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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 32 of 2013

1. Kulmani Pradhan, S/o Late Bimbadhar Pradhan, aged about 58 years
2. Smt. Suwansi Pradhan, W/o Kulmani Pradhan, aged about 55 years
3. Gantaj Pradhan, S/o Kulamani Pradhan, aged about 16 years. Represented by legal guardian Appellant No.1

All resident of Village Machida, Tahsil & Thana Pusor, District Raigarh (C.G.)

---- Appellants/Claimants

Versus

1. Vijay Kumar Patel S/o Khemraj Patel, aged about 43 years, Occupation Job, R/o Chote Bhandar, Thana Pusor, Tahsil Pusor, District Raigarh (C.G.)
2. Manager, IFFCO TOKYO General Insurance Co. Ltd., Third Floor, Shop No. 345-347 Lal Ganga Complex Mall, G.E. Road, Raipur (C.G.)
3. Manager, IFFCO TOKYO General Insurance Co. Ltd., Branch Office, Raigarh, Gauri Shankar Mandir Road, on Top of Charlie Out, Tahsil and District Raigarh (C.G.)

---- Respondents/Non-applicants

For Appellants	:	Shri Aakash Shrivastava, Advocate appears on behalf of Shri Anumeh Shrivastava, Advokatge
For Respondent No. 1	:	None
For Respondents 2&3	:	Shri Amrito Das, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

01.04.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Raigarh (C.G.) vide award dated 30.08.2012 passed in Claim Case No. 50 of 2012.
2. The Claimants/Appellants, unfortunate parents and brother of deceased- Santosh Pradhan, aged about 25 years, claimed compensation of Rs.93,00,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of Santosh Pradhan in the motor vehicular accident.
3. Facts of the case, in brief, are that on 21.01.2010 deceased-Santosh Pradhan along with one Toshram Kolta was returning from Panchayat Office by

motorcycle which was being ridden by Santosh Pradhan and Toshram Kolta was the pillion rider of the same, when they reached near Devla pond of Village-Odekera, non-applicant No.1- Vijay Kumar Patel, driver as well as owner of the offending vehicle TVS Victor bearing registration No. CG-13/B/0210, driving the same in a rash and negligent manner, dashed Santosh Pradhan. As a result thereof, Santosh Pradhan sustained grievous injuries on his head, eye, legs and other parts of the body and during treatment in Shree Balaji Super Specialist Hospital, Raipur he died on 28.01.2010.

4. The learned Tribunal, in the impugned award, has assessed the compensation of Rs.3,18,740/- but, the Tribunal found non-applicant No.1 as well as the deceased guilty of negligence to the cause of accident to the extent of 50:50% and has awarded a compensation of Rs.1,59,370/- in favour of the Appellants/Claimants with interest @ 6% per annum from the date of application till its realization and has fastened the liability upon the Insurance Company to pay compensation to the Claimants.

5. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents/non-applicants.

6. Learned counsel for the Appellants/Claimants submits that on the date of accident, the deceased was aged about 25 years, was unmarried and was earning Rs.6,000/- per month from agriculture and Rs.3,000/- per month from tuition classes. He also submits that the Tribunal has illegally deducted 50% on account of contributory negligence on the part of the deceased. He further submits that multiplier of 10 has wrongly been applied by the Tribunal, therefore, considering the age of the deceased, it should have been 18. He also submits that no amount towards future prospects has been granted to the Claimants; amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably and no amount towards loss of filial consortium has been granted. In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of **Smt. Sarla Verma and others Vs.**

Delhi Transport Corporation and another, (2009) 6 SCC 121; National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680 and 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.

7. On the other hand, learned counsel for the Insurance Company opposes the contention made by learned counsel for the Appellants/Claimants and submits that the Tribunal was justified in deducting 50% from the amount of compensation towards contributory negligence on the part of the deceased because at the time accident deceased was not having a valid and effective driving licence. He also submits that the deceased was unmarried and the Tribunal has wrongly deducted 1/3rd towards personal and living expenses of the deceased whereas it should have been 50%.

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

9. It is not disputed that the accident occurred on 21.01.2010. The deceased and non-applicant No.1 both were riding separate motorcycles and the accident happened near Devla pond of Village- Odekera, as a result thereof, Santosh Pradhan sustained grievous injuries on the various part of the body and during treatment in Shree Balaji Super Specialist Hospital, Raipur he died on 28.01.2010. As per record, admittedly, the accident was outcome of the head on collision between two motorcycles being ridden by deceased- Santosh Pradhan and non-applicant No.1 – Vijay Kumar Patel and at the time of accident, the deceased was not having a valid and effective licence. Therefore, the Tribunal has not committed any error in holding the deceased guilty of contributory negligence to the extent of 50%.

10. Nevertheless, looking to the Claimants i.e. parents and brother of deceased- Santosh Pradhan who was aged about 25 years and was unmarried at the time of accident, the Tribunal has certainly fallen in error in deducting 1/3rd of income towards personal and living expenses of the deceased and in applying the

multiplier of 10 in place of 18 and not granting any amount towards future prospects and loss of filial consortium to the Claimants.

11. It was pleaded by the Claimants that the deceased was earning Rs.6,000/- per month from agriculture and Rs.3,000/- per month from tuition classes, but no documentary evidence in support thereof has been adduced. Therefore, the Tribunal was justified in considering the income of the deceased as Rs.3,000/- per month. Further, considering the age of deceased i.e. 25 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Smt. Sarla Verma; Pranay Sethi and Magma General Insurance Co. Ltd.* (supra), the Claimants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.3,000/- per month (as considered by the Tribunal)	Rs.36,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.36,000/- + Rs.14,400/-) Rs.50,400/-
3.	50% deduction towards personal and living expenses of Deceased	(Rs.50,400/- – Rs.25,200/-) Rs.25,200/-
4.	Multiplier of 18 applied	Rs.25,200/- x 18 = Rs.4,53,600/-
5.	Conventional heads:- Towards loss of estate and funeral expenses	Rs.30,000/-
6.	Filial consortium @ Rs.15,000/- to Claimants No. 1 & 2 each	Rs.30,000/-
7.	Medical expenses during treatment	Rs.76,740/- (as awarded by the Tribunal)
	Total Amount	Rs.5,90,340/-
	After deducting 50% on account of contributory negligence on the part of the deceased from the above total amount	Rs.2,95,170/-
	Total Compensation	Rs.2,95,170/-

Since the Tribunal has already awarded Rs.1,59,370/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for

additional compensation of Rs.1,35,800/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

12. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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