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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 592 of 2015

- Shri Ram General Insurance Company Limited, Headquarter E-8, EPIP, RIICO, Industrial Area, Sitapura, Jaipur Rajasthan (Rajasthan)

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

Versus

1. Smt. Vibha Durga W/o Late Pawan Singh Durga, Aged About 27 Years
2. Ku. Ayushi D/o Late Pawan Singh Durga, Aged About 1 Year
3. Ku. Gudia D/o Late Pawan Singh Durga, Aged About 3 Months
Respondent No 2 & 3 minor represented through their natural guardian mother Smt. Vibha Durga
4. Vikal Singh Durga S/o Late Laldhar Singh, Aged About 61 Years
5. Smt. Deepa Durga W/o Shri Vikal Singh Durga, Aged About 55 Years
All R/o Power House Chowk, Shiv Mandir Ward, Thana Kotwali, Jagdalpur, District Bastar (C.G.)

(Claimants)

6. Bhajan Singh S/o Hannu Singh, Aged About 28 Years, Occupation Driver, R/o Village- Taragaon, Block Lohandiguda, Thana Lohandiguda, District Bastar (C.G.)

(Driver/Non-applicant No.1)

7. Suresh Prasad Gupta S/o Arjun Prasad Gupta, Aged About 50 Years, Occupation- Transporter, R/o Danteshwari Ward, Jagdalpur, District Bastar (C.G.)

(Owner/Non-applicant No.2)

---- Respondents

And

Miscellaneous Appeal (Civil) No. 686 of 2015

1. Smt. Vibha Durga Wd/o Late Pawan Durga Aged About 27 Years
2. Miss Ayushi Durga D/o Late Pawan Singh Durga, Aged About 1 Years
3. Miss Gudiya D/o Late Pawan Singh Durga, Aged About 3 Months
4. Vikal Singh Durga S/o Late Laldhar Singh, Aged About 61 Years
5. Smt. Deepa Durga W/o Vikal Singh Durga, Aged About 55 Years
Appellant No.2 to 3 are minors therefore represented through Smt. Vibha Durga (Mother)
All are Resident of Power House Chowk, Shiv Mandir, Ward P.S. Kotwali, Jagdalpur, District Bastar (C.G.)

---- Claimants

Versus

1. Bhajan Singh S/o Hannu Singh, Aged About 28 Years, R/o Village Taragaon Vikaskhand Lohandiguda, P.S. Lohandiguda, District Bastar (C.G.)

(Driver of the Vehicle/Non-applicant No.1)

2. Suresh Prasad Gupta S/o Arjun Prasad Gupta, Aged About 50 Years, R/o Danteshwari Ward, Jagdalpur, District Bastar (C.G.)

(Owner of the Vehicle/Non-applicant No.2)

3. The Shriram General Insurance Co. Ltd. S/o Through The Branch Manager,
E-8 Industrial Area, Seetapura Jaipur Post Jaipur District Jaipur (Rajasthan)
Pin 302022
(Insurer of the Vehicle/Non-applicant No.3)

---- Respondents

For Insurance Company	:	Shri Sachin Singh Rajput, Advocate
For Claimants	:	Shri Pravin Kumar Tulsyan, Advocate
For Owner & Driver	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

12.04.2019

1. As both above appeals arise out of the same accident occurred on 08.05.2013 involving the same vehicle Truck bearing registration No. CG-17/ZC/0192 (hereinafter referred to as "offending vehicle"), they are being disposed of by this common judgment.
2. M.A.(C) No. 592 of 2015 has been filed by the Insurance Company and M.A.(C) No. 686 of 2015 has been filed the Claimants arise out of common award dated 30.10.2014 passed by the Third Additional Motor Accident Claims Tribunal, Bastar, at Jagdalpur (C.G.) in M.A.C.C. No. 84/2014 awarding compensation in favour of the Claimants of Rs.36,00,600/- with interest @ 6% per annum from the date of claim application till realization and has fastened the liability upon non-applicant No.3/Insurance Company alongwith non-applicants No. 1 & 2/Driver & owner jointly and severally to pay compensation to the Claimants.
3. The Claimants, unfortunate wife, children, mother and father of deceased- Pawan Singh Durga, claimed compensation of Rs.51,70,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of Pawan Singh Durga in the motor accident.
4. Brief facts necessary for disposal of both the appeals are that on the date of accident i.e. on 08.05.2013, deceased- Pawan Singh Durga was coming by

motorcycle from Darampura to his house towards Jagdalpur, near Kale Nursing Home, Non-applicant No.1- Bhajan Singh, driver of the offending vehicle, owned by non-applicant No.2 and insured with non-applicant No.3, driving the offending vehicle Truck bearing registration No. CG-17/ZC/0192 in a rash and negligent manner, dashed the motorcycle. As a result thereof, Pawan Singh Durga fell down on the road and died on the spot.

5. In M.A.(C) No. 592 of 2015, learned counsel for the Insurance Company/non-applicant No.3 challenges the quantum of compensation and also contributory negligence on the part of deceased which was not considered by the Tribunal. He submits that as per postmortem report (Ex.-A/5), the deceased had consumed liquor, therefore, the Tribunal has ignored this fact and held that there was no contributory negligence on the part of the deceased and awarded compensation which is on the higher side.

6. In M.A.(C) No. 686 of 2015, learned counsel for the Claimants submits that unjust and meager compensation has been awarded by the Tribunal. He further submits that the income of the deceased has wrongly been considered as Rs.16,600 per month whereas it should have been Rs.25,000/- per month and the amount awarded by the Tribunal under the conventional heads also being on the lower side deserves to be enhanced suitably.

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

8. M.A.(C) No. 592 of 2015:

It is not disputed that deceased- Pawan Singh Durga was died due to rash and negligent driving of the offending vehicle by its driver/non-applicant No.1 and that finding was not challenged by the Insurance Company. As per Ex.-A/5, postmortem report, smell of alcohol was found on the stomach of the deceased, but no evidence has been adduced by the parties including the Insurance Company that the deceased was in intoxication condition and the deceased was driving the motorcycle in a rash and negligent manner. Therefore, the Tribunal was justified in

not assessing the contributory negligence on the part of the deceased. So far as issue of quantum is concerned, it is considered in M.A.(C) No. 686 of 2015 as below.

9. M.A.(C) No. 686 of 2015:

As regards the appeal filed by the Claimants for enhancement of compensation and the appeal filed by the Insurance Company challenging the quantum, as per Ex.-A/11 (pay slip of the deceased), the deceased was posted as Constable, CPS in the Police Department and he was a salary paid employee, therefore, the Tribunal has rightly considered the income of the deceased as Rs.16,600/- per month and Rs.1,99,200/- per annum. After deducting 1/4th towards personal and living expenses of the deceased at Rs.49800/-, the annual dependency comes to Rs.1,49,400/-. Further, after applying the multiplier of 16 to the annual dependency i.e. Rs.1,49,400/-, the total loss of dependency comes to Rs.23,90,400/-. Looking to the age of deceased i.e. in between 31-35 years, by adding 50% toward future prospect to the total loss of dependency at Rs.11,95,200/-, the amount comes to Rs.35,85,600/-. Further, the Tribunal has awarded Rs.15,000/- towards conventional heads i.e. loss of estate, funeral expenses & loss of consortium. Thus, the Tribunal has awarded a total compensation of Rs.36,00,600/- to the Claimants, therefore, in my opinion, the compensation awarded by the Tribunal is just and proper and does not call for any interference. The appeal filed by the Claimants and the appeal filed by Insurance Company deserve to be dismissed.

10. In this view of the matter, the above appeals {M.A.(C) No. 592 of 2015 & M.A.(C) No. 686 of 2015} being without any substance are liable to be dismissed and are accordingly dismissed.

11. No order as to cost.

Sd/-
(Gautam Chourdiya)
Judge