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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 568 of 2014

- The Oriental Insurance Company Limited, Through Manager, The Oriental Insurance Company Limited Itwari Bazar, Raigarh, Tahsil and District- Raigarh (C.G.).

---- Appellant

Versus

1. Smt. Chanda Bai Wd/o Late Bharat Singh Rathiya, aged about 45 years, Occupation- Housewife.

2. Gurudayal Singh Rathiya S/o Late Bharat Singh Rathiya, aged about 26 years.

3. Girija Shanker Rathiya S/o Late Bharat Singh Rathiya, aged about 24 years.

4. Ramdayal Rathiya S/o Late Bharat Singh Rathiya, aged about 21 years.

   All Caste Kanwar, R/o Village Barbaspur, Police Station Chhal, Tahsil Dharamjaigarh, District- Raigarh (C.G.).

5. Guru Prasad Sahu S/o Tarachand Sahu, Occupation- Driver, R/o Amodi, Police Station- Bamhnidih, Tahsil and District- Janjgir- Champa (C.G.).

6. Hitendra Kumar Pandey S/o Pradeep Kumar Pandey, occupation owner of vehicle, R/o Bhojpur Manjhla Talab, Station Road, Champa, Tahsil and District- Janjgir- Champa (C.G.)

---- Respondents

For Appellant	: Shri H.B. Agrawal, Sr. Advocate with Smt. Prabha Sharma ,Adv.
For Respondents No. 1 to 4/Claimants	: Shri R.K. Pali Advocate & Shri Amit Kumar Sau, Advocate.
For Respondents No. 5 & 6	: Shri K.P. S. Gandhi, Advocate.

And

MAC No. 744 of 2014

1. Smt. Chandabai, W/o Late Bharat Singh Rathia aged about 45 years, Occupation- Housewife.

2. Gurudayal Singh Rathia, S/o Late Bharat Singh Rathia aged about 26 years, Occupation- Unemployed.

3. Girija Shankar Rathia S/o Late Bharat Singh Rathia aged about 24 years, Occupation- unemployed

4. Ramdayal Rathia, S/o Late Bharat Singh Rathia, aged about 21 years, Occupation- Student.

   All by Caste- Kanwar, R/o Village- Barbaspur, Police Station- Chhal, Tahsil- Dharamjaigarh, Distt.- Raigarh (C.G.).

---- Appellants/claimants

Versus

1. Guru Prasad Sahu, S/o Tarachand Sahu, Occupation- Driver, R/o Aamodi, Police Station- Bamhnindih, Tahsil & District- Janjgir-Champa (CG).

2. Hitendra Kumar Pandey, S/o Pradeep Kumar Pandey, Occupation- Owner of Vehicle, R/o Bhojpur Manjhla Talab, Station Road, Champa, Tahsil & District- Janjgir- Champa (C.G.).

3. The Oriental Insurance Company Ltd. Through- Branch Manager, The Oriental Insurance Company Ltd., Itwari Bazar, Raigarh, Tahsil & District- Raigarh (C.G.).

---- Respondents

For Appellants	: Shri R.K. Pali & Shri Amit Kumar Sahu, Advocate.
For Respondents 1 & 2	: Shri K.P.S. Gandhi, Advocate.
For Respondent No. 3	:Shri H.B. Agrawal, Sr. Advocate with Smt. Prabha Sharma, Advocate.

<u>Hon'ble Shri Gautam Chourdiya, J</u>

<u>Judgment On Board</u>

<u>15.04.2019</u>

1. Since both the appeals filed under Section 173 of the Motor Vehicle Act arise out of the same accident & award dated 31.03.2014 passed by Motor Accident Claims Tribunal, Raigarh in Claim Case No.

52/2013, therefore, they are heard together and are being disposed of by this common judgment.

