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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1305 of 2014

1. Smt. Lalita Singh Wd/o Late Ram Tahal Singh aged 36 years
2. Ku. Rasmi Singh D/o Late Ram Tahal Singh aged 14 years
3. Priyansu Singh D/o Late Ram Tahal Singh aged 12 years
4. Ku. Siwani Singh D/o Late Ram Tahal Singh aged 09 years
5. Ayush Singh, S/o Late Ram Tahal Singh, aged about 07 years
6. Aryan Singh S/o Late Ram Tahal Singh, aged about 4 years
7. Ram Sunder Singh aged 78 years S/o Ramawtar Singh (Father of deceased)
8. Smt. Rajpati Devi W/o Ram Sunder Singh aged 72 years (Mother of deceased)

Appellants No. 2 to 6 are minor through his Natural Guardian mother Smt. Lalita Singh Appellant No.1

All R/o Near Higher Secondary School Bhathapara Old Basti Ward 7 Kohka P.S. Supela Bhilai Tahsil and District Durg (C.G.)

---- Appellants/Claimants

Versus

1. Amarjeet Kumar, S/o Shiv Paras Singh, aged about 26 years, R/o Near Mourya Kirana Shop, Ghasidas Nagar, Ward No. 15, P.S. Jamul Bhilai, District Durg (C.G.)
(Driver of Vehicle Trailer No. CG-04-JB-7055)
2. Sanjay Kumar Singh S/o Shiv Paras Singh aged 40 years R/o Ward 15 P.S. Jamul Bhilai Tahsil and District Durg C.G. through JCB Transport Nagar Bhilai Tahsil and District Durg (C.G.)
(Owner of Vehicle Trailer No. CG-04-JB-7055)
3. Branch Manager New India Insurance Company Ltd. Near Dena Bank Nandini Road Bhilai, District Durg (C.G.)
(Insurer of Vehicle Trailer No. CG-04-JB-7055)

---- Respondents/Non-applicants

For Appellants	:	Shri Vikas Shrivastava, Advocate
For Respondents 1 & 2	:	Shri A.L. Singroul, Advocate
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

15.02.2019

1. This appeal is by the Claimants, unfortunate wife, children and old parents of deceased- Ram Tahal Singh, against the award dated 16.10.2014 passed by the Fourth Additional Motor Accident Claims Tribunal, Durg, District Durg (C.G.) in

Claim Case No. 0002047/2013 awarding total compensation of Rs.30,14,888/- with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicants No. 1 and 2 jointly and severally.

2. As per claim petition, on 28.12.2012 deceased- Ram Tahal Singh aged 40 years, earning Rs.39,000/- per month as transporter as well as driver, died in the motor vehicular accident caused due to rash and negligent driving of the offending vehicle Trailer No. CG-04-JB-7055 by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3.

3. On claim petition being filed by the Claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

4. Learned counsel for the Appellants/Claimants submits that on the ground that the transport vehicle was not having valid fitness certificate of registration, the Tribunal has wrongly exonerated the Insurance Company/non-applicant No.3 to pay compensation. He further submits that in this case Claimants No. 2 to 6 are minor children and Claimants 7 and 8 are old parents, aged above 70 years, of the deceased but no amount towards loss of parental and filial consortium has been granted by the Tribunal. Therefore, in view of the decisions of Hon'ble Supreme Court in the matter of ***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***, for loss of parental and filial consortium compensation @ Rs.15,000/- may be granted to the Claimants No. 2 to 8 each. He also submits that income of the deceased has wrongly been considered by the Tribunal as Rs.13,518/- per month whereas it should have been Rs.15,000/- per month.

5. Learned counsel for Respondents No. 1 and 2/driver and owner supports the contention made by learned counsel for the Appellants regarding exoneration of the Insurance Company, but he opposes the contention made for enhancement of compensation. He admits that no counter appeal has been filed by the owner.

6. On the other hand, learned counsel for Respondent No.3/Insurance Company opposes the contention made by learned counsel for the Appellants and submits that the amount awarded under the conventional heads also being on the higher side deserves to be reduced. She also submits that looking the age of the deceased i.e. 40 years, 50% amount towards future prospects has been added to annual income of the deceased by the Tribunal whereas it should have been 40%. In support of above contention, reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd.*** Vs. ***Pranay Sethi, (2017) 16 SCC 680***. Regarding fitness certificate, reliance has been placed on the decision of High Court of Kerala at Ernakulam in the matter of ***Pareed Pillai*** Vs. ***Oriental Insurance Co. Ltd., 2019 ACJ 16 Jan***.

