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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 928 of 2013

1. Surendra Pratap Singh, S/o Ramjit Singh, Aged About 55 Years, R/o Village Amandon, P.S. Pratappur, Revenue And Civil District Surajpur, Chhattisgarh.

2. Smt. Neelam, W/o Surendra Pratap Singh, Aged About 50 Years, R/o Village Amandon, P.S. Pratappur, Revenue And Civil District Surajpur, Chhattisgarh.

3. Smt. Shanti Devi, W/o Late Ramjit Singh, Aged About 90 Years, R/o Village Amandon, P.S. Pratappur, Revenue And Civil District Surajpur, Chhattisgarh.

4. Ku. Renu Singh, D/o Surendra Pratap Singh, Aged About 20 Years, R/o Village Amandon, P.S. Pratappur, Revenue And Civil District Surajpur, Chhattisgarh.

5. Ku. Suchita Singh, D/o Surendra Pratap Singh, Aged About 7 Years, Minor Through Father Surendra Pratap Singh, R/o Village Amandon, P.S. Pratappur, Revenue And Civil District Surajpur, Chhattisgarh.

6. Ku. Harbal Singh, D/o Surendra Pratap Singh, Aged About 15 Years, Minor Through Father Surendra Pratap Singh, R/o Village Amandon, P.S. Pratappur, Revenue And Civil District Surajpur, Chhattisgarh.

7. Nagendra Pratap Singh, S/o Surendra Pratap Singh, Aged About

13 Years, Minor Through Father Surendra Pratap Singh, R/o Village Amandon, P.S. Pratappur, Revenue And Civil District Surajpur, Chhattisgarh.

8. Shivendra Pratap Singh, S/o Surendra Pratap Singh, Aged About 11 Years, Minor Through Father Surendra Pratap Singh, R/o Village Amandon, P.S. Pratappur, Revenue And Civil District Surajpur, Chhattisgarh.

---- Appellants

Versus

1. I.C.I. Lombard Motor Insurance, Jainit House, Keshavrao Khande Road, Mahalaxmi Mumbai, (M.H.) 400034.

2. Babulal, S/o Gulsay Rajwade, R/o Anujnagar, Post Latory, P.S. Jaynagar, District Surajpur, Chhattisgarh.

3. Ranjit, S/o Ram Prasad Agariya, R/o Village Tulsi, Post Latory, P.S. Jaynagar, District Surajpur, Chhattisgarh.

---- Respondents

For Appellants	:	Shri Arvind Sinha, Advocate.
For Respondent No. 1	:	Shri Amrito Das, Advocate.
For Respondent No. 2 & 3	:	Shri Anil Gulati, Advocate.

AND

Miscellaneous Appeal (C) No. 403 of 2014

ICICI Lombard General Insurance Co. Ltd., Through its Legal Manager, ICICI General Insurance Co.Ltd., Ground Floor, Vanijya

Bhawan, Devendra Nagar Road, Raipur, Chhattisgarh.

---- Appellant

Versus

1. Surendra Pratap Singh, S/o Ramjeet Singh, Aged About 57 Years, R/o Village Amandon, P.S. Pratappur, District Surajpur, Chhattisgarh.

2. Smt. Neelam, W/o Surendra Pratap Sing,h Aged About 52 Years, R/o Village Amandon, P.S. Pratappur, District Surajpur, Chhattisgarh.

3. Smt. Shanti Devi, W/o Late Ramjeet Singh, Aged About 92 Years, R/o Village Amandon, P.S. Pratappur, District Surajpur, Chhattisgarh.

4. Kumari Renu Singh, D/o Surendra Pratap Singh, Aged About 22 Years, R/o Village Amandon, P.S. Pratappur, District Surajpur, Chhattisgarh.

5. Ku. Suchita Singh, D/o Surendra Pratap Singh, Aged About 9 Years, Minor Through Surendra Pratap Singh, R/o Village Amandon, P.S. Pratappur, District Surajpur, Chhattisgarh.

6. Ku. Harbal Singh, D/o Surendra Pratap Singh, Aged About 17 Years, Minor Through Surendra Pratap Singh, R/o Village Amandon, P.S. Pratappur, District Surajpur, Chhattisgarh.

7. Nagendra Pratap Singh, S/o Surendra Pratap Singh, Aged About 15 Years, Minor Through Surendra Pratap Singh, R/o Village Amandon, P.S. Pratappur, District Surajpur, Chhattisgarh.

8. Shivendra Pratap Singh, S/o Surendra Pratap Singh, Aged About 13 Years, Minor Through Surendra Pratap Singh, R/o Village Amandon, P.S. Pratappur, District Surajpur, Chhattisgarh.

9. Babulal, S/o Gulsai Rajwade, R/o Anujnagar, Post Latori, P.S. Jainagar, District Surajpur, Chhattisgarh.

10. Ranjeet, S/o Ram Prasad Agriya, R/o Village Tulsi, Post Latori, P.S. Jainagar, District Surajpur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Amrito Das, Advocate.
For Respondent No. 1 & 8	:	Shri Arvind Sinha, Advocate.
For Respondent No. 9 & 10	:	Shri Anil Gulati, Advocate.

<u>Hon'ble Shri Justice Sanjay Agrawal</u>

<u>Award On Board</u>

<u>16.07.2019</u>

1. Since both these Miscellaneous Appeals arise out of common award dated 30.07.2013 passed by the Additional Motor Accidents Claims Tribunal, Pratappur, District Surajpur (for short 'the Claims Tribunal) in Claim Case No.75/2012, by which the learned Claims Tribunal while allowing the claim in part, awarded a total amount of compensation to the tune of Rs.9,45,560/- with 7.5% interest per annum from the date of filing of the claim petition till its realization while fastening the liability upon the Insurance Company, they are being disposed of by this common

award.

2. Briefly stated the facts of the case are that on 02.12.2011 at 5:00 pm, deceased Ritesh Kumar Singh, aged about 27 years, was coming along with his friend Amarnath, by his motor cycle bearing its Registration No. C.G.-15-E-3891 from Ambikapur to Pratappur and as soon as they reached near the village Tulsinala, District Surajpur, it was dashed vehemently from its opposite side by the offending vehicle (Tata 407) bearing its Registration No. C.G.-15-AC-0132. It was being driven rashly and negligently by its driver Ranjeet Kumar Singh, Non-Applicant No.3, owned by Non-Applicant No.2, Babulal Rajwade. The alleged offending vehicle was insured with the I.C.I. Lombard Motor Insurance Company Limited, the Non-Applicant No.1. It is alleged in the claim petition that owing to the alleged accident, deceased died on the spot. It is stated further that deceased was a government employee working as a ward boy in Primary Health Centre, Songara of District Surajpur and was involved also in agricultural process and as such, he used to earn Rs.35,000/- per month, and therefore, the total amount of compensation has been claimed to the tune of Rs.80,50,000/- by his legal representatives under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988').

3. The aforesaid claim has been contested by Non-Applicant No.1/Insurance Company while disputing the monthly income of the deceased, as he was an unemployed and used to earn nothing and was responsible for the alleged accident. It is contested further on the ground that the driver of the offending

vehicle i.e., “Tata 407” was not holding effective and valid driving license and offence punishable under Section 3/181 of the Act of 1988 has been registered against him, therefore, the alleged offending vehicle was being used in violation of the insurance policy. Apart from this, he was driving the alleged vehicle in drunken condition, therefore, the deceased and the driver of the alleged offending vehicle, both were responsible for the alleged accident.

4. Non-Applicant Nos. 2 & 3, the driver and the owner of the alleged offending vehicle, contested the claim on the ground that no accident as such has occurred with their vehicle (Tata 407) and, pleaded further that the vehicle in question was insured with Non-Applicant No.1/Insurance Company, therefore, in case of any liability being fastened, the same could be indemnified by the said Insurance Company.

5. After considering the evidence led by the parties, the learned Claims Tribunal, by its award impugned, reached to a conclusion that the alleged accident has occurred on 02.12.2011 at 5:00 pm near the village Tulsinala due to rash and negligent driving of the driver of the offending vehicle namely, Ranjeet Kumar Singh (Non-Applicant No.3), resulting in the sad demise of Ritesh Kumar Singh, who was 27 years old and that by considering his monthly income to the tune of Rs.10,129/-, rounded off to Rs.10,120/-, and by applying the multiplier of 11, awarded total amount of compensation to the tune of Rs.9,45,560/- by providing Rs.55,000/- on other heads, with 7.5% interest per annum from the date of filing of the claim petition till its realization while

fastening the liability upon the Insurance Company as the vehicle in question was not being used in violation of the policy (Ex.D-4C).

