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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1278 of 2014

- Manager, National Insurance Company Ltd. Tatiband Business Centre, G.E. Road, Tatibandh, Dist. Raipur C.G.

----Appellant

Versus

1. Smt. Fulkunwar Patel Wd/o Late Shri Alekhram Patel Aged About 45 Years, Caste Aghariya

2. Netram Patel S/o Late Shri Alekhram Patel Aged About 23 Years, Caste Aghariya

   Both R/o Village Nartora, Chowki, Patewa, P.S. Tumgaon, Dist. Mahasamund C.G.

3. Amitabh Pal S/o Anil Krishna Pal R/o Sai Nagar, Jail Road, Dist. Raipur C.G.

4. Puran Singh Thakur S/o Shri Bhola Singh Thakur Aged About 26 Years R/o Clubpara, Mahasamund, P.S. And Tah. And Dist. Mahasamund, C.G. At Presently reising at Ambey Fuels Main Road Patel, Chowki Patewa, Tah. And Dist. Mahasamund C.G.

---- Respondents

For Appellant	Shri Qamrul Aziz, Advocate.
For Respondent no. 1 & 2	Shri Sunil Sahu, Advocate.
For Respondent No.3	Shri A.L. Singroul, Advocate.
For Respondent No.4	None.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

05/03/2019

1. This appeal is by the Insurance Company/non-applicant no.3 against the award dated 06.09.2014 passed by the Motor Accident Claims Tribunal, Mahasamund, District Mahasamund, C.G. in Claim Case No.04/2013 awarding total compensation of Rs.11,61,000/- with interest @ 6% per annum from the date of

application till realization, fastening liability on the Insurance Company i.e. appellant/non-applicant no.3 along with non-applicants no. 1 & 2 jointly and severally.

2. As per claim petition, on 26.03.2012 deceased Alekh Ram Patel, aged about 50 years, earning Rs.500/- per day as Electrician and Plumber, died in the motor vehicular accident caused due to rash and negligent driving of vehicle bus bearing registration no.CG04-E-1063 by non-applicant No.2. At the time of accident, vehicle was owned by respondent no.1/non-applicant no.1 and insured with non-applicant no.3/appellant herein.

3. On claim petition being filed by the claimants i.e. wife and son of the deceased under Section 166 of the Motor Vehicles Act to the tune of Rs.29,20,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4. Learned counsel for the appellant/Insurance Company submits as under:

(i) that the Tribunal has wrongly fastened liability of satisfying the award on the Insurance Company whereas according to the evidence adduced by the Insurance Company, on the date of accident non-applicant No.2 was not having a valid and effective driving licence to drive the offending vehicle.

(ii) that income of the deceased has wrongly been considered by the Tribunal as Rs.9,000/- per month whereas it should have been Rs.5,000/- as per minimum wages at the relevant time.

(iii) that the amount awarded under the conventional heads also being on the higher side deserves to be reduced suitably.

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.***

5. On the other hand, learned counsel for the respondent no.3/owner supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly fastened liability on the Insurance Company and awarded compensation which needs no interference by this Court.

6. Counsel for the respondents/claimants submits that in this case Tribunal has rightly assessed the income of deceased but erred in ignoring the future prospect to the claimants which should have been 25% in the present case as the deceased was aged about 40-50 years of age as is evident from the pleading of the claimants in the claim petition.

7. No counter appeal has been filed by the respondents as submitted by both the parties.

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

9. So far as issue of liability is concerned, though the Insurance Company has pleaded that the offending vehicle was being driven on the date of accident without valid permit and licence by non-applicant no.2, however, no evidence to substantiate the said plea has been adduced by the Insurance Company. As per seizure memo Ex.P-8, R.C. book ,

Insurance Policy which was valid till 20.06.2012, permit (special) having validity from 25.03.2012 to 27.03.2012, fitness certificate valid till 17.01.2019 and driving licence valid till 18.02.2014 were seized by the police. Admittedly, the accident occurred in this case on 26.03.2012 and as such in view of seizure of the aforesaid documents by the police and in absence of any evidence to the contrary by the Insurance Company, it stands proved that the offending vehicle was being driven by non-applicant no.2 in accordance with the terms and conditions of the Insurance Policy. In these circumstances, the Tribunal was fully justified in fastening liability on Insurance Company jointly and severally along with non-applicants No.1 & 2.

10. So far as quantum of compensation is concerned, the Tribunal appears to have fallen in error in assessing the income of the deceased as Rs.9,000/- per month. Though, the claimants have pleaded that the deceased was earning Rs.500/- per day as Electrician and Plumber but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.5,000/- per month as per minimum wages at the relevant time as skilled labour. Further, considering the age of the deceased i.e. above 45 and below 50 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi (supra) & **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***, the claimants are held entitled for compensation in the following manner:

S.I. No.	Heads	Calculation (in rupees)
1.	Income of the deceased @ Rs.5,000/- per month	Rs.60,000/- per annum
2.	25% of (i) above to be added towards future prospects.	Rs.15,000/- Rs.60,000 + Rs.15,000 = Rs.75,000/-
3.	1/3 deduction towards personal and living expenses of the deceased	Rs.25,000/- Rs.75,000 – Rs.25,000 = Rs.50,000/-
4.	Multiplier of 13 to be applied	Rs.6,50,000/-
5.	Towards loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
6.	Towards loss of parental consortium to claimant no.2	Rs.1,00,000/- (as awarded by the Tribunal)
	Total Compensation	**Rs.8,20,000/-**

11. In the result, the appeal is allowed in part. The impugned award is hereby modified to the extent that Insurance Company/non-applicant no.3 is held liable jointly and severally along with non-applicants No.1 & 2 to pay only **Rs.8,20,000/-** with interest as awarded by the Tribunal to the claimants instead of Rs.11,61,000/-. However, the amount, if any, deposited by the Insurance Company/non-applicant no.3 in excess of its liability, it shall be entitled to recover the same from the claimants in accordance with law. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge

Akhilesh