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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 101 of 2015

1. Smt. Rajmatibai, Wd/o Late Kejauram Pal, Aged About 50 Years, R/o Village Navagarh, Tahsil & Thana Nawagarh, District Bemetara, Chhattisgarh (Claimant).

2. Rupesh Kumar Pal, S/o Late Kejauram Pal, Aged About 25 Years, R/o Village Navagarh, Tahsil & Thana Nawagarh, District Bemetara, Chhattisgarh (Claimant).

3. Ritesh Kumar Pal, S/o Late Kejauram Pal, Aged About 23 Years, R/o Village Navagarh, Tahsil & Thana Nawagarh, District Bemetara, Chhattisgarh (Claimant).

---- Appellants

Versus

1. Ramesh Kumar Devangan, S/o Motiram Devangan, Aged About 40 Years, R/o Shaktinagar, Durg, District Durg, Chhattisgarh (Driver).

2. M/s Durg Roadways Pvt. Ltd., Near Bus Stand, G.E. Road, Durg, District Durg, Chhattisgarh (Owner).

3. Branch Manager, The Oriental Insurance Company Ltd., Office 16, RSS Market, Power House, Supela, Bhilai, District Durg, Chhattisgarh.

---- Respondents

For Appellants	:	Shri Samir Singh, Advocate.
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate.

AND

Miscellaneous Appeal (C) No. 148 of 2015

The Oriental Insurance Company Ltd., Through its Branch Manager, 16- R.S.S. Market, Power House, Supela, Bhilai, District Durg, Chhattisgarh (Appellant/Respondent No.3).

---- Appellant

Versus

1. Smt. Rajmati Bai, W/o Late Kejauram Pal, Aged About 50 Years, Occupation Housewife, R/o Village Navagarh, Tahsil & Thana Navagarh, District Bemetara, Chhattisgarh (Non-Appellant No.1/Claimant No.1).

2. Rupesh Kaumar Pal, S/o Late Kejauram Pal, Aged About 25 Years, R/o Village Navagarh, Tahsil & Thana Navagarh, District Bemetara, Chhattisgarh (Non-Appellant No.2/Claimant No.2).

3. Ritesh Kumar Pal, S/o Kejauram Pal, Aged About 23 Years, R/o Village Navagarh, Tahsil & Thana Navagarh, District Bemetara, Chhattisgarh (Non-Appellant No.3/Claimant No.3).

4. Ramesh Kumar Dewangan, S/o Motiram Dewangan, Aged About 40 Years, R/o Shakti Nagar, Durg, District Durg, Chhattisgarh (Non-Appellant No.4/Respondent No.1).

5. M/s Durg Roadways Pvt. Ltd., G.E. Road, Durg, District Durg, Chhattisgarh (Non-Appellant No.5/Respondent No.2)

---- Respondents

For Appellant	:	Smt. Chitra Shrivastava, Advocate.
For Respondent Nos.1 to 3	:	Shri Samir Singh, Advocate.

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

27.09.2019

1. Both these Miscellaneous Appeals arise out of common award dated 27.10.2014 passed by the Additional Motor Accident Claims Tribunal (for short 'the Claims Tribunal'), Bemetara (C.G.) in Claim Case No.65/2013, by which, the learned Claims Tribunal while allowing the claim in part, awarded total amount of compensation to the tune of Rs.38,20,954/- with 6% interest per annum from the date of filing of claim petition till its realisation. The parties to these Appeals shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 03.04.2013 at 07:30 PM, deceased Kejauram was returning by his motorcycle from village Muglatola to his house at village Navagarh and as soon as he reached near the village Kanteli, it was dashed vehemently by the offending vehicle 'Bus' bearing its Registration No. CG-07-E-1013 owned by Non-Applicant No.2 M/s Durg Roadways Private Limited, which was insured with the Non-Applicant No.3/The Oriental Insurance Company Limited. At the relevant time, the alleged offending vehicle was being driven rashly and negligently by its driver namely, Ramesh Kumar Dewangan/Non-Applicant No.1, owing to which, the alleged accident occurred and the deceased sustained serious injuries and expired on the spot.

3. On the basis of the aforesaid accident, the claimants being legal representatives of the deceased, instituted a claim petition enumerated under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') by submitting *inter alia* that the deceased, a 50 years old, was working as an Assistant Lineman in Chhattisgarh State Electricity Board, Saja and used to earn Rs.50,000/- per month and have, thus, claimed total amount of compensation to the tune of Rs.50,00,000/- under various heads.

4. Non-Applicant No.1 was proceeded ex parte and Non-Applicant No.2/Owner has contested the claim by saying that the alleged accident has not occurred due to the rashness and negligent driving of the driver of the offending vehicle and, in fact deceased himself was driving his own vehicle in a rash and negligent manner and was alone responsible for the alleged accident. It is contested further on the ground that since the vehicle in question was insured with the Non-Applicant No.3/Insurance Company, therefore, in case of any liability being fastened, the same could be indemnified by the said Insurance Company.

5. While Non-Applicant No.3/Insurance Company contested the claim mainly on the ground that the driver of the offending vehicle was not holding the effective and valid driving license and contested further on the ground that the amount of compensation as claimed, is extremely on higher side.

6. After considering the evidence led by the parties, it has been

held by the Claims Tribunal that the alleged accident occurred on 03.04.2013 at 07:30 PM due to the rashness and negligent driving of the driver of the offending vehicle 'Bus' resulting into the sad demise of said Kejauram, who was 55 years old and used to earn Rs.47,613/- per month. It held further that the vehicle in question was not being used in violation of the insurance policy and that by fastening the liability upon the Insurance Company awarded total amount of compensation to the tune of Rs.38,20,954/- with 6% interest per annum from the date of filing of the claim petition till its realisation.

