, the claimant in Claim Case No.102/2013 (MAC No.317/2015) is held entitled for additional compensation of Rs.1.40 lacs with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

13. Claim Case No.103/2013:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.3000/- per month.	36,000/- per annum
02.	40% of (i) above to be added towards future prospects.	36,000 + 14,400 = 50,400/-
03.	1/3rd deduction towards personal and	50,400 – 16,800 =

	living expenses of the deceased.	33,600/-
04.	Multiplier of 17 to be applied	5,71,200/-
05.	Towards loss of estate, loss of consortium and funeral expenses	70,000/-
	Total compensation	**6,41,200/-**

Since the Tribunal has already awarded Rs. 4.38 lacs, after deducting the same from the above amount, the claimants in Claim Case No.103/2013 (MAC No.335/2015) are held entitled for additional compensation of Rs.2,03,200/-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. <u>Claim Case No.104/2013</u>:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.3000/- per month.	36,000/- per annum
02.	25% of (i) above to be added towards future prospects.	36,000 + 9,000 = 45,000/-
03.	1/3rd deduction towards personal and living expenses of the deceased.	45,000 – 15,000 = 30,000/-
04.	Multiplier of 15 to be applied	4,50,000/-
05.	Towards loss of estate, loss of consortium and funeral expenses	70,000/-
	Total compensation	**5,20,000/-**

Since the Tribunal has already awarded Rs. 3.90 lacs, after deducting the same from the above amount, the claimants in Claim Case No.104/2013 (MAC No.318/2015) are held entitled for additional compensation of Rs.1.30 lacs with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

15. Claim Case No.105/2013:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.3000/- per month.	36,000/- per annum
02.	40% of (i) above to be added towards future prospects.	36,000 + 14,400 = 50,400/-
03.	1/3rd deduction towards personal and living expenses of the deceased.	50,400 – 16,800 = 33,600/-
04.	Multiplier of 16 to be applied	5,37,600/-
05.	Towards loss of estate, loss of consortium and funeral expenses	70,000/-
	Total compensation	**6,07,600/-**

Since the Tribunal has already awarded Rs. 4.09 lacs, after deducting the same from the above amount, the claimants in Claim Case No.105/2013 (MAC No.334/2015) are held entitled for additional compensation of Rs.1,98,600/ with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

16. As regards the liability, from perusal of the record it is seen that as per Ex.NA-6C the cheque issued by the owner towards premium of the insurance policy got dishonoured due to insufficiency of fund in the account and as per Ex.NA-10C the insurance company informed the owner/non-applicant No.2 Rejo Khan about cancellation of the policy and further informed that cover shall again commence from the date of receipt of fresh remittance of Rs.14,894/- including bank charges of Rs.500/- in cash or bank draft in favour of the insurance company. As per Ex.NA-11C, a registered legal notice dated 5.4.2007 was sent to the owner through counsel for the insurance company, thereby informing the owner about the above fact. As per Exs. NA-14C and NA-

15C i.e. postal receipts, it has been proved by the insurance company that notice was sent to the owner on 7.4.2007. A notice was also sent to the Regional Transport Authority regarding dishonour of the cheque which is evident from postal book of the insurance company. From Ex.P/11C it is clear that registered notice was sent to the owner on the same address which was given in the claim petition and therefore, as per Section 27 of the General Clauses Act, 1897 the notice shall be deemed to be served upon the owner.

Thus, considering the fact that accident occurred on 6.11.2007 whereas the insurance policy was cancelled about 7 months prior to the said accident on 24.2.2007 due to dishonour of cheque and the owner did not take any action for payment of premium of the policy despite several notices by the insurance company, this Court is of the opinion that the Tribunal was fully justified in exonerating the insurance company on the above ground and fastening liability on non-applicants No.1 & 2/driver and owner jointly and severely of satisfying the impugned award.

17. So far as judgments relied upon by learned counsel for the appellant are concerned, the same being distinguishable on facts from the present case are of no help to the appellant. In the matter of *Inderjit Kaur* (supra), premium for insurance policy was paid and the insurance company issued policy in favour of owner, however, the cheque so issued got dishonoured, the owner later on paid the premium in cash and in the meanwhile, the accident occurred. Hence in these circumstances, the insurance company was held liable for satisfying the award. Likewise, in the case of *Rula and others* (supra), the policy was cancelled due to dishonour of cheque after the accident occurred and therefore, the insurance company was held liable. However, the facts of the present case are entirely different as mentioned above and therefore, these cited judgments are not applicable to the facts of the present case. Accordingly, it is held that non-applicants No. 1 & 2/driver & owner of the offending vehicle are jointly and severely liable to pay the amount of compensation to the claimants.

18. In the result, all the four appeals are allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)
Judge

Khan