NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 143 of 2014

- IFFCO Tokio General Insurance Company Limited, 3rd Floor, Shop No. 345-347 Ganga Shopping, G.E. Road, Raipur, Tahsil & District Raipur, Chhattisgarh. (**Insurer Vehicle No. CG O4 EC 2502**)

---- Appellant

Versus

1. Smt. Kunti Bai Sahu, W/o Late Shri Rupram Sahu, aged about 35 years,

2. Gendi Bai, W/o Late Shri Daulatram Sahu, aged about 56 years,

3. Sunit Kumar Sahu, S/o Late Shri Rupram Sahu, aged about 18 years,

4. Ku. Lomita Sahu, D/o Late Shri Rupram Sahu, aged about 16 years,

5. Ku. Hina Sahu, D/o Late Shri Rupram Sahu, aged about 13 years

   Respondent No. 4 and 5 being minors are represented through their mother Smt. Kunti Bai Sahu, W/o Late Shri Rupram Sahu

   All above R/o Village Joundi, Thana Gobra Navapara, Raipur, District Raipur, Chhattisgarh **(Claimants)**

6. Poshan @ Pappu Dewangan, S/o Late Shri Baliram Dewangan, aged about 29 years, R/o Kholipara, Ward No. 1, Navapara, Thana Gobra, Navapara, District Raipur, Chhattisgarh **(Owner)**

7. Manager, ICICI Lombard General Insurance Company Ltd., Ground Floor, Vanijya Bhawan, Devendra Nagar Chowk, Raipur, Chhattisgarh

---- Respondents

For Appellant	: Shri Ali Asgar, Advocate.
For Respondent No 1to 5.	: Shri Rajkumar Pali, Advocate on behalf of Shri Shivendu Pandya, Advocate
For Respondent No. 6.	: Shri A. L. Singroul, Advocate
For Respondent No. 7	: Shri Saurabh Sharma, Advocate alongwith Tarkeshwar Nande, Advocate

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MAC No. 1105 of 2013

- ICICI Lombard General Insurance Company Limited**,** Registered Office : ICICI Bank Towers, Bandra-Kurla, Complex, Mumbai, 400051, through its Legal Manager, ICICI Lombard General Insurance Company Limited Ground Floor, Vanijya Bhawan, Devendra Nagar Road, Raipur (C.G.)
  (**Insurer Vehicle No. CG O4 KE 2961**)

---- Appellant

Versus

1. Smt. Kunti Bai Sahu, W/o Late Shri Rupram Sahu, aged about 34 years,

2. Gendi Bai, W/o Late Shri Daulatram Sahu, aged about 55 years,

3. Sunit Kumar Sahu, S/o Late Shri Rupram Sahu, aged about 17 years,

4. Ku. Lomita Sahu, D/o Late Shri Rupram Sahu, aged about 15 years,

5. Ku. Hina Sahu, D/o Late Shri Rupram Sahu, aged about 12 years

   Respondent No. 3 and 5 being minors are represented through their mother Smt. Kunti Bai Sahu W/o Late Shri Rupram Sahu (Respondent No. 1)

   All are R/o Village Jaundi, P.S. Gobra Nawapara, Raipur, District Raipur, Chhattisgarh **(Claimants)**

6. Poshan @ Pappu Dewangan, S/o Late Shri Baliram Dewangan, aged about 29 years, R/o Kholipara, Ward No. 1, Navapara, Thana Gobra, Navapara, District Raipur, Chhattisgarh **(Owner)**

7. IFFCO Tokio General Insurance Company Limited, Through : The Manager, Lalganga Shopping Mall, G.E. Road, Raipur, District Raipur(C.G.) **(Insurer Vehicle No. CG 04 EC/ 2502)**

---- Respondents

For Appellant	:	Shri Saurabh Sharma, Advocate alongwith Tarkeshwar Nande, Advocate
For Respondent No 1to 5.	:	Shri Rajkumar Pali, Advocate on behalf of Shri Shivendu Pandya, Advocate
For Respondent No. 6.	:	Shri A. L. Singroul, Advocate

For Respondent No. 7 : Shri Ali Asgar, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

08.05.2019

1. Since M.A. (C) No. 143 of 2014 filed by the IFFCO Tokio General Insurance Company Limited and M.A. (C) No. 1105 of 2013 filed by the ICICI Lombard General Insurance Company Limited, under Section 173 of the Motor Vehicle Act arise out of the award dated 19.09.2013, passed by 7th Additional Motor Claims Tribunal, Raipur in Claim Case No. 09/2013, therefore, they are heard together and are being disposed of by this common judgment.

