AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1149 of 2013

- Smt. Rukhamani Bai Verma W/o Jitendra Verma Aged About 30 Years R/o Mungeshwer, Thana- Mandir Hashod, Distt. Raipur C.G.

----Appellant

Versus

1. Chandra Shekhar Banjare S/o Girwarlal Banjare Aged About 15 Years Minor, Through- legal guardian Father Girwar Banjare, Age- 38 Yrs, S/o Sukhlal Banjare, R/o Mungeshwer, Thana- Mandir Hashoud, Distt. Raipur C.G.

2. Lakshaman Dhritlahare S/o Bishouha Dhritlahare R/o Tulshi Baradera, Thana- Mandir Hashoud, Distt. Raipur C.G.

3. The New India Insurance Company Ltd., Thru- Branch Manager, Madina Building, Jail Road, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellant	Shri A.L. Singroul, Advocate.
For Respondent Nos. 1	Shri Basant Kaiwartya, Advocate.
For Respondent No.3	Shri Dashrath Gupta, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

24/04/2019

This appeal is by the claimant against the award dated 30.09.2013 passed by the 1st Additional Motor Accident Claims Tribunal, Raipur, C.G. in Claim Case No.37/2012 awarding total compensation of Rs.2,45,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant nos.1 & 2 while exonerating Insurance Company on the ground that at the time of accident driver of the offending vehicle was not having a valid and effective driving licence to drive the vehicle.

02. As per claim petition, on 02.08.2008, deceased Ku. Deepika Verma aged about 08 years, student, died in the motor vehicular accident caused due to rash and negligent riding of motorcycle bearing no. CG04-DD-1760 by non-applicant no.1. At the time of accident, the offending vehicle was owned by non-applicant no.2 and duly insured with non-applicant no.3.

03. On claim petition being filed by the claimant i.e. mother of the deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.9,50,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellant/claimant submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds:-

(i) that multiplier of 10 has wrongly been applied and considering the age of the deceased, it should have been 15.

(ii) that no amount towards future prospect has been granted to the claimant.

(iii) that deceased was the third party and the offending vehicle was duly insured with non-applicant no.3, this Court may order for pay and recover in this case in the interest of justice.

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 & Manuara Khatun and others Vs. Rajesh Kumar Singh and others (2017) 4 SCC 796.***

05. On the other hand, learned counsel for the respondent no.3 supports the impugned award and submits that there was specific breach of policy conditions as non-applicant no.1 was not having a valid and effective driving licence at the time of accident and, therefore, the insurance company has rightly been exonerated of its liability and it would not be justifiable to pass an order of pay and recover in this case.

06. Counsel for the respondent no.1 supports the contention made by the appellant's counsel insofar as it relates to order of pay and recover.

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

08. Considering the facts and circumstances of the case, particularly the fact that it is not disputed by both the parties that the deceased Ku. Deepika Verma was minor aged about 8 years on the date of accident and had not started earning, had she been alive, she would have certainly contributed substantially to the

family of appellant by working hard, therefore, the income of the deceased considered by the Tribunal as Rs.3,000/- per month on notional basis is just and proper. Further, considering the age of the deceased, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma & Pranay Sethi* (supra), the claimant is held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Notional Income of the deceased @ Rs.3,000/- per month.	Rs.36,000/- per annum
02.	40% of (i) above to be added towards future prospects.	Rs.14,400/- Rs.36,000 + 14,400 = Rs.50,400/-
03.	1/2 deduction towards personal and living expenses of the deceased	Rs.25,200/-
04.	Multiplier of 15 to be applied	Rs.3,78,000/-
05.	Towards loss of estate and funeral expenses	Rs.30,000/-
	Total compensation	**Rs.4,08,000/-**

Since the Tribunal has already awarded Rs.2,45,000/-, after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs.1,63,000/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

09. However, considering the facts and circumstance of the case, the fact that the offending vehicle was duly insured with non-applicant no.3 at the relevant time vide Ex.D-1 (Insurance Policy) and that the deceased was the third party, keeping in view the benevolent provisions of the Act in the light of the decision of Hon'ble Supreme court in ***Manuara Khatun*** *(supra)**,*** this Court is of the opinion that the ends of justice would be served if the Insurance Company is directed to pay the entire amount of compensation to the claimant and then recover the same from the driver and owner of the offending vehicle in question in accordance with law. Ordered accordingly.

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

Sd/-
Gautam Chourdiya
Judge

Akhilesh