

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 522 of 2015

1. Smt. Sona Bai W/o Late Samelal Aged About 55 Years
2. Suresh Kumar Gavel S/o Late Samelal Aged About 19 Years
3. Sanju Kumar Gavel S/o Late Samelal Aged About 21 Years

All R/o Gevaraghat Thana Kotwali Tahsil And Distt. Korba
Chhattisgarh

---- Appellants/claimants

Versus

1. Raja Ram Sunhale S/o Ramfal R/o Mohtarai Ratanpur Distt.
Bilaspur Chhattisgarh , Chhattisgarh
2. Riyajuddin Ansari S/o Sagir Ahmad R/o Ward No. 1 House No.
37 Macha Doli Podi Sub Road Distt. Korba Chhattisgarh
3. Branch Manager The National General Insurance Company
Limited Taha Complex Byapar Bihar Road, Bilaspur Chhattisgarh

---- Respondents

For Appellants	:	Shri AL Singroul, Advocate.
For Respondent Nos. 1 & 2	:	None though served.
For Respondent No.3	:	Shri Gautam Khetrupal, Advocate.

MAC No. 819 of 2015

- National Insurance Company Limited Through The Branch
Manager, Branch Office Taha Complex, Vyhapar, Vihar Road
Bilaspur Chhattisgarh

---- Appellant

Versus

1. Smt. Sona Bai W/o Late Samelal Gavel Aged About 55 Years
2. Suresh Kumar Gavel S/o Late Samelal Gavel Aged About 19
Years
3. Sanju Kumar Gavel S/o Late Samelal Gavel Aged About 21
Years

Respondents No. 1 to 3 R/o Gevraghat, Police Station Kotwali, Korba, Tahsil And District Korba Chhattisgarh

4. Rajaram Sunahle S/o Ramphal R/o Mohatarai Ratanpur, District Bilaspur Chhattisgarh
5. Riyajuddin Ansari S/o Sagir Ahmad R/o Ward No. 1, House No. 37, Machadoli, Podi- Uproda, District Korba Chhattisgarh

---- Respondents

For Appellant	:	Shri Gautam Khetrapal, Advocate.
For Respondent Nos. 1 to 3	:	Shri AL Singroul, Advocate.
For Respondent Nos.4 & 5	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

05/03/2019

MAC No.819/2015 has been filed with a delay of 128 days. An application IA No.1/2015 has been filed for condonation of the said delay.

02. For the reasons mentioned in the application, which is duly supported by affidavit, the same is allowed and delay in filing the appeal is hereby condoned.

03. The appeal being arguable is admitted for hearing.

04. With the consent of the parties, both the appeals are heard finally.

05. As both these appeals arise out of the common award dated 28.11.2014 passed by Additional Motor Accident Claims Tribunal (FTC), Korba in Claim Case No.07/2013, awarding total compensation in favour of the claimants of Rs.40,13,000/- with interest @ 7% per annum from the date of claim petition till realization fastening liability on non-applicant No.3/insurance company jointly and severally along with non-applicants No. 1 & 2/driver & owner, they are being disposed of by this common judgment.

06. As per claim petition, on 2.6.2012 Samelal, aged 58 years, working as Supervisor in CG State Power Generation Co. Ltd. (CSPGCL) and drawing Rs.12,001/- as salary, was returning to his house by his motorcycle. However, on the way non-applicant No.1 Rajaram Sunhale by riding motorcycle bearing No. CG 12 N 2006 in a rash and negligent manner, dashed the motorcycle of Samelal from behind, as a result of which Samelal suffered grievous injuries and died on the spot itself. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

07. On claim petition being filed by the claimants, wife and children of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

08. **MAC No.819/2015**: This appeal has been filed by the insurance company challenging the liability as also the quantum of compensation. He submits that as per evidence adduced by the claimants themselves, the FIR (Ex.P/1) has been lodged after about four months of the accident on 21.10.2012 in collusion with the non-applicants No. 1 & 2. In fact, it is a case of false implication of the offending vehicle to secure compensation. As per merg intimation (Ex.P/2), no any other vehicle in involved in the accident and the deceased himself was negligent and responsible for his death as he dashed the electric poll. Further, as per Ex.P/4 i.e. inquest, the said fact also stands proved. Therefore, the claim petition filed under Section 166 of the Motor Vehicles Act was not maintainable. He further submits that looking to the age of the deceased and permanent job in Electricity Department, the amount awarded by the Tribunal is very much on the higher side and needs to be reduced suitably.

