AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1364 of 2014

- The Oriental Insurance Company Ltd. Rama Trade Centre, In Front Of Rajeev Plaza, Near Bus Stand, Tah. And Distt. Bilaspur C.G.

---- Appellant/non-applicant No.3

Versus

1. Bhanu Pratap Singh S/o Late Jeevrakhan Singh Aged About 58 Years

2. Smt. Pushpa Singh W/o Bhanu Pratap Singh Aged About 45 Years

   Both R/o Village Dheka, Tahsil and District Bilaspur (CG)

3. Nand Kumar Sahu S/o Lakhan Lal Sahu Aged About 38 Years R/o Adhari Nawagaon, Dhamtari, P.S. Dhamtari, Tah. And Distt. Dhamtari C.G.

4. Ramchand Panjawani S/o Late Kundan Mal Panjwani Aged About 40 Years R/o Sunderganj Ward, Dhamtari, Tah. And Distt. Dhamtari C.G.

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate.
For Respondent Nos. 1 & 2	:	Shri Salvik Tiwari, Advocate.
For Respondent Nos. 3 & 4	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

27/06/2019

This appeal is by the non-applicant No.3/insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award dated 29th October, 2014 passed by 6th Additional Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No.164/2013 awarding total compensation of Rs.3.34 lacs with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally. The Tribunal further directed that in case the amount of compensation is not deposited with the Tribunal within a period of one month from the date of award, it shall carry interest @ 12% per annum from the date of application till its payment.

02. As per claim petition, on 11.4.2013 when Ajay Singh, aged 23 years, earning Rs.1200-1500/- per day as Auto driver, by driving Auto bearing registration No. CG 10 T 7974 with a moderate speed reached about one kilometer ahead of Dhamtari Bus Stand, non-applicant No.1 Nand Kumar Sahu by driving vehicle Truck bearing registration No. CG 04 G 2851, owned by non-applicant No.2 & insured with non-applicant No.3, rashly and negligently, dashed the Auto of Ajay Kumar, as a result of which Ajay Kumar suffered grievous injuries and died during treatment on 12.4.2013.

03. On claim petition being filed by the claimants, parents of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurer has assailed the award of the Tribunal on the following grounds:

(i) that liability on the insurance company has wrongly been fastened as driver of the offending vehicle truck was not having a valid and effective driving licence on the date of accident,

(ii) that income of the deceased has been considered on higher side as Rs.3000/- per month without any evidence;

(iii) that multiplier of 18 has wrongly been applied whereas considering the age of the deceased, it should have been 17,

(iv) that as the deceased was also equally liable for the accident, particularly in view of the fact that he was not having any driving licence, there has to be 50% deduction towards his contributory negligence,

(v) that the imposition of penal interest @ 12% is unsustainable in law.

05. On the other hand, learned counsel for the respondents/claimants supports the impugned award insofar as it relates to fastening of liability on the insurance company. However, the claimants being dissatisfied with the quantum of compensation have filed cross-objection in this appeal under Order 41 Rule 22 of CPC seeking enhancement of the compensation on the following grounds:

(i) that income of the deceased has been considered on the lower side by the Tribunal as Rs.3000/- per month whereas it should have been at least Rs.5000/- as per minimum wages of skilled labour at the relevant time,

(ii) that no amount towards future prospects has been allowed to the claimants,

(iii) that no amount towards loss of filial consortium has been granted to the claimants.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680*** 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.***

06. Heard learned counsel for the parties on the appeal as well as on cross-objection and perused the material available on record.

07. So far as breach of policy conditions on the ground that non-applicant No.1 driver of the offending vehicle was not having a valid and effective driving licence is concerned, no any evidence whatsoever has been adduced by the insurance company in this regard. As per final report Ex.A/1, driving licence of non-applicant No.1 was seized by the investigating officer and produced before the Tribunal. As per Ex.A/11 i.e. seizure memo, the driving licence seized from non-applicant No.1 was valid till 18.12.2013. Admittedly, the accident in this

case occurred on 11.4.2013 and as such, the accident occurred during the validity period of the driving licence held by non-applicant No.1. Nothing could be brought on record by the insurance company to prove that the said driving licence was not valid or effective on the date of accident. Therefore, the Tribunal was justified in holding that the insurance company has failed to prove that there was any breach of policy conditions on the part of driver/owner of the vehicle.

08. Now it has to be seen whether there was any contributory negligence on the part of the deceased. The said plea has also not been substantiated by the insurance company or driver or owner of the vehicle by adducing any evidence before the Tribunal. Merely on the ground that there was collision between two vehicles i.e. truck & auto, it cannot be said that there was contributory negligence on the part of the driver of the auto/deceased until and unless the same is specifically pleaded and proved by cogent and reliable evidence. Hence it is held that the insurance company has also failed to prove contributory negligence on the part of the deceased.

09. As regards imposition of penal interest @ 12% p.a. on the amount of compensation from the date of application till payment of the same if the compensation is not deposited within a month from the date of award, the same being against the settled principle of law is liable to be set aside and is, accordingly, set aside.

10. So far as quantum of compensation is concerned, though the claimants have pleaded that the deceased was earning Rs1200-1500/- per day as Auto driver but no documentary or oral 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.4,500/- per month as per minimum wages at the relevant time of skilled labour. Further, considering the age of the deceased i.e. 23 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***,, *Pranay Sethi* and *Magma General Insurance Co. Ltd. and* (supra), the claimants are held entitled for compensation in the

following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.4,500/- per month.	54,000/- per annum
02.	40% of (i) above to be added towards future prospects.	54,000 + 21,600 = 75,600/-
03.	50% deduction towards personal and living expenses of the deceased	37,800/-
04.	Multiplier of 18 to be applied	6,80,400/-
05.	Towards loss of estate (Rs.15,000/) and for funeral expenses (Rs.15,000/-)	30,000/-
06.	Towards loss of filial consortium @ Rs.15,000/- to each of the claimants	30,000/-
	Total:	**7,40,400/-**

11. Since the Tribunal has already awarded Rs.3.34 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,06,400/- with interest @ 7.5% per annum from the date of application till realization. The liability of payment of entire amount of compensation shall be of non-applicant No.3/insurance company jointly and severally along with non-applicants No. 1 & 2/driver & owner of the vehicle. However, rest of the conditions of the impugned award shall remain intact except the condition of penal interest @ 12% p.a. as awarded by the Tribunal, which is hereby set aside.

12. In the result, the appeal filed by the insurance company and the cross-objection preferred by the claimants are allowed in part with modification in the impugned award to the above extent.

Sd/

(Gautam Chourdiya)
Judge

Khan