2. As per averments made in the claim petition, when on 21.11.2012, Roopram Sahu (since deceased) aged about 40 years working as Hamal (labour) earning Rs. 10,000/-per month was riding his motorcycle bearing No. CG04KE/2961 alongwith Sukhdev, near Jauda Bhatha turning, Police Station- Gobra, Navapara, Non-applicant No. 1- Poshan @ Pappu Dewangan driver of the offending vehicle (motorcycle) bearing registration No. **CG 04 FC/ 2502** by driving the said vehicle in a rash & negligent manner, dashed the vehicle of Roopram Sahu from opposite direction due to which Roopram sustained grievous injuries and succumbed to these injuries. At the time of accident, the offending vehicle was owned by non-applicant No. 1- Poshan @ Pappu Dewangan and insured with Non-applicant No. 2- IFFCO Tokio General Insurance Company Limited. The vehicle (motorcycle) of the deceased is insured with Non-applicant No. 3- ICICI Lombard General Insurance Company

Limited

3. On claim petition being filed under Section 166 of the Motor Vehicle Act, 1988 by the claimants, who are unfortunate wife, mother & children of deceased- Roopram Sahu, the Tribunal considering the evidence led by both the parties, awarded compensation of Rs. 10,48,158/- along with interest @ 6% per annum from the date of filing of claim petition till its actual payment. Further, the Claims Tribunal recorded a finding that the liability to pay compensation to the claimants would be the ratio of 50:50%. 50% of compensation amount would pay by the Non-applicant No. 1-Poshan @ Pappu Dewangan & Non-applicant No. 2- IFFCO Tokio General Insurance Company Limited jointly & severally and other 50% of compensation amount would pay by the non-applicant No. 3- ICICI Lombard General Insurance Company Limited.

4. Being aggrieved and dissatisfied with the liability part of the impugned award, the insurer of both the vehicle involved in the said accident have filed MAC No. 143 of 2014 & MAC No. 1105 of 2013

<u>MAC No. 143 of 2014</u>

5. The instant appeal filed by the appellant/Insurance Company- IFFCO Tokio General Insurance Company Limited challenging the impugned award on two main ground- (i) learned Tribunal wrongly fastened liability to pay compensation to the claimants and (ii) challenging the quantum part of the award.

(i) Learned counsel for the appellant submits that as per evidence and finding recorded by the learned Tribunal in para 10 of the impugned award the deceased himself was equally liable for the accident. As per spot map

(Ex. P/4) no any negligent driving of driver of the offending vehicle /Non-applicant No. 1 was proved. Therefore, 50% contributory negligence on the part of non-applicant No. 1 was wrongly fastened upon non-applicant No. 1 & 2 jointly and severally.

(ii) Learned counsel for the appellant/ IFFCO Tokio General Insurance Company Limited submits that in this case learned Tribunal has wrongly considered future prospect of 50% but looking to the age of the deceased i.e. 40 years in view of the apex Court Judgment in the Matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, 40% future prospect should have been considered. He further submits that compensation under the conventional heads is also on the higher side which reduced suitably.

6. Learned counsel for the respondents No. 1to 5/claimants opposes the contention made by the appellant/I. C. and submits that the Tribunal has rightly passed the award.

7. Learned counsel for the respondent No. 6 has assisted the Court.

8. Learned counsel for the respondent No. 7/ICICI Lombard General I.C. opposes the contention made by learned counsel for the appellant/Insurance Company regarding liability part only.

(In MAC 1105/2013)

9. Learned counsel for the appellant/I.C- ICICI Lombard General Insurance Company Limited (MAC No. 1105/2013) submits that accident occurred due to contributory negligence of driver of both the vehicles in the ratio of 50:50%, the learned Tribunal fastened liability jointly & severally upon Non-applicant No. 1/driver of the offending vehicle and non-applicant No. 2/ insurer of the offending vehicle to pay compensation to the claimants. He further submits that as the vehicle of the deceased was insured with non-applicant No. 3, the learned Tribunal wrongly fastened the liability upon the appellant/Non-applicant No. 3- ICICI Lombard General Insurance Company. It is not a case of composite negligence but it is a case of contributory negligence. The application was

filed by the claimants against the death of deceased who was owner of the offending vehicle and equally responsible for the accident. Therefore, no any liability can be fastened upon the Non-applicant No. 3 /appellant looking to the terms & conditions of the insurance policy.

10. Learned counsel for the respondent No. 1to 5/claimants supports the award.

11. Learned counsel for the respondents No. 6 & 7/ driver & owner supports the impugned award to the extent it fastened liability upon the appellant- ICICI Lombard General Insurance Company

12. Heard and perused the award with material available on records.

13. It is not disputed by the parties that there was head on collision between two motor-cycles, one driven by the deceased bearing No. CG04KE/2961 and another by non-applicant No. 1 bearing No. CG04 FC/2502. As per evidence adduced by the claimants FIR (Ex.P/3) and spot map (Ex.P/4) and the evidence of eyewitness- Sukhdev (AW-2) it stands proved that there was head on collision between the aforesaid motor-cycles in the middle of the road. No other evidence has been adduced by the parties. In both the case any appeal or cross-objection has not been filed by the claimants against the finding recorded by the Tribunal regarding contributory negligence on the part of the drivers of both the vehicle or for enhancement of compensation amount and therefore, the said finding has attained finality. In this view of the matter, the finding of the Tribunal regarding 50% contributory negligence on the part of the deceased and 50% contributory negligence on the part of the non-applicant No. 1 cannot be faulted with and the same is hereby affirmed.

