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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 677 of 2014

- Sri Ram General Insurance Company Limited Address- 10003 E-8, E.P.I.P. Ricco, Industrial Area, Sitapur, Jaipur, 302022, Rajasthan.

---Appellant

Versus

1. Smt. Rajani Dewangan W/o Late Jagadish Dewangan Aged About 31 Years, Occupation Housewife.

2. Ku. Krutika Dewangan D/o Late Jagadish Dewangan Aged About 10 Years

3. Smt. Basanti Dewangan W/o Kheduram Dewangan Aged About 62 Years, House Wife

4. Kheduram Dewangans S/o Late Shuklal Dewangan Aged About 71 Years

   All are Gram R/o Chandkhuri, Post- Chandkhuri, Thana- Phulgaon, Tah. And Distt. Durg C.G.

5. Shiv Kumar Nishad S/o Sudama Nishad Aged About 37 Years, Occupation Driver Shakin Gram(Khappawara), Thana- Anda, Distt. Durg C.G., Permanent Address- Gram- Manaki, Thana- Somani, Distt. Rajnandgaon C.G.

6. Balvinder Kapur S/o Manohar Kapur Aged About 32 Years, Occupation Transporter Shakin Kasharideh, Durg,

---- Respondents

For Appellant	Shri Deepak Gupta, Advocate.
For Respondent nos. 1 to 4	Shri Goutam Khetrapal, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on board

11/03/2019

1. This appeal is by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 against the award 28.02.2014

passed by 1st Additional Motor Accident Claims Tribunal, Durg, District Durg, C.G. in Claim Case No. 40/2012 awarding total compensation of Rs.14,40,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the Insurance Company jointly and severally along with non-applicants no. 1 & 2.

2. Respondent nos. 1 to 4 have also filed cross objection under Order 41 Rule 22 of CPC challenging quantum of compensation along with the application (I.A. No.2) for condonation of delay in filing the cross objection.

3. On due consideration, I.A. No.2 is allowed and delay in filing the cross objection is hereby condoned.

4. As per averments made in the claim petition, on 17.01.2012, deceased Jagdish Dewangan, aged about 35 years, earning Rs.24,000/- per month by running a hotel & selling egg rolls was going with his brother Anil Dewangan on motorcycle bearing no. CG07-A-3948 as a pillion rider from village Chandkhuri towards Durg. However, on the way non-applicant no.1 by driving the vehicle truck bearing no.CG07-ZC-1864 in a rash and negligent manner dashed the said motorcycle, as a result of which Jagdish Dewangan and Anil Dewangan both suffered grievous injuries. During treatment Jagdish Dewangan succumbed to the injuries sustained by him in the accident. At the time of of accident, the offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.

5. On claim petition being filed by the claimants i.e. wife, children

and parents of the deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.72,85,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned above in para 1 of this judgment.

6. Counsel for the appellant has assailed the award only on the two grounds that the Tribunal has wrongly fastened the liability on the Insurance Company as the deceased had consumed alcohol at the time of riding his vehicle and the compensation awarded by the Tribunal without there being any evidence is on the higher side and needs to be reduced suitably.

7. On the other hand learned counsel for the respondents/claimants submits that amount awarded by the Tribunal is not on the higher side, therefore, he has also filed cross objection in this appeal seeking enhancement of the same. He submits that at the time of accident deceased was earning Rs.15,000/- per month, but learned Tribunal only considered Rs.6,000/- per month. Further, multiplier of 14 has wrongly been applied and considering the age of the deceased, it should have been 15. The Tribunal has awarded interest @ 6% only whereas it should have been 12% and the amount awarded under the conventional heads, loss of filial and other consortium also being on the lower side deserves to be enhanced suitably. As regards the liability, he submits that the Tribunal considering all the relevant aspects of the matter has rightly fastened liability on the Insurance Company which needs no interference by this Court.

8. Learned counsel for the appellant/Insurance Company submits

that there is no need to enhance the award as per the cross objection filed by the claimants.

9. Heard both the parties on appeal as well as on cross objection and perused the material available on record.

10. So far as liability is concerned, though the Insurance Company has pleaded that on the date of accident non-applicant no.1 was driving the offending vehicle without having valid and effective licence but no evidence whatsoever has been adduced by it to substantiate the said pleading. As per Ex.P-10, during investigation the police had seized R.C. Book, Insurance which was valid till 15.09.2012, permit having validity till 10.12.2013 and driving licence of non-applicant no.1 Shiv Kumar Nishad having validity till 05.11.2013, but no evidence was adduced by the Insurance Company that driving licence so seized by the police of non-applicant no.1 was not valid and effective on the date of accident. Since, the Insurance Company was raising a specific plea regarding breach of policy conditions, the burden lies upon it to prove the same by adducing cogent and reliable evidence but it has failed to do so. In these circumstances, the Tribunal recorded a finding that the Insurance Company has failed to prove any breach of policy conditions on the part of driver and owner of the vehicle and fastened the liability upon Insurance Company jointly and severally along with non-applicant nos. 1 & 2 driver and owner of the vehicle. The said finding being based on just and proper appreciation of the evidence does not call for any interference.

11. As regards the quantum of compensation, though the claimants have pleaded that the deceased was earning Rs.24,000/- per month by running a hotel and selling egg rolls but no documentary evidence in support of the same has been adduced by the claimants. Therefore, the Tribunal considering the oral evidence of the claimants that the deceased was running a hotel and selling egg rolls, the age of the deceased and the minimum wages at the relevant time, assessed his income as Rs.6,000/- per month which appears to be just and proper. Further, the Tribunal considering the age of the deceased and the decisions in the matter of ***Rajesh and others vs Rajbeer Singh and others 2013 (2) ACCD 961 (SC), SanoBano NazirBhai Mirza and another vs. Ahemdabad Municipal Transport Service 2014 (1) ACCD 29 (SC) & Santosh Devi Vs. National Insurance Company Limited and others, 2012 (2) ACCD 973 (SC),*** granted 50% towards future prospect and assessed the annual income of the deceased as Rs.1,08,000/-. Further, the Tribunal considering the decisions in the matter of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121,*** keeping in view the number of dependents i.e. 4, deducted ¼ towards personal and living expenses of the deceased, applied multiplier of 15 considering the age of the deceased i.e. 37 years, considering the decisions in the matter of ***Rajesh and others (supra), Vimal Kaunwar and others vs. Kishor Daan and others 2013 (2) ACCD 993 (SC) and Jiju Kuruvila and others vs. Kunju Mohan and***

others, 2013 (3) ACCD 1348 (SC), granted Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of spousal consortium and loss of estate and Rs.1,00,000/- to minor daughter of the deceased towards loss of love and affection. Thus, the Tribunal awarded a total compensation of Rs.14,40,000/- in favour of the claimants with interest @ 6% per annum which prevalent at the time of accident. Considering the over all facts and circumstances of he case, the pleadings of the respective parties and the evidence adduced by them, this Court is of the opinion that the amount of compensation granted by the Tribunal cannot be said to be lower side or higher side but it appears to be just and proper.

12. In the result, the appeal filed by the Insurance Company and the Cross Objection filed by the claimants being without any substance are liable to be dismissed and are, accordingly, dismissed.

Sd/-

(Gautam Chourdiya)
Judge

Akhilesh