7. Being aggrieved, these appeals have been preferred by the insurer as well as by the claimants. Smt. Chitra Shrivastava, learned counsel for the Appellant in MAC No.148/2015 submits that the award under appeal as passed by the Claims Tribunal while applying the multiplier of 11 is apparently contrary to law. While inviting attention to the documentary evidence, like Inquest (Naksha Panchayatnama) (Ex.P-5) and Postmortem Report (Ex.P-8), submits that the age of the deceased was 58 years. As such, the proper multiplier of 9 ought to have been applied instead of 11. However, without considering those documentary evidence, which were produced and relied upon by the claimants themselves, the Claims Tribunal has erred in arriving at a conclusion that the age of the deceased was 55 years. She, therefore, submits the amount of compensation as determined while applying the multiplier of 11 is liable to be interfered.

8. On the other hand, Shri Samir Singh, learned counsel for the

Appellants in MAC No.101/2015 submits that just and proper compensation payable to the claimants has not been awarded as future prospects of the income of the deceased has not been taken into consideration and that apart, a meagre amount of compensation of Rs.50,000/- alone has been awarded towards conventional heads. The award impugned is, therefore, liable to be enhanced and/or modified accordingly. In support, he placed his reliance upon the decisions rendered in the matter of ***National Insurance Company Limited*** **Versus** ***Pranay Sethi and Others*** reported in **(2017) 16 SCC 680** and in the matter of ***Magma General Insurance Company Limited Versus Nanu Ram Alias Chuhru Ram and Others*** reported in **(2018) 18 SCC 130.**

9. I have heard learned counsel for the parties and perused the entire record carefully.

10. In both the aforesaid appeals, the learned counsel for the Appellants are questioning mainly the amount of compensation as assessed by the Claims Tribunal. According to Smt. Chitra Shrivastava, the proper multiplier of 9 ought to have been applied instead of 11, while neither the future prospects of the income of the deceased was taken into consideration nor proper amount of compensation under the conventional heads has been awarded according to Shri Samir Singh, learned counsel for the claimants.

11. In order to appreciate the aforesaid contentions, I examined the record and from perusal of it, the monthly income of the

deceased was assessed by the Claims Tribunal to the extent of Rs.47,613/-, yearly Rs.5,71,358/- and that by deducting 10% of it towards income tax, i.e., Rs.57,135/-, the actual annual income of the deceased has been assessed at Rs.5,14,221/- (Rs.5,71,356 – Rs.57,135). By deducting one third of it, i.e. Rs.1,71,407/- towards his personal and living expenses, the annual dependency has been assessed to the tune of Rs.3,42,814/- and upto this, I do not find any infirmity in the finding of the Claims Tribunal. But, applying the multiplier of 11 while considering the age of the deceased as 55, the Claims Tribunal has certainly committed an illegality as Inquest (Ex.P-5) and Postmortem Report (Ex.P-8) which are the documents produced by the claimants in support of their claim reveal the age of the deceased as 58 years. Having considered these documentary evidence (Ex.P-5 and Ex.P-8), I hereby hold that the deceased was 58 years old, at the time of accident and, as such the proper multiplier would be 9 instead of 11, as contended by Smt. Shrivastava learned counsel for the Appellant in MAC No.148/2015.

12. Actual income of the deceased after deducting the tax amount, as observed herein above, was assessed at Rs.5,14,221/- and, therefore, while determining the income of the deceased, an addition of 15%, looking to his age, of the actual salary to the income of the deceased towards future prospects of his income is to be made, i.e. of Rs.77,133.5/- (Rs.5,14,221 X 15% = Rs.77,133.5/-) in view of the principles laid down in ***National Insurance Company Limited*** *(supra).* The annual income of the

deceased is, thus, assessed at Rs.5,91,354.15/- (Rs.5,14,221 + Rs.77,133.5/-). Besides, the claimants would be entitled to proper amount of compensation towards conventional heads as well in view of the principles laid down in the ***Magma General Insurance Company Limited*** *(supra)*.

13. Considering the aforesaid facts and circumstances of the case and that by applying the multiplier of 9 with actual salary of the deceased, i.e. of Rs.5,91,354.15/-, it would arrived at Rs.53,22,187.35/- (Rs.5,91,354.15 x 9). By deducting one third of it, i.e. Rs.17,74,062.45/- towards his personal and living expenses, total dependency would thus, be arrived at Rs.35,48,124.9/- (Rs.53,22,187.35 – Rs.17,74,062.45). In addition to this, the claimants would be entitled to a sum of Rs.1,70,000/-, instead of Rs.50,000/-, under conventional heads as under:-

1.	Loss of consortium to wife	Rs.40,000/-
2.	Funeral expenses	Rs.15,000/-
3.	Loss of estate	Rs.15,000/-
4.	Love and affection to the two minor children Rs.50,000/- each	Rs.1,00,000/-
	Total	**Rs.1,70,000/-**

14. Thus, the claimants would be entitled to the total amount of compensation to the tune of Rs.37,18,124.9/-, rounded off Rs.37,18,125/-, instead of Rs.38,20,954/-, as determined by the

Claims Tribunal, which shall carry interest at the rate of 6% per annum from the date of filing of claim petition till its realisation. As far as other conditions as observed by the Claims Tribunal are concerned, they shall remain intact.

15. Consequently, both these appeals are disposed of to the extent indicated hereinabove. No order as to costs.

Sd/-
(**Sanjay Agrawal)**
Judge

Deepti Jha