6. Being aggrieved, these appeals have been preferred by the insurer as well as by the claimants. Shri Amrito Das learned counsel for the Appellant in MAC No.403/2014 submits that the award under appeal as passed by the Claims Tribunal while fastening the liability upon the Insurance Company is apparently contrary to law. According to him, the vehicle in question (Tata 407) was being driven by its driver without holding an effective and valid driving license against whom a case has been registered under Section 3/181 of the Act of 1988. However, without considering the said fact in its proper manner, the Claims Tribunal has erred in fastening the liability upon the Insurance Company. He submits further that the deceased was unmarried, therefore, instead of deducting half of his income, 1/3rd was wrongly deducted while calculating the amount of compensation towards dependency upon the deceased. He, therefore, submits that the award impugned be modified by exonerating the Insurance Company from its liability.

7. On the other hand, Shri Arvind Sinha learned counsel for the Appellants in MAC No.928/2013 submits that just and proper compensation payable to the claimants has not been awarded and looking to the age of the deceased, who was 27 years old, a proper multiplier of 17 ought to have been applied instead of 11. He submits further that future prospects of the income of the deceased was not taken into consideration while passing the

award under appeal. Having failed so, the Claims Tribunal has committed an illegality in awarding the meagre amount of compensation to the claimants. In support, he placed his reliance upon the decision rendered in the matter of ***National Insurance Company Limited*** Vs. ***Pranay Sethi and Others*** reported in **(2017) 16 SCC 680**.

8. Shri Anil Gulati learned counsel for the driver and the owner of the offending vehicle, has supported the award impugned as passed by the Claims Tribunal and not required to be interfered.

9. I have heard learned Counsel for the parties and perused the entire record carefully.

10. In MAC No.403/2014, preferred by the Insurance Company, wherein, it has been contended by learned counsel for the Appellant that the driver of the offending vehicle was not holding an effective and valid driving license, and therefore, Insurance Company cannot be held liable. In order to establish the said fact, the burden was heavily upon the Insurance Company. However, no evidence as such was led by the Insurance Company so as to hold that the insured has violated any of the terms and conditions of the policy as contended by its counsel. In such circumstances, the Claims Tribunal has not committed any illegality in fastening the liability upon the Insurance Company. The said finding deserves to be and is hereby affirmed. However, his contention in so far as, the deduction of half instead of 1/3rd of the income of the deceased towards his personal expenses deserves to be and is hereby accepted in view of the principles laid down in the matter of ***Sarla Verma (Smt) And Others*** Vs. ***Delhi Transport***

Corporation And Another reported in **(2009) 6 SCC 121.**

11. As far as the appeal (MAC No.928/2013) preferred by the claimants is concerned, it appears that the amount of compensation as calculated by the Claims Tribunal while applying the multiplier of 11 instead of 17, looking to the age of the deceased and even without considering the future prospects in the income of the deceased was not proper, and therefore, deserves to be modified. It appears from perusal of the record that deceased Ritesh Kumar Singh was a government employee, working as a ward boy in the Primary Health Centre, and therefore, his monthly income as reflected from the pay slip would be Rs.10,129/-, rounded off to Rs.10,130/-. Besides, 50% of the actual income of the deceased should have been taken into consideration towards future prospects of his income in order to provide just and proper compensation to the claimants as held in the matter of ***National Insurance Company Limited*** Vs. ***Pranay Sethi and Others*** (supra).

12. Considering the facts and circumstances of the case and in view of the principles laid down in the aforesaid decision, I deem it proper to assess the monthly income of the deceased at Rs.10,130/-, yearly Rs.1,21,560/- and that by adding 50% of it i.e., Rs.60,780/- towards future prospects of his income, it would be worked out to Rs.1,82,340/- (Rs.1,21,560+Rs.60,780). Since the deceased was unmarried, therefore, after deducting half of it, the yearly dependency would be Rs.91,170/- and that by applying multiplier of 17, it would be Rs.15,49,890/-. In addition to this, the claimants are entitled to a sum of Rs.30,000/- instead of

Rs.55,000/- towards the conventional heads and as such, the claimants are entitled to a total sum of Rs.15,79,890/- instead of Rs.9,45,560/- as awarded by the Claims Tribunal and the enhanced amount of compensation, i.e., Rs.6,34,330/- (Rs.15,79,890-Rs.9,45,560/-) shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization. As far as the other conditions of the Claims Tribunal are concerned, they shall remain intact.

13. Consequently, both the appeals are disposed of and the award impugned is modified accordingly, to the extent indicated hereinabove. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge

Deepti Jha