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

8. In the Insurance Policy Ex.-D/1, limitations as to use of vehicle are provided. It shows that "*the Policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988 or such a carriage falling under Sub-Section 3 of Section 66 of the Motor Vehicles Act, 1988. The Policy does not cover use FOR a) Organised racing b) Pace Making of the reliability Trials d) Speed Testing*". Sections 3 and 66 of the Motor Vehicles Act, do not contemplate regarding necessity of fitness certificate, therefore, no such plea can be taken by the Insurance Company. Sections 3 and 66 of the Act only deals with driving licence and permits and both these documents were not challenged before the Tribunal. According to the Insurance Company, the fitness certificate issued in favour of the owner of the offending vehicle was not valid and effective at the time of accident. As per statement of NAW-1- Deepak Malik and Ex.-D/2, fitness certificate, issued from the Office of Regional Transport, Raipur in favour of the owner valid from 04.10.2011 to 03.10.2012 & as per Ex.D/3 it is valid from 30.01.2013 to 29.01.2014. Admittedly, in this case, accident occurred on 28.12.2012. However, in the insurance policy, there is no mention regarding necessity of fitness certificate and further, such a defence is not envisaged under Section 149 of the Motor Vehicles Act.

9. In the decision of the Delhi High Court in the matter of ***New India Assurance Co. Ltd.*** Vs. ***Kumud Devi & Ors., MAC A PP. 520/2010***, while considering the identical issue whether the absence of fitness certificate entitles the Insurance Company of its exoneration, it was held that the absence of fitness certificate does not empower insurance company to avoid its liability because no such defence available to the Insurance Company under Section 149(2) of the Act. The judgment relied upon by the Insurance Company in the matter of *Pareed Pillai* (supra) is of no help to the Insurance Company.

10. Thus, keeping in view the overall evidence available on record, the Insurance Policy, the provisions of Section 149 of the Act and the decisions of Delhi High Court in the matter of *Kumud Devi* (supra), this Court is of the opinion that the Tribunal was not justified in exonerating the Insurance Company on the ground that the vehicle was not having valid and effective fitness certificate at the time of accident. Being so, the finding of the Tribunal regarding fastening the liability on non-applicants No. 1 & 2 jointly and severally is hereby set aside and Insurance Company/non-applicant No.3 is held jointly and severally alongwith non-applicants No. 1 & 2 liable to pay compensation to the Claimants.

11. As per Ex.-P/19 (Income Tax Return) for the assessment year 2011-2012, the gross total income of the deceased was Rs.2,10,220/- per annum. Therefore, in view of document of Ex.-P/19 regarding income, this Court is of the opinion that the income considered by the learned Tribunal as Rs.13,518/- per month is on lower side and it can safely be taken as Rs.15,000/- per month. Further, considering the age of the deceased i.e. 40 years, the dependency, the nature of 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* and *Magma General Insurance Co. Ltd.* (supra), the Claimants/Appellants are held entitled for compensation in the following manner:

Sl.No.	**Heads**	**Calculation (In rupees)**
1.	Income of the deceased	Rs.15,000/- per month Rs.1,80,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.1,80,000/- + Rs.72,000/-) Rs.2,52,000/-
3.	1/5th deduction towards personal and living expenses of Deceased	(Rs.2,52,000/- – Rs.50,400/-) Rs.2,01,600/-
4.	Multiplier of 15 to be applied	Rs.2,01,600/- x 15 = Rs.30,24,000/-
5.	Conventional heads: Funeral expenses; loss of estate and loss of consortium	Rs.70,000/-
6.	For loss of parental consortium @ Rs.15,000/- to the Claimants No. 2 to 6 each	Rs.75,000/-
7	For loss of filial consortium @ Rs.15,000/- to the Claimants No. 7 to 8 each	Rs.30,000/-
	Total Compensation	**Rs.31,99,000/-**

12. Since the Tribunal has already awarded Rs.30,14,888/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.1,84,112/- with interest @ 6% per annum from the date of application till its realization.

13. Insurance Company/non-applicant No.3 is held jointly and severally along with non-applicants No. 1 & 2 liable for paying the entire amount of compensation with interest to the Claimants. Rest of the conditions of the award shall remain intact. The award impugned stands modified to the above extent

14. Insurance Company/non-applicant No.3 is directed to pay the awarded sum to the Claimants/Appellants within a period of two months from the date of receipt of certified copy of this judgment.

15. If any amount has been deposited by the Respondents 1 and 2 (driver and owner of offending vehicle) and disbursed to the Claimants/Appellants, they are entitled to recover the same from Respondent No.3/Insurance Company.

16. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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