NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 21 of 2016

1. Thanu Ram S/o Gorelal Kurmi, Aged About 42 Years
2. Krishna Bai W/o Thanu Ram, Aged About 39 Years
3. Kumari Brihaspati D/o Thanu Ram, Aged About 14 Years S/o Gorelal Kurmi,

   Appellant No.3 is minor through his legal guardian Father Appellant No.1 Thanu Ram.

   All R/o Village-Bijatarai, Tahsil Mungeli, Distt. Bilaspur Now Distt. Mungeli (CG)

---- Appellants/claimants

Versus

1. Lekhram S/o Mukhi Ram Kurmi, Aged About 27 Years, Driver of offending vehicle Tractor No. CG 10A 2669 and Trolley No. CG 10A 2670.
2. Ram Sharan S/o Mukhi Ram Kurmi, Aged About 33 Years, owner of offending vehicle Tractor No. CG 10A 2669 and Trolley No. CG 10A 2670.

   Both are R/o Village Bijatarai, Tahsil Mungeli, Distt. Bilaspur, Now Distt. Mungeli (CG)
3. The National Insurance Company Limited, Branch B-1, Taha Complex First Manjil Ring Road Priya Darshani Nagar Bilaspur, Chhattisgarh. Insurer

---- Respondents

For Appellants	:	Shri AL Singroul, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Shri Shivendu Pandya, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

08/04/2019

This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award 27.11.2015 passed by Additional Motor Accident Claims Tribunal, Mungeli, in Claim Case No.43/2003 awarding total compensation of Rs.3,69,500/- with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicants No. 1 & 2/driver & owner jointly and severally while exonerating non-applicant No.3/insurance company.

02. As per claim petition, on 30.4.2003 Chhammanlal, 25 years of age, earning Rs.5500/- per month as a mason, was travelling in vehicle

Tractor bearing No. CG 10A 2669 & Trolley bearing No.CG 10A 2670 by sitting on its mudguard. As the said vehicle was being driven by non-applicant No.1 in a rash and negligent manner, it turned turtle resulting in grievous injuries to Chhammanlal leading to his death on the spot itself. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the claimants, parents and minor sister of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits as under:

(i) that no amount towards future prospect has been granted to the claimants.

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

(iii) that the insurance company has wrongly been exonerated of its liability. Alternatively, he submits that if this Court comes to the conclusion that exoneration of the insurance company is proper, then order of pay and recover may be passed in this case because the claimants have till date not received any amount as compensation.

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 ***Shivaraj Vs. Rajendra and another, 2018 (4) TAC 1 (SC)***.

05. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly fastened liability on non-applicants No.1 & 2 and exonerated the insurance company on account of there being specific breach of policy

conditions. He submits that there is no scope for enhancement in this case and that the Tribunal has wrongly deducted 1/3rd towards personal and living expenses of the deceased whereas considering the fact that the deceased was bachelor, the deduction should have been 50%.

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

07. As regards income of the deceased, there is no dispute that income of the deceased as Rs.3000/- per month has rightly been considered by the Tribunal. From the pleadings of the claimants and the evidence adduced by them, age of the deceased comes to 25 years. The deceased was admittedly a bachelor. Therefore, 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* 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.3,000/- per month.	36,000/ per annum
02.	40% of (i) above to be added towards future prospects.	36,000 + 14,400 = 50,400/-
03.	50% deduction towards personal and living expenses of the deceased	25,200/-
04.	Multiplier of 18 to be applied	4,53,600/-
05.	Towards loss of estate & funeral expenses	30,000/-
	Total compensation	**4,83,600/-**

Since the Tribunal has already awarded Rs.3,69,500/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.1,14,100/- with interest @

6% per annum from the date of application till realization.

08. So far as exoneration of the insurance company is concerned, from perusal of the material available on record it is seen that the offending vehicle was insured for agricultural purposes whereas on the date of accident it was being used for commercial purpose by carrying bricks in the same. Therefore, the Tribunal was justified in exonerating the insurance company of its liability and fastening the same on non-applicants No. 1 & 2/driver & owner. However, considering the facts and circumstances of the case, in particular the fact that on the date of accident the offending vehicle was duly with non-applicant No.3/National Insurance Co. Ltd., the deceased was the third party, the accident is of the year 2003 and till date, as informed by the claimants' counsel, the claimants have not received any amount as compensation, keeping in view the decision of the Hon'ble Supreme Court in *Shivaraj* (supra), the insurance company is directed to pay the entire amount of compensation to the claimants and then recover the same from non-applicants No. 1 & 2/driver & owner in accordance with law.

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

Sd/

(Gautam Chourdiya)

Judge

Khan