NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 831 of 2013

1. Pusai Bai W/o Late Krishna Ram Aged About 47 Years,

2. Narad Singh S/o Late Krishna Ram Aged About 29 Years,

3. Ku. Kiran D/o Late Krishna Ram Aged About 20 Years,

4. Bhavesh S/o Late Krishna Ram Aged About 18 Years,

   All are R/o Parsatola, Thana/Tah. Ambagarh Chouki, Revenue/Civil Distt. Rajnandgaon (C.G.).

5. Gangotri Bai W/o Sant Kumar Aged About 23 Years R/o Kalchua, Post- Gota Tola, Civil Distt. Rajnandgaon (C.G.)

---- Appellants/Claimants

Versus

1. Indradhavaj Ravte S/o Pramod Kumar Aged About 25 Years R/o Jeeratola, Post/Thana- Kaudikasa, District Rajnandgaon (C.G.) (Driver/Owner)

2. Manager, The Oriental Insurance Co .Ltd., Branch Office, Near Railway Station, Rajnandgaon, Distt. Rajnandgaon (C.G.) (Insurance Co.)

---- Respondents

For Appellants	:	Shri Samir Singh, Advocate.
For Respondent No.2	:	Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

30/04/2019

1) This appeal is preferred by the claimant under Section 173 of the Motor Vehicles Act, 1988 against the award dated 26/06/2013 passed by Motor Accident Claims Tribunal Rajnandgaon (C.G.) in Claim Case No. 78/2012 awarding total compensation of Rs. 2,28,000/- with interest @ 6% per annum from the date of application till realization, considering 50% negligence on part of deceased himself fastening liability on the non-applicant No. 1.

2) As per averments of claim petition, on 07/03/2012 at around 05:45 P.M. deceased Krishna Ram Yadav, 53 years of age, earning Rs. 15,674/- per month working as Assistant Gr.-III, was riding his Scooty bearing No. CG08 N 4837 returning from Ambagarh Chowki to his village, near Shivnath bridge Biharikala road non-applicant No. 1 Indradhavaj Ravte owner and rider of motorcycle bearing No. CG08 A 9467 driven the motorcycle rashly and negligently and dashed the Scooty of Krishna Ram Yadav. As a result of this accident Krishna Ram Yadav sustained grievous injury on nose, head, legs and other parts of the body and shifted for treatment in Hospital Ambagarh Chowki and died on the same day during treatment. At the time of accident the offending vehicle was owned by non-applicant No. 1 and insured with Non-applicant No. 2.

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

4) Learned counsel for the appellants/claimants submits that though he has raised various grounds in this memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds only :-

i. There is no any specific evidence to prove that deceased Krishna Ram Yadav was under the influence of alcohol. As per Postmortem Report (<u>Ex. P-9</u>) no any content of alcohol was found in stomach of the deceased. Only on the basis of MLC Report (Ex. P-7) wherein the Doctor mentioned that the deceased/injured had consumed alcohol and as per <u>Ex. D-8</u> the learned Tribunal wrongly recorded the finding regarding contributory negligence on the part of deceased.

ii. That the learned Tribunal on the ground that driver of offending vehicle had consumed alcohol wrongly exonerated Insurance company as a breach of policy. As per MLC Report (Ex. D-8) only that fact is found some alcohol taken by Indradwaj driver of offending vehicle but there is no evidence to prove that driver of the offending vehicle was so drunk that he had lost control over his vehicle which led to the unfortunate accident. Therefore, as per proviso of Sec 185 of the Motor Vehicles Act, 1988, no any blood test or no breath test conducted by Doctor or Investigating Officer and there is no evidence that the driver of offending vehicle was driving the vehicle in influence of any alcohol. In these circumstances, learned Tribunal wrongly exonerated Insurance Company.

iii. that no amount towards future prospect has been granted to the claimant. Looking to the income, age of deceased and permanent salary paid employee 15% future prospect has to be granted.

iv. that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

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.***

5) On the other hand, learned counsel for respondent/insurance company opposed the contention made by the learned counsel for the appellant and supported the award mentioning as per Ex. P-7 deceased and as per Ex. D-8 driver of offending vehicle Indradhavaj Ravte non-applicant No. 1 consumed alcohol and this fact is proved by claimants themselves filing the documents and believing that documents. Therefore, he has no right to argue against the documents believed and proved by the claimants themselves.

Therefore, the learned Tribunal has rightly exonerated Insurance Company and income considered as per prevailing price index of the time, wages no any document evidence proved by the claimant and Ex. P-10 is not properly proved who issue that document. Therefore, Rs. 5,000/- per month considered is just and proper, no need to grant any future prospect in this case.

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

7) So far as the contributory negligence on part of deceased is concerned, considering the fact that there is head on collision between two vehicles, crime was also registered against the deceased on the complaint made by non-applicant No. 1. Charge sheet, Final report (Ex. D-3) against deceased under section 279, 337 and 338 of IPC and also the fact that deceased was not holding a valid and effective driving licence as has been admitted by his wife Pusai Bai (AW-1). As per Dehati Nalsi (Ex. D-5), FIR (Ex. D-6), Spot Map (Ex. D-7) and MLC report (Ex. P-7) of deceased, deceased was found under toxic condition and consumed alcohol. Looking to all the documents as above mentioned this Court is of the opinion that the Tribunal was fully justified in holding the deceased contributory negligent in causing the accident.

8) Section 185 of the Motor Vehicles Act, 1988 speaks about driving by a drunken person or by a person under the influence of drugs and prescribes the punishments therefor the relevant portion of above section reads as under:-

> **“185 Driving by a drunken person or by a person under the influence of drugs** – whoever, while driving, or attempting to drive, a motor vehicle – (a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyzer, or (b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle …..**”.**

No, any blood test or breath test as contemplated under section 185 of the Motor Vehicles Act, 1988 was conducted by the Doctor or Investigating Officer to ascertain the quantity of alcohol in the blood of the non-applicant No. 1 driver of offending vehicle to prove that non-applicant no. 1 Indradhavaj Ravte was under the influence of liquor to such an extent that he was incapable to exercising proper control over the vehicle.

Though, as per Ex. D-8, MLC of non-applicant No. 1 he was found to have consumed some liquor, however, there is no evidence adduced by the Insurance Company to show that non-applicant No. 1 had consumed liquor to such an extent that he was incapable of driving the vehicle and had lost control over the vehicle. In these circumstances the Tribunal was not justified in exonerating the Insurance Company of its liability merely on the basis of MLC of (Ex. D-8).

9) As regards income of the deceased, the claimants have pleaded that the deceased was earning Rs. 15,674/- per month as Government servant (Assistant Grade-III) and further not proved the same by documents. Therefore, the tribunal has riglty assessed the income of the deceased by presuming it as Rs. 5000/- per month. Further, considering the age of the deceased i.e. 53 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma and Pranay Sethi & Magma* (supra), the claimants are held entitled for compensation in the following manner:

S. N.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs 5000/- per month.	(Rs. 5000 x12) = Rs. 60000 per annum (as assessed by Tribunal)
02.	15% of (1) above to be added towards future prospects.	(Rs. 60000 + 9000) = Rs. 69000/-
03.	1/3 deduction towards personal and living expenses of the deceased	(Rs. 69000 - Rs. 23000) = Rs. 46000/-
04.	Multiplier of 11 to be applied	(Rs. 46000 x11) = Rs. 506000/-
05.	Towards parental consortium	Rs. 8,000/- (as awarded by Tribunal)
06.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-

S. N.	Heads	Calculation (in rupees)
07.	50% deduction towards contributory negligence	(584000 - 292000) = Rs. 292000/-
	Total compensation	**Rs. 2,92,000/-**

10) Since the Tribunal has already awarded Rs. 2,28,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 64,000/- with interest @ 6% per annum from the date of application till realization. Non-applicant No. 2/Insurance company is held jointly and severally liable alongwith non-applicant No. 1 driver-cum-owner to pay the entire amount of compensation to the claimants. However, rest of the conditions of the impugned award shall remain intact.

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

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant