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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 523 of 2013

1. Smt. Namita Hans W/o Late Madhusudan Hans, aged -29 years
2. Swaraj Hans S/o Late Madhusudan Hans, aged 9 years
3. Devraj Hans S/o Late Madhusudan Hans, aged 4 years
Appellants No. 2 and 3 are minors, through- their natural guardian mother
Smt. Namita Hans W/o late Madhusudan Hans, aged 29 years
4. Smt. Keshar Hans W/o Late Shanti Lal aged 54 years
All are the R/o Qtr. No. 213 Sector -3A, Balco Nagar, Korba, P.O. & P.S.-
Balco Nagar, Tahsil & District- Korba (C.G.)

---- Appellants/Claimants

Versus

1. Basant Kumar Paswan S/o Shri Baliram Paswan, aged 22 years, R/o
Sogapur, Post- Uрга, P.S. Uрга, Tahsil & District Korba (C.G.)
(Driver)
2. Shubnarayan Mishra S/o Baikunthnath Mishra, R/o Amaraiya Para, Korba,
P.O.- Korba, P.S. Kotwali, Tahsil & District Korba (C.G.)
(Owner)
3. Bajaj Allianz General Insurance Company Limited, Through- Its Branch
Manager, Shivmohan Bhawan, Vidhan Sabha Marg, Pandri, P.O.- Pandri,
P.S. Civil Line, Tahsil & District- Raipur (C.G.)
(Insurer)

---- Respondents/Non-applicants

For Appellants	:	Shri Sanjay Patel, Advocate
For Respondent No. 1	:	None
For Respondent No. 2	:	Shri Samir Singh, Advocate
For Respondent No. 3	:	Shri Rohitashava Singh, 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, Korba (C.G.) vide award dated 15.03.2013 passed in Claim Case No. 69 of 2011.
2. The Claimants/Appellants, unfortunate wife, children and mother of deceased- Madhusudan Hans, aged about 35 years, claimed compensation of Rs.1,48,00,000/- by filing a claim petition under Section 166 of the Motor Vehicles

Act, 1988 for death of Madhusudan in the motor accident.

3. Facts of the case, in brief, are that on 07.05.2009 deceased- Madhusudan was coming from village Seoni to Balco Nagar Korba by his motorcycle Splender bearing registration No. CG-12/ZM/5740. At about 11:15 pm, on the way in village Kothari Chapda, Madhusudan met with an accident with the offending vehicle – Truck bearing No. CG-07/C/6031, owned by non-applicant No.2 and insured with non-applicant No. 3, which was parked on the road by non-applicant No.1 in a rash and negligent manner without brake light, reflector and parking the indicator. As a result thereof, Madhusudan sustained grievous injuries on his hands, legs and chest and died on spot.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.25,79,240/- 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 non-applicant No.2/owner of the offending vehicle to pay compensation to the Claimants.

5. Learned counsel for the Appellants/Claimants submits that at the time of accident, the deceased was aged about 35 years, was permanent salary paid employee in BALCO and earning Rs.30,000/- per month. He further submits that there are four dependents of the deceased, but the Tribunal has wrongly deducted 1/3rd towards personal and living expenses of the deceased whereas it should have been 1/4th. He also submits that no amount towards future prospects has been granted to the Claimants and 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** and **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**.

6. Learned counsel for non-applicant No.2/owner opposes the contention made by learned counsel for the Appellants/Claimants.

7. On the other hand, learned counsel for the Insurance Company/non-applicant No.3 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court. He further submits that at the time of accident, there was no valid permit to ply the offending vehicle, therefore, on account of there being breach of policy conditions, the Tribunal was justified in fastening liability on non-applicant No.2/owner.

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

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

10. As per Ex.-P/7, salary slip of the deceased, the gross salary is 28,564/- per month and after deducting income-tax; petrol allowance and other permissible deduction, the salary of the deceased comes to Rs.19,955/- per month. Therefore, the Tribunal was justified in considering the income of the deceased as 19,955/- per month.

11. So far as arguments relating to deduction towards personal and living expenses of the deceased; non-grant of future prospects to the Claimants and the low amount awarded under the conventional heads are concerned, considering the age of the deceased i.e. 35 years, the dependency, the nature of his job as he was permanent salary paid employee and the decisions of the Hon'ble Supreme Court in *Smt. Sarla Verma and Pranay Sethi* (supra), the Claimants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (in rupees)
01	Income of the deceased @ Rs.19,955/- per month	Rs.2,39,460/- per annum
02	50% of (1) above to be added towards future prospects	(Rs.2,39,460/- + Rs.1,19,730/-) Rs.3,59,190/-
03	1/4th deduction towards personal and living expenses of	(Rs.3,59,190/- – Rs.89,798/-) Rs.2,69,392/-

	the deceased	
04	Multiplier of 16 to be applied	Rs.2,69,392/- x 16 = Rs.43,10,272/-
05	Conventional heads: Loss of estate; loss of consortium and funeral expenses	Rs.70,000/-
	Total Compensation	Rs.43,80,272/-

Since the Tribunal has already awarded Rs.25,79,240/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.18,01,032/- with interest @ 6% per annum from the date of application till realization.

12. It is submitted by learned counsel for the Appellants/Claimants that in this case, no amount of compensation has been received by the Claimants till date, therefore, order of pay and recover may be passed in this case.

13. Keeping in view of the decision of the Hon'ble Supreme Court in the matter of *Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796*, this Court feels it proper to order for pay and recover in this case. Hence, the Insurance Company/non-applicant No.3 is directed to pay the entire awarded sum to the Claimants within a period of two months from the date of receipt of certified copy of this judgment and then recover the same from the owner (non-applicant No.2) of the offending vehicle as per law laid down in *Manager, National Insurance Company Limited Vs. Saju P. Paul & Anr., (2013) 2 SCC 41*. However, rest of the conditions of the impugned award shall remain intact.

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

15. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge