AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 214 of 2018

- Reliance General Insurance Company Limited Through Its Legal Officer, Reliance General Insurance Company Limited, 301- 302, Corporate House, 169 R N T Marg, Opposite Jhabua Tower, Indore, Madhya Pradesh.

----Appellant

Versus

1. Smt. Sita Bai Banjare W/o Late Satrughan Banjare Aged About 35 Years

2. Sajan Kumar S/o Late Satrughan Banjare Aged About 17 Years

3. Kishan Banjare S/o Late Satrughan Banjare Aged About 13 Years

4. Ku. Nitu Banjare D/o Late Shatrughan Aged About 11 Years

5. Kamal Das Banjare S/o Late Satrughan Banjare Aged About 7 Years

6. Tameshwar Banjare S/o Late Satrughan Banjare Aged About 4 Years

7. Birjhu Banjare S/o Late Satrughan Banjare Aged About 1 Years

   Respondent nos. 2 to 7 being minor represented through Legal Guardian Mother Smt. Sita Bai Banjare, Permanent R/o Village Raveli, Police Station Suhala, District Balodabazar, Chhattisgarh Present R/o Prem Nagar, Mowa, Police Station Pandari, District Raipur, Chhattisgarh.

8. Chedilal Patel S/o Shiv Prasad Patel Aged About 45 Years R/o Village Dhardai, Police Station Shivrinarayan, District Raipur, Chhattisgarh.

9. Ganesh Ram Sahu S/o Dulari Ram Sahu Aged About 36 Years R/o Village Katgi Police Station Kashdol, District Balodabazar, Chhattisgarh.

---- Respondents

For Appellant	Shri Sourabh Sharma, Advocate.
For Respondents	Shri A.L. Singroul, Advocate.

MAC No. 484 of 2018

1. Smt. Sita Bai W/o Late Shatruhan Banjare Aged About 35 Years

2. Sajan Kumar S/o Late Shatruhan Banjare Aged About 17 Years

3. Kishan Banjare S/o Late Shatruhan Banjare Aged About 13 Years

4. Ku. Neetu Banjare D/o Late Shatruhan Banjare Aged About 11 Years

5. Kamal Das Banjare S/o Late Shatruhan Banjare Aged About 7 Years

6. Tameshwer Banjare S/o Late Shatruhan Banjare Aged About 4 Years

7. Birjhu Banjare S/o Late Shatruhan Banjare Aged About 1 Years

   Appellant nos. 2 to 7 Being minor Represented Through Legal Guardian Mother Sita Bai. All R/o Permanent R/o Village Ravali, P.S. Suhela District Balouda Bazar, Chhattisgarh, Hall Mukam R/o Prem Nager Raipur Mowa P.S. Pandri District Raipur, Chhattisgarh.

---- Appellants

Versus

1. Chhedi Lal Patel S/o Shiv Prasad Patel Aged About 45 Years R/o Village Dhardai P.S. Shivrinarayan District Raipur, Chhattisgarh (Driver Of The Offending Vehicle Truck No. C.G.04/JC/6244)

2. Ganesh Ram Sahu S/o Dulari Ram Sahu Aged About 36 Years R/o Village Katgi Thana Kashadol District Balodabazar, Chhattisgarh (Owner Of The Offending Vehicle Truck No.C.G.04/JC/6244)

3. Reliance General Insurance Company Limited Through Manager, Address 4th Mala Ravi Bhawan Jaistambh Chowk Raipur, Chhattisgarh (Insurer Of The Offending Vehicle Truck No. C.G.04/JC/6244)

---- Respondents

For Appellants   Shri A.L. Singroul, Advocate.
For Respondent no.3   Shri Sourabh Sharma, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

14/01/2019

1. As both these appeal arise out of the award dated 13.07.2017 passed by the Additional Motor Accident Claims Tribunal, Raipur, District Raipur, C.G. in Claim Case No.139/2012, they are being disposed of by this common judgment.
2. As per averments in the claim petition, on 24.05.2012 the deceased Late Satrughan Banjare, aged about 35 years, earning Rs.300/- per day, working as Mason, died in the motor vehicular accident caused due to rash and negligent driving of Truck bearing no. CG04-JC-6244 by non-applicant No.1. As a result thereof, the deceased suffered grievous injuries and died on the spot. At the time of accident, the offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.
3. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act claiming compensation of Rs.20,50,000/- under various heads, the Tribunal considering the evidence led by both the parties, by the impugned award granted a total compensation of Rs.10,54,000/- with interest @ 9% per annum from the date of application till its realization, fastening the liability on the non-applicants jointly and severally.
4. **MAC No.214/2018**: This appeal has been filed by the insurance company challenging its liability. Learned counsel

for the appellant/Insurance Company submits 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.1 was not having a valid and effective driving licence to drive the offending vehicle. This apart learned counsel for the Insurance company is also challenged the quantum of compensation on the ground that the Tribunal has wrongly considered the income of the deceased as Rs.6,000/- without there being any evidence in this respect and the award of Rs.1,90,000/- under conventional heads and interest at the rate of 9% are also on the higher side.

5. On the other hand, learned counsel for respondents/claimants support the impugned award insofar as it relates to fastening of liability on the insurance company. However, the claimant has also challenged the award on the point of quantum and has filed a separate appeal i.e. MAC No.484/2018 for enhancement of compensation.

6. **<u>MAC No.484/2018</u>**: This appeal has been filed by the claimants for enhancement of compensation. Learned counsel for the appellants/claimants submit that the Tribunal has wrongly considered income of the deceased as Rs.6000/- per month whereas even as per minimum wages

prevalent at the relevant time, his income comes to Rs.9000/- per month. He also submits that no amount towards future prospect has been granted to the claimants. He further submits that Tribunal has granted only 9% simple interest whereas it should have been 12%.

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***, ***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.***

7. Opposing the above contention, learned counsel for the insurance company submits that the Tribunal has already awarded compensation on the higher side and therefore, there is no need for its enhancement by this Court.

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

9. As per the award Paras 11 & 12 Insurance Company has failed to prove this fact that at the time of accident non-applicant no.1 driver of the vehicle did not have a valid and effective driving licence to drive the vehicle. As per the evidence adduced by the Insurance company ie. non-

applicant witness no.1 Dinesh Kumar Meena (LDC) submits that driving license no. C/3209/88 is not issued by the Regional Transport Office, Jhalana, Jaipur. In his cross-examination this witness admitted that in Jaipur, there are two other Regional Transport Offices, if that licence is issued by another Regional Office of Jaipur he has no knowledge about the same. Thus, the evidence adduced by the Insurance company does not prove that driving licence issued in favour of the non-applicant no.1 driver is fake. Therefore, the Tribunal rightly considered this fact and evidence adduced by the parties and as per the appreciation of evidence in award in paras 11 & 12 has fastened the liability on the insurance company. No breach of policy is proved by the Insurance Company. Therefore, the appeal preferred by the insurance company being without any substance is liable to be dismissed insofar as it relates to the fastening of liability.

10. As regards the appeal filed by the claimants for enhancement, the Tribunal was justified in assessing the income of the deceased as Rs.6000/- per month on notional basis considering the minimum wages at the relevant time as the claimants could not prove his income as Rs.9000/- by any documentary evidence. However, no amount towards future prospect has been granted by the Tribunal. Therefore, considering the judgment of the Hon'ble Supreme Court in

Pranay Sethi, *(supra)*, 40% of the annual income is to be added thereto towards future prospect.

Further, considering the age of the deceased i.e. 38 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi, Magma General Insurance Co. Ltd.*(supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.6000 per month.	Rs.72,000/- per annum
02.	40% to be added towards future prospects.	Rs.28,800/- Rs.72,000 + Rs.28,800 = 1,00,800/-
03.	1/5 deduction towards personal and living expenses of the deceased	Rs.20,160/- Rs.1,00,800 – Rs.20,160/- = Rs.80,640/-
04.	Multiplier of 15 to be applied	Rs.12,09,600/-
05.	Towards loss of estate, for funeral and loss of spousal consortium	Rs.70,000/- (as awarded by the Tribunal)
06.	Towards loss of parental consortium to claimants 2 to 7 @ 20,000/- each	Rs.1,20,000/- (as awarded by the Tribunal)
	Total compensation	**Rs.13,99,600/-**

Since the Tribunal has already awarded Rs.10,54,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.3,45,600/- with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

11. In the result:

- MAC No.214/2018 preferred by the insurance company being without any substance is hereby dismissed.
- MAC No.484/2018 filed by the claimants is allowed with modification in the impugned award to the above extent that the claimants shall be entitled for additional compensation of Rs.3,45,600/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh