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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 997 of 2013

- Shri Ram General Insurance Co. Ltd. Through Incharge Officer, Shriram General Insurance Co. Ltd., Plot No. 8, Sandhya Prakash, Press Road, Malviya Nagar, Bhopal (M.P.)
(Insurer of vehicle truck No. C.G.-12-C-1940)

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

Versus

1. Khem Bai Wd/o Late Mohan Lal Sahu @ Mohit Ram, aged about 32 years
2. Rupendra Kumar S/o Mohan Lal Sahu @ Mohit Ram, aged about 11 years
3. Gopal S/o Mohan Lal Sahu @ Mohit Ram, aged about 09 years
4. Ku. Manisha D/o Mohan Lal Sahu @ Mohit Ram, aged about 07 years
5. Chhedul Lal S/o Late Kartik Ram Sahu, aged about 60 years
6. Kunj Bai W/o Chhedul Ram Sahu, aged about 58 years

No. 2 to 4 are minor through natural guardian mother Khem Bai Sahu

All R/o Gokul Nagar, Kabir Chowk, Gudhiyari, Raipur, District Raipur (C.G.)

(Claimants)

7. Mustafa Ali S/o Hanif R/o Banki Mongra, Police Station Bambi, District Korba (C.G.)
(Driver of vehicle truck No. C.G.-12-C-1940)

(Non-applicant No.1)

8. Ramesh Agrawal S/o Ramnarayan Agrawal, R/o Bhairo Lal, Surkadwar Korba, Police Station Banki (Korba), District Korba (C.G.)
(Owner of vehicle truck No. C.G.-12-C-1940)

(Non-applicant No.2)

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate
For Respondents No. 1 to 6	:	Shri Amiyakant Tiwari, Advocate
For Respondents No. 7 & 8	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

20.06.2019

1. Being aggrieved with the award dated 26.10.2012 passed in Claim Case No. 13 of 2011 by the First Additional Motor Accident Claims Tribunal, Raipur (C.G.), the Appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988.

2. As against compensation of Rs.13,96,000/- claimed by the Claimants, unfortunate wife, children and parents of deceased- Mohal Lal @ Mohit Ram Sahu,

by filing claim application under Section 166 of the Motor Vehicles Act, 1988 for death of Mohan Lal in the motor accident, the Tribunal awarded a total sum of Rs.7,74,400/- along with interest @ 6% per annum from the date of application till realization and fastened the liability upon the Insurance Company/non-applicant No.3 alongwith non-applicants No. 1 & 2.

3. Facts of the case, in brief, are that on 21.07.2010, non-applicant No.1/driver of the vehicle Truck bearing registration No. CG-12/C/1940, driving the said offending vehicle in a rash and negligent manner, dashed the Matador bearing registration No. CG-05/B/1204 near Village Tarpongi driven by Mohal Lal. As a result thereof, Mohan Lal sustained grievous injuries and succumbed to those injuries.

4. Learned counsel for the Appellant/Insurance Company challenges the award only on three grounds. *First*, income of the deceased has wrongly been considered by the Tribunal as Rs.4,000/- per month whereas it should have been Rs.3,000/- per month. *Second*, the Tribunal has not considered the contributory negligence on the part of the deceased, therefore, award is liable to be reduced suitably and *third*, the Tribunal has wrongly deducted 1/10 towards personal and living expenses of the deceased which is not permissible under the law.

5. Learned counsel for the Claimants/Respondents 1 to 6 opposed the contention made by learned counsel for the Appellant. He submits that the Claimants are poor persons and want to file cross-objection. He also submits that no amount towards future prospects has been granted to the Claimants.

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

7. Looking to the facts and circumstances of the case, the Claimants are poor person and as per Ex.-P/8 certificate regarding income of the deceased, the deceased was earning Rs.6,000/- per month as driver in Sahil Transport, but it was not proved before the Tribunal. Therefore, the Tribunal, in absence of any proof regarding income, has rightly considered the income of the deceased as Rs.4,000/-

per month and it is just and proper.

8. So far as argument regarding contributory negligence on the part of the deceased is concerned, as per statement of Kamal Kesharwani (AW-2), he stated that deceased was driving the Matador and he was sitting on the same. He also stated that the driver of the offending vehicle- Truck driving same in a rash and negligent manner, dashed the Matador due to which deceased died. Therefore, the Tribunal is right in not considering the negligence on the part of the deceased.

9. So far as argument regarding 1/10 deduction towards personal & living expenses of the deceased is concerned, in view of the decision of Hon'ble Supreme Court in the matter of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, there are six persons dependent on deceased, 1/4th should have been deducted.

10. It was argued that the Tribunal has not awarded any amount towards future prospects of the deceased. In the present case, the Claimants are poor old parents, widow and minor children of deceased- Mohan Lal, they want to be filed cross-objection and the deceased was driver who was only bread winner of the family, this Court is of the opinion that this case is to be considered as special case. Therefore, considering the age of the deceased i.e. 35 years, nature of job, there are six dependents of the deceased and in view of the decision of Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**, the Claimants/Respondents 1 to 6 are entitled 40% future prospects.

11. In view of the above, the Claimants 1 and 6 are held entitled for compensation by re-computing in the following manner:

Sl.No.	Head	Calculation (In Rupees)
1	Income of the deceased (as considered by the Tribunal)	Rs.4,000/- per month i.e. Rs.48,000/- per annum
2	40% towards future prospects added to annual income	(Rs.48,000/- + Rs.19,200/-) Rs.67,200/- per annum
3	1/4th deduction towards personal and living expenses	(Rs.67,200/- – Rs.16,800/-) Rs.50,400/-

	of Deceased	
4	Multiplier of 16 applied	Rs.50,400/- x 16 = Rs.8,06,400/-
5	Loss of spousal consortium to Claimant No.1	Rs.5,000/- (as awarded by the Tribunal)
6	For of parental consortium to Claimants 2 to 4	Rs.15,000/- (as awarded by the Tribunal)
7	For loss of filial consortium to Claimants 5 & 6	Rs.10,000/- (as awarded by the Tribunal)
8	For funeral expenses	Rs.5,000/- (as awarded by the Tribunal)
9	For loss of estate	Rs.5,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.8,46,400/-

Thus, the amount of compensation awarded by the Tribunal i.e. Rs.7,74,400/- is enhanced to Rs.8,46,400/-. The additional amount of compensation i.e. Rs.72,000/- shall carry interest @ 6% per annum from the date of application till its actual payment. However, rest of the conditions of the impugned award shall remain intact.

12. The Appellant/Insurance Company is directed to deposit the aforesaid amount of additional compensation of Rs.72,000/- along with interest before the concerned Tribunal within a period of two months from the date of this judgment.

13. The appeal filed by the Insurance Company is disposed of with modification in award impugned to the above extent. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge