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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 651 of 2014

- National Insurance Company Limited Through Branch Manager, Branch Office, Jagdalpur Near Main Post Office Jagdalpur Through: Authorized Signatory for National Insurance Company Limited, Divisional Office Bilaspur (C.G.)

---- Appellant/Non-applicant No.3

Versus

1. Smt. Hirai Kashyap, aged 46 years Wd/o Late Maya Ram Kashyap, Caste Muriya, R/o Village Chitrakut Lamdagudapara, P.S. & Tehsil Lohandiguda, District Bastar (C.G.)
(Claimant)
2. Sunder Yadav, aged 27 years, Caste Ravat S/o Chamru Yadav, R/o Village Pohmar, P.S. Madapal Tehsil Kondagaon, District Bastar (C.G.)
(Driver/Non-applicant No.1)
3. Kashinath Kashyap, aged 28 years S/o Birbal Ram Kashyap, R/o Badekuusnal, P.S. Madapal, Tehsil Kondagaon, District Bastar (C.G.)
(Owner/Non-applicant No.2)

---- Respondents

For Appellant	:	Shri B.N. Nande, Advocate
For Respondent No. 1	:	Shri A.L. Singroul, Advocate
For Respondents No. 2 & 3	:	Shri Akhilesh Mishra, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

07.02.2019

1. Being aggrieved with the award dated 29.10.2013 passed in Claim Case No. 09 of 2011 by the First Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur (C.G.), the Appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the quantum of compensation as also the contributory negligence on the part of the deceased.
2. Facts of the case, in brief, are that on 11.08.2010 deceased- Maya Ram Kashyap, aged about 52 years, was going by his Motorcycle bearing No. CG-17/E/7014 for treatment of his another student namely Balku alongwith his student

namely Sukhnath, both students were pillion riders in his motorcycle. When they reached near village Ratenga, non-applicant No.1- Sunder Yadav, rider of offending vehicle- Motorcycle bearing registration No. CG-17/K/4739, owned by non-applicant No.2 and insured with non-applicant No.3/Appellant, riding the said offending vehicle in a rash and negligent manner, dashed the motorcycle of Maya Ram Kashyap. As a result thereof, Maya Ram Kashyap sustained grievous injuries and died on spot.

3. A claim petition was filed by the Claimant, i.e. wife/widow of deceased- Maya Ram Kashyap, under Section 166 of the Motor Vehicles Act, 1988 for compensation to the tune of Rs.40,17,520/-for the death of Maya Ram Kashyap in the motor accident.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.21,11,592/- in favour of the Claimant/Respondent No. 1 with interest @ 6% per annum from the date of filing of the application till realization and has fastened the liability upon the Appellant/Insurance Company along with driver and owner/Respondents 2 & 3 jointly and severally to pay compensation.

5. In this appeal, a cross-objection has also been filed by the Claimant/Respondent No. 1 under Order XLI, Rule 22 of the Code of Civil Procedure seeking enhancement of the compensation.

6. Heard the appeal on merits alongwith cross-objection.

7. Learned counsel for the Appellant/Insurance Company submits that there was a head-on-collision between the two motorcycles and the deceased himself was responsible for the accident. He further submits that as per statement of Claimant- Hirai Kashyap, she stated that at the time of accident, three persons were sitting on the motorcycle including the deceased who was riding the motorcycle, therefore, there is contributory negligence on the part of the deceased. He also submits that the Claimant is sole dependent on the deceased, but the Tribunal has deducted 1/3rd towards personal and living expenses which is also against the law and it should have been 50%. In support of above contention,

reliance has been placed on the decision of the Madhya Pradesh High Court (Gwalior Bench) in the matter of ***Madhya Pradesh State Road Transport Corporation, Through Divisional Manager Vs. Kumar Singh alias Kamal Singh and Another, 2005 (2) T.A.C. 159 (M.P.)***.

8. Learned counsel for Respondent No.1/Claimant opposes the contention made by the learned counsel for the Appellant/non-applicant No.3.

9. In cross-objection, learned counsel for Respondent No.1/Claimant submits that as per Ex.-A/7, Last Pay Certificate, deceased was salary paid employee and was earning Rs.26,396/- per month as Head Master, but the Tribunal has wrongly considered the income of the deceased as Rs.23,859/- per month. He further submits that no amount towards future prospect has been granted to the Claimant and amount awarded by the Tribunal 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 decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***.

10. Learned counsel for Appellant/non-applicant No.3 opposes the contention made by the learned counsel for Respondent No. 1/Claimant.

11. As per statement of eye-witness- Sukhnath, he stated in paras 1, 2 & 3 that at the time of accident, deceased- Maya Ram was riding his motorcycle and he and Balku were the pillion riders of the motorcycle of deceased. He stated that due to illness of Balku, three persons were going on the motorcycle for treatment of Balku and non-applicant No.1- Sunder Yadav was riding the motorcycle No. CG-17/K/4739 in a rash and negligent manner, dashed the motorcycle of the deceased. But, no any evidence regarding negligence on the part of the deceased was given by the Sukhnath.

12. FIR (Ex.-A/2) was registered against Sunder Yadav, rider of the offending vehicle No. CG-17/K/4739 and charge-sheet (Ex.-A/1) was filed against him who is non-applicant No.1 before the Tribunal. No other evidence adduced by the non-applicants regarding contributory negligence on the part of the deceased. Non-

applicant No.1, rider of the offending vehicle, was not examined before the Tribunal. It can safely be presumed from documentary and oral evidence given by the Claimant as also Sukhnath that non-applicant No.1 was absolutely liable for the accident. Only on the ground that three persons were sitting on the motorcycle, it cannot be presumed that there was contributory negligence on the part of deceased unless appropriate evidence is adduced before the Tribunal regarding contributory negligence. The judgment relied upon by the Insurance Company in the matter of *Kumar Singh Alias Kamal Singh* (supra) is of no help to the Insurance Company. There is no breach of policy conditions. Therefore, the appeal filed by the Appellant/Insurance Company/non-applicant No.3 deserves to be dismissed.

13. So far as the argument advanced by learned counsel for the Appellant/Insurance Company regarding 1/3rd deduction in place of 50% towards personal and living expenses of the deceased as the Claimant was sole dependent of the deceased is concerned, this Court is of the view that looking to the fact that the deceased was married at the time of accident, 1/3rd deducted by the Tribunal towards personal and living expenses of the deceased appears to be correct.

14. As regards the cross-objection for enhancement of compensation filed by the Claimant/Respondent No.1, the deceased was a salary paid employee in Education Department and as per Ex.-A/7 (Last Pay Certificate), total gross income of the deceased was Rs.26,396/- per month including other allowances. Therefore, the Tribunal has wrongly considered the income of the deceased as Rs.23,859/- per month.

15. So far as arguments advanced by the learned counsel for the Claimant/Respondent No.1 with regard to non-grant of future prospects and low amount awarded under the conventional heads are concerned, this Court is of the view that looking to the age of the deceased i.e. 52 years, 15% towards future prospects can be given to the Claimant and the amount awarded by the Tribunal under the conventional heads is also on the lower side. Therefore, in view of *Pranay Sethi* (supra) & **Smt. Sarla Verma and others Vs. Delhi Transport**

Corporation and another, (2009) 6 SCC 680, the compensation is calculated as under:-

Sl.No.	Head	Calculation (In Rupees)
1	Income of the deceased	Rs.26,396/- per month i.e. Rs.3,16,752/- per annum
2	15% towards future prospects added to annual income	(Rs.3,16,752/- + Rs.47,513/-) Rs.3,64,265/- per annum
3	1/3rd deduction towards personal and living expenses of Deceased	(Rs.3,64,265/- – Rs.1,21,422/-) Rs.2,42,843/-
4	Multiplier of 11 applied	Rs.2,42,843/- x 11 = Rs.26,71,273/-
5	Conventional Heads:- Loss of estate; loss of consortium and funeral expenses	Rs.70,000/-
	Total Compensation	Rs.27,41,273/-

Since the Tribunal has already awarded Rs.21,11,592/-, after deducting the same from the above amount, the Claimant/Respondent No. 1 is held entitled for additional compensation of Rs.6,29,681/-.

16. Resultantly, the cross-objection filed by the Claimant/Respondent No. 1 is allowed in part and the impugned award is modified to the extent that the Claimant shall be entitled to a total enhanced amount of compensation of Rs.6,29,681/- with further direction of payment of interest on the enhanced amount of compensation @ 6% per annum from the date of applicant till realization. However, rest of the conditions of the impugned award shall remain intact.

17. The appeal filed by the Appellant/Insurance Company/non-applicant No.3 is dismissed.

18. Consequently, stay order granted on 14.08.2015 stands vacated.

Sd/-
(Gautam Chourdiya)
Judge