14. Admittedly, the motorcycle of the deceased was insured as per insurance policy Ex. P/19 with ICICI Lombard General Insurance Company and as observed above he was equally responsible for the accident. Being so, the Tribunal was not justified in fastening liability upon the ICICI Lombard General Insurance Company, insurer of the vehicle of the deceased to pay compensation to the claimants and therefore, the finding recorded by the Tribunal in this regard is liable to be and is hereby

set aside.

15. So far as the liability fastened upon non-applicant No. 2/IFFCO Tokio General Insurance Company Limited is concerned, from the record it is seen that the accident occurred due to contributory negligence on the part of the non-applicant No. 1- Poshanlal. Non-applicant No. 2- IFFCO Tokio General Insurance Company Limited has failed to adduced any evidence to prove that there was any breach of policy conditions on the part of non-applicant No. 1/driver & owner of the offending vehicle. In these circumstances the Tribunal was fully justified in fastening the liability upon IFFCO Tokio General Insurance Company Limited.

16. Looking to the other conventional heads challenged by learned Counsel for the appellant/Insurance Company- IFFCO Tokio General Insurance Company Limited, in this case the deceased was survived by his widow, two minor daughters, one minor son and 55 years old mother who were dependent upon him and the learned Tribunal has awarded Rs. 50,000/-each (to respondent Nos. 3 to 5) towards parental & Rs. 10,000/- (to respondent No. 2, mother of the deceased) towards filial consortium which is in opinion of this Court on higher side. Therefore, in these circumstances, Rs. 10,000/- towards filial consortium to respondent No. 2, mother of the deceased and Rs. 40,000/-each to the children of the deceased (respondent Nos. 3 to 4) and Rs. 60,000/- to the youngest daughter of deceased (respondent No. 5) towards parental consortium i.e. total amount of Rs. 1,50,000/- can safely be considered as per the Supreme Court Judgment in the matter of ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018.*** Further the learned Tribunal awarded Rs. 1,00000/- towards spousal consortium and Rs. 25,000/- towards funereal expenses in on higher side, as per Hon'ble Supreme Court Judgment in the matter of ***Pranay Sethi, (supra),*** Rs. 70,000/- can safely be considered towards incidental heads i.e. loss of spousal consortium, loss of Estate & funeral consortium instead of 1,25,000/-. Only 50% future prospect would be reduced looking to the age of deceased i.e. 40 years and 40% is applicable in view of the Pranay Setthi (Supra). Income considered by the learned Tribunal as Rs. 3,000/-

pm is just & proper. Looking to the age of the deceased and in view of the decision in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, the multiplier of 15 is applicable and 1/4th deduction towards personal expenses is rightly considered. Medical bills considered by the Tribunal shall be taken as it is. Thus, 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).	Rs. 3,000 x 12= Rs. 36,000/- per annum
02.	40% of (1) above to be added towards future prospects.	Rs.36,000+ 14,400= Rs. 50,400/-
03.	After 1/4 deduction towards personal and living expenses of the deceased	Rs. 50,400-12,600= Rs. 37,800
04.	Multiplier of 15 to be applied	Rs. 37,800x 15= Rs. 567,000/-
05.	Towards spousal consortium, loss of funeral expenses & loss of estate	Rs. 70,000/-
06.	Towards filial & parental consortium	Rs. 1,50,000/-
07.	Towards Medical bills	Rs. 155,658/-
08.	Total Compensation	Rs. 7,87,000/-
09.	After deduction of 50% of compensation amount toward contributory negligence	Rs. 3,93,500/-

The amount of compensation awarded by the Tribunal i.e. Rs. 5,24079/- (after deduction of 50% towards contributory negligence) is reduced to Rs. 3,93,500/-. The aforesaid amount shall carry interest @ 6% per annum from the date of application till its actual payment. Rest of all the conditions mentioned in the award shall remain intact.

17. It is made clear that amount, if any, is deposited by the Insurance Company- ICICI Lombard General Insurance Company pursuant to the impugned award, the same shall be recovered from Non-applicants No. 1 & 2 as per law. It is also mentioned here that if any compensation amount has been disbursed to the claimants exceeding their above entitlement, the same shall be recovered from the claimants by the Insurance Company- IFFCO Tokio General Insurance Company Limited in accordance with law.

18. In the result, the appeal filed by the Insurance Company- IFFCO Tokio General Insurance Company Limited (In MAC 143/2014) is allowed in part with modification in the impugned award to the above extent and the appeal Insurance Company- ICICI Lombard General Insurance Company (In MAC 1105/2013) is allowed to the extent of liability part. However, rest of the conditions of the impugned award shall remain intact.

Sd/-

(Gautam Chourdiya)
Judge

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