09. Learned counsel for the respondents/claimants submits that the Tribunal considering all the relevant aspects of the matter has rightly fastened liability on the insurance company. However, as regards quantum of compensation, the claimants have filed a separate appeal i.e. MAC No.522/2015 seeking enhancement of compensation.

10. **MAC No.522/2015**: Learned counsel for the appellants/claimants submits that the Tribunal has wrongly deducted income tax from the salary of the deceased twice, that too @ 20% whereas it should have been @ 10%. As per Ex.P/9A, the income of the deceased is Rs.76,765/- wherein it has shown that Rs.8,000/- was being deducted by the department towards income tax. The Tribunal after deducting Rs.8,000/-, assessed the salary of the deceased as Rs.68,765/- and further deducted 20% towards income tax from the said amount, which is not sustainable in law. He submits that the deceased was 59 years of age, as has been assessed by the Tribunal, and therefore, considering the age of the deceased and nature of his job i.e. permanent government service, 15% should have been granted towards future prospect as per decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680*** but the same has not been considered by the Tribunal.

11. On the other hand, learned counsel for the respondent/insurance company submits that the Tribunal has already awarded on the higher side and therefore, there is no need to further enhance the amount of compensation, rather it needs to be reduced.

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

13. So far as appeal preferred by the insurance company is concerned, definitely FIR in this case has been lodged after about 4 months of the accident. The claimants in their statements have offered explanation for the same that they came to know about the incident through eyewitness after about four months of the accident. In this case, the driver and owner of the offending vehicle have not been examined and they have not dared to enter the witness box. Even the insurance company has not adduced any evidence to prove that present is a concocted case in collusion with non-applicants No. 1 & 2 by the claimants. From the evidence on record vide FIR and charge sheet, it is seen that the vehicle of the deceased was dashed from backside and no counter FIR was lodged by the owner or driver of the offending vehicle. Therefore, there cannot be any contributory

negligence on the part of the deceased. Thus, considering the facts and circumstances of the case, the pleadings of the parties and the evidence adduced by them, this Court finds no substance in the appeal filed by the insurance company. The Tribunal was justified in fastening liability on the insurance company.

14. As regards the appeal i.e. MAC No.522/2015 filed by the claimants, learned counsel for the appellants/claimants submits that in this appeal the claimants have sought enhancement only on two grounds, firstly that income tax has wrongly been deducted by the Tribunal and secondly, the Tribunal has not granted any amount towards future prospect. From perusal of the award it is seen that the manner in which the Tribunal has deducted amount towards income tax from the salary of the deceased was not in accordance with law. Further, considering the age of the deceased i.e. 59 years, in view of decision in *Pranay Sethi* (supra), the claimants are entitled for 15% addition towards future prospects.

15. As per Ex.P/9A, the income of the deceased is 76,765/- per month. After adding 15% (Rs.11,515/-) towards future prospect it comes to Rs.88,280/- per month i.e. Rs.10,59,360/- per annum. As per income tax slab at the relevant time, income upto Rs.2 lacs was non-taxable. Thus, the taxable incomes to Rs.8,59,360/-. Since income upto Rs.5 lacs was taxable @ 10% and above Rs.5 lacs it was @ 20%, on Rs.3 lacs the tax liability comes to Rs.30,000/- and on Rs.3,59,360/-, the tax liability @ 20% comes to Rs.71,872/-. Thus, the total tax comes to Rs.1,01,872/- and as such, the net annual income of the deceased is worked out to Rs.9,57,488/-. After deducting 1/3rd (Rs.3,19,163/-) from the above towards personal and living expenses of the deceased, the annual loss of dependency comes to Rs.6,38,325/-, which after application of multiplier of 9, makes the total loss of dependency as Rs.57,44,925/-. The Tribunal has awarded Rs.30,000/- towards loss of spousal consortium, Rs.20,000/- towards loss of parental consortium and Rs.15,000/- towards funeral expenses. The said amount appears to be just and proper in view of decision of the Hon'ble Supreme Court in *Pranay Sethi* (supra) 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, therefore, it is kept intact. Thus, the claimants are entitled for a total compensation of Rs.58,09,925/-.

16. Since the Tribunal has already awarded Rs.40.13 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.17,96,925/- with interest @ 7% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

17. In the result, the appeal filed by the insurance company (MAC No.819/2015) is dismissed and appeal filed by the claimants (MAC No.522/2015) is allowed in part with modification in the impugned award to the above extent.

Sd/

(Gautam Chourdiya)

Judge