AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 635 of 2014

- ICICI Lombard General Insurance Company Limited, Through- Its Legal Manager, ICICI Lombard General Insurance Company Ltd., Vinay Bhawan, Ground Floor, Devendra Nagar Road, Raipur C.G.

---Appellant

Versus

1. Smt. Geneshibai Bharti W/o Late Raja @ Rajkumar Bharti Aged About 32 Years
2. Smt. Tulsibai Bharti W/o Bhekhlal Bharti Aged About 58 Years
3. Shri Bhekhlal Bharti S/o Late Bajau Bharti Aged About 60 Years
4. Ku. Savita Bharti D/o Late Raja @ Rajkumar Bharti Aged About 13 Years
5. Ku. Sangita Bharti D/o Late Raja @ Rajkumar Bharti Aged About 11 Years

   Respondent Nos. 4 & 5 being minors, through their natural guardian mother Smt. Ganeshibai Bharti,

   All R/o Barbaspur, Panchayat Badgaon, Post- Birkoni, Thana- Mahasamund, District Mahasamund C.G.

6. Roshan Kumar Patel S/o Bhekhlal Patel Aged About 23 Years R/o Daldali Road, Ward No. 06, In Front Of Machli Bajar, Mahasamund, Distt. Mahasamund C.G.
7. Santosh Kumar Namdeo S/o Meethulal Namdeo Aged About 23 Years R/o Daldali Road, Ward No. 24, Mahasamund, District Mahasamund C.G.

---- Respondents

For Appellant	Shri Amrito Das, Advocate.
For Respondent Nos. 1 to 5	None.
For Respondent Nos. 6 & 7	Shri A.L. Singroul, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

07/03/2019

1. This appeal is by the Insurance Company/non-applicant no.3

against the award dated 29.03.2014 passed by the Motor Accident Claims Tribunal, Mahasamund, C.G. in Claim Case No.100/2013 awarding total compensation of Rs.14,84,600/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

2. As per claim petition, on 28.03.2013 deceased Raja @ Rajkumar, aged about 35 years, earning Rs.8,000/- as Contract Labour (*Hamal)*, was going by motorcycle bearing no.CG06-K-5767 on Barbaspur. However, on the way non-applicant no.1 by riding motorcycle bearing no.CG04-KE-4773 in a rash and negligent manner dashed the motorcycle of deceased, as result of which he 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 i.e. wife, children and parents of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.29,50,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

4. Counsel for the appellant has assailed the award only on the following grounds:-

   (i) that the Tribunal has wrongly fastened the liability on the Insurance Company as vide Ex.P-7 the deceased had consumed alcohol at the time of riding his vehicle.

   (ii) that the compensation awarded by the Tribunal without there being any evidence is on the higher side and needs to be reduced suitably.

5. On the other hand, learned counsel for the respondent nos. 6 & 7 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

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

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

8. So far as the issue of contributory negligence is concerned, the Insurance Company has heavily relied upon the postmortem report of Ex.P-7 wherein the Doctor has found undigested food with alcoholic smell in the stomach of the deceased and thereby contended that the deceased was under the influence of liquor and as such was equally responsible for the accident. However, the said contention of the Insurance Company is not acceptable because mere presence of alcohol in the body of the deceased would not *ipso-facto* lead to an inference that he was under the influence of liquor while riding the motorcycle or had consumed liquor to such an extent as to have lost control over the vehicle which resulted into accident. No evidence has been adduced by the Insurance Company to prove that the deceased being under influence of liquor was not in a position to properly ride the motorcycle. On the contrary from perusal of the record, it is seen that charge sheet Ex.P-1 was filed against non-applicant no.1

under Section 304A of IPC, FIR Ex.P-2 and Dehati Nalishi Ex.P-3 were registered against non-applicant no.1 and no counter report was lodged against the deceased. Thus, in the facts and circumstances of the case and the nature of evidence available on record, the manner in which the accident occurred, this Court is of the opinion that no contributory negligence can be held on the part of the deceased and the Tribunal was fully justified in not considering any negligence on the part of the deceased.

9. As regards income of the deceased, the Tribunal has erred in assessing the income of the deceased as Rs.7,000/- per month. Though the claimants have pleaded that the deceased was earning Rs.8,000/- per month as Contract Labour *(Hamal)* 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. Further, considering the age of the deceased i.e. 35 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***, ***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***, the claimants are held entitled for compensation in the following manner:

S.No.	Heads	Calculation (in rupees)
1.	Income of the deceased @ Rs.5,000/- per month.	Rs.60,000/- per annum
2.	40% of (i) above to be added towards future prospects.	Rs.24,000/- Rs.60,000 + Rs.24,000 = Rs.84,000/-
3.	1/4 deduction towards personal and living expenses of the deceased	Rs.21,000/- Rs.84,000 – Rs.21,000 = Rs.63,000/-
4.	Multiplier of 16 to be applied	Rs.10,08,000/-
5.	Towards mental agony and loss of spousal consortium to claimant no.1 (wife)	Rs.1,00,000/-(as awarded by the Tribunal)
6.	Towards loss of filial consortium @ Rs.25,000/- each to claimant nos. 2 & 3	Rs.50,000/- (as awarded by the Tribunal)
7.	Towards loss of parental consortium @ of Rs.50,000/- each to claimant nos. 4 & 5 minor children	Rs.1,00,000/- (as awarded by the Tribunal)
8.	Towards funeral expenses	Rs.25,000/- (as awarded by the Tribunal)
	Total Compensation	**Rs.12,83,000/-**

9. On the basis of aforesaid discussion, it is held that claimants are held entitled for a sum of Rs.12,83,000/- whereas the Tribunal has awarded Rs.14,84,600/-.

10. In the result, the appeal is allowed in part with modification to the extent that claimants are entitled for a sum of Rs.12,83,000/- instead of Rs.14,84,600/- as awarded by the Tribunal. The said amount of

Rs.12,83,000/- shall carry interest as awarded by the Tribunal.

10. If the Insurance Company has deposited any amount in excess of above liability, it shall be entitled to recover the same from the claimants in accordance with law.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh