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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1053 of 2015

- Branch Manager, National Insurance Company Ltd., 13 Meenu Complex, Main Road, Kosa Badi Korba, District- Korba (C.G.)

---- Appellant/Insurer

Versus

1. Smt. Anita Wd/o Late Santu Yadav, aged 24 years
2. Ku. Anchal D/o Late Santu @ Santoo Yadav, age 4 years
3. Ku. Sonam D/o Late Santu Yadav, age 2 years
4. Roopnath S/o Late Bhuwali Yadav, age 58 years

   Respondent No.2 & 3 are minor through natural guardian mother Respondent No.1 Smt. Anita

   All R/o Village Kordha, Post- Urdara, P.S. & Tahsil – Lundra, District- Surguja (C.G.)

---- Respondents 1 to 4/Claimants

5. Chandra Kumar S/o Milar Ram, age 33 years, R/o Village & P.S. Banki Mongra, District Korba (C.G.)

---- Driver

For Appellant	:	Shri Raj Awasthi, Advocate
For Respondents 1 & 4	:	Ms. Neha Verma, Advocate
For Respondent No.5	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

15.01.2019

1. This is insurer's appeal against the award dated 30.04.2015 passed by the Third Motor Accident Claims Tribunal, Ambikapur, Sarguja (C.G.) in Motor Accident Claim Case No. 01 of 2014.

2. Facts of the case, in brief, are that on 01.11.2013 at about 10:30 pm deceased- Santu @ Santoo was going on his motorcycle from Ambikapur to his village- Korandha, when he reached nearby Luhkighat situated in Ambikapur-Raigarh main road, one Truck was standing without parking light or indicator on the middle of the road and therefore, his (deceased) motorcycle dashed with the said Truck from behind. As a result thereof, Santu sustained injuries on his head, chest, hand and leg and died on the spot.

3. On a claim petition being filed by the Claimants/Respondents No. 1 to 4, who are wife, children and father of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties awarded compensation of Rs.12,93,000/- alongwith interest @ 6% per annum from the date of application till realization in favour of the Claimants, fastening liability on the non-applicants- driver, owner and insurance company.

4. Learned counsel for the Appellant/Insurance Company challenging the liability fastened on the Insurance Company, submits that no specific issue was framed by the Tribunal whether policy was issued by the insurance company or not in favour of owner the offending vehicle. He further submits that under the conventional heads, the Tribunal awarded Rs.1,00,000/- to Respondent No.1 for loss of consortium and Rs.25,000/- for funeral expenses which is on the higher side, therefore, it may be considered in view of the decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd.*** Vs. ***Pranay Sethi, (2017) 16 SCC 680***. He also submits that Rs.1,00,000/- awarded by the Tribunal to each Respondents 2 and 3 (daughters of the deceased) towards love and affection is also on the higher side. Therefore, he prays that the matter may be remitted back to the Tribunal to decide the claim petition afresh.

5. Learned counsel for the Claimants/Respondents 1 to 4**,** however, opposes the appeal and submits that the learned Tribunal has rightly awarded the amount of compensation including the conventional heads, therefore, it is just and reasonable, which does not call for any interference in the instant appeal.

6. In this appeal, it is not disputed by both the parties that Respondent No.5 had parked the Truck bearing registration No. CG-04/JB/0521 in a negligent manner due to which deceased- Santu @ Santoo died. As submitted by both the parties, no any appeal has been filed by the driver and owner of the offending vehicle.

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

8. First question raised by the learned counsel for the Appellant/Insurance Company is that there is no any policy issued in favour of the owner of the vehicle. As per evidence adduced by the Claimants and as per seizure memo Ex.-P/3 i.e. registration certificate, national permit, insurance policy of the vehicle and driving licence of the driver were seized and these documents were produced before the Tribunal. There is no evidence adduced by the Insurance Company to rebut these facts and the Tribunal considered the seized documents including the insurance policy. As per seizure memo Ex.-P/3, it is specifically mentioned that insurance policy was valid till 30.07.2014 and was issued by the Appellant/Insurance Company. Therefore, the Tribunal has rightly fastened liability on the Insurance Company on the basis of the documents and evidence adduced before it.

9. So far as arguments regarding award made under the conventional heads and love and affection by the Tribunal are concerned, considering the facts and circumstances of the case, the Tribunal has erred in awarding higher amount on the above heads. Therefore, this Court is of the opinion that in view of the decisions in the matters of ***Pranay Sethi* (supra) and *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 compensation is required to be recomputed in the following manner:-

Sl.No.	**Heads**	**Calculation**
1	Income of the deceased	Rs.4,500/- per month i.e. Rs.54,000/- per annum
2	50% towards future prospects added to annual income	(Rs.54,000/- + Rs.27,000/-) Rs.81,000/-

3	1/3rd deduction towards personal expenses of deceased	(Rs.81,000/- – Rs.27,000/-) Rs.54,000/-
4	Multiplier of 17 to be applied	Rs.54,000/- x 17 = Rs.9,18,000/-
5	Towards conventional heads i.e. loss of estate; loss of consortium and funeral expenses	Rs.70,000/-
6	Towards loss of parental consortium @ Rs.50,000/- to Respondents No. 2 & 3 each	Rs.1,00,000/-
7	Filial consortium to parents i.e. father/Respondent No.4	Rs.50,000/-
	Total	**Rs.11,38,000/-**

10. For the foregoing, the appeal is allowed in part. The amount of compensation of Rs.12,93,000/- awarded by the Tribunal is reduced by Rs.1,55,000/-. In other words, Respondents No. 1 to 4/Claimants are entitled to get compensation of Rs.11,38,000/- in place of Rs.12,93,000/- with interest as awarded by the Tribunal. The amount, if any, already deposited by the Insurance Company shall be adjusted accordingly. The award impugned is modified to the above extent. Rest of the conditions of the award shall remain intact.

11. Appellant/National Insurance Company is granted two months' time to deposit the amount before the concerned Claims Tribunal.

Sd/-

(Gautam Chourdiya)
Judge

vatti