2. As per averments made in the claim petition, when on 09.05,2013, at 5.00pm Bharat Singh Rathiya (since deceased) was riding his motorcycle with two persons Lakhan Singh Rathiya & Jagrat Singh Rathiya when returning from village Khadgaon to village Barpaspur, respondent No. 1.Guru Prasad Sahu while driving the offending vehicle (truck) bearing registration No. CG04-G/7616 rashly and negligently, dashed the motorcycle of the deceased from the backside, as a result thereof deceased- Bharat Singh Rathiya sustained grievous injuries and succumbed to these injuries. At the time of accident, the offending vehicle was owned by non-applicant No. 2 and insured with Non-applicant No. 3.

03. On claim petition being filed by the claimants/wife & children of the deceased- Bharat Singh Rathiya under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of Rs, 55,50,000/- under various heads, the Tribunal after considering the evidence led by both the parties, awarded a total compensation of Rs. 34,71,520/- along with interest @ 6% per annum from the date of filing of claim petition till its actual payment. The learned Tribunal fastened the liability upon the non-applicants.

04. Being aggrieved and dissatisfied with the award, fastening the liability upon the Insurance Company and the quantum of award, Insurance Company filed an appeal (MAC No. 568/2014) whereas for seeking enhancement of the compensatoin under award, the claimants,

who are unfortunate wife & children of the deceased- Bharat Singh Rathiya filed an appeal (MAC No. 744/2014).

In MAC No. 568/2014

05 Learned counsel for the appellant/Insurance Company in MAC No. 568/2014 would submit that the Tribunal has committed an error in fastening the liability upon the Insurance Company on the ground that at the time of accident, the offending vehicle was not insured with the appellant/Insurance Company and, therefore, in these circumstances the Insurance Company is not liable to pay compensation to the claimants. He further submits that the compensation is also appears to be higher side the learned Tribunal committed error in applying 12 multiplier in the facts of the case, therefore, it is liable to be reduced.

06. Learned counsel for the respondents/owner& driver supported the award impugned regarding the liability fastened upon the Insurance Company and prayed for no interference in the award impugned.

07. MAC No. 744/2014 also filed by the claimants/wife & children of the deceased- Bharat Singh Rathiya seeking enhancement of the compensation.

08. Learned counsel for the claimants submits that he is assailing the award on the grounds that the deceased was salaried person as government employee but the Tribunal did not award any amount towards future prospect considering the age of the deceased i.e. 50 years & nature of job, 30% future prospect should have been considered by the Tribunal. He further submits that the learned Tribunal that looking to the age of the deceased the learned Tribunal wrongly applied

multiplier 12 instead of 13.

In support of above contention, reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680, Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121.***

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

10. It is not disputed by both the parties that at the time of accident the driver of the offending vehicle was driving the vehicle rashly and negligently. A copy of the insurance policy, which is a package policy, is also produced before the Tribunal in which the insurance of the offending vehicle is valid from 06.08.2012 to mid night of 29.07.2013 in favour of the non-applicant No. 2/owner of the offending vehicle, therefore, the contention made by the counsel for the Insurance Company that the offending vehicle was not insured with the insurance company is unsustainable and in the package policy of their person is covered and the learned Tribunal rightly fastened liability upon the non-applicant No. 3/Insurance Company jointly and severely alongwith owner of the offending vehicle for payment of compensation to the claimants.

11. So far as the second contention raised by learned counsel for the Insurance Company that the multiplier is wrongly applied looking to the age of the deceased but for supporting the aforesaid contention Insurance Company has not been produced any documents before the

Tribunal regarding the age of the deceased, therefore the learned Tribunal considered the age of the deceased in view of the inquest report vide Ex. A/3, and the postmortem report in which the age of the deceased was shown as 50 years, which has not been challenged or contrary proved by any of the parties before the learned Tribunal. Therefore, the aged of the deceased can be considered as 50 years and multiplier of 13 would be applicable in place of 12 in view of Supreme Court judgment in the matter of **Sarla Verma (Supra).**

In MAC No. 744/2014

12. So far as the enhancement is concerned in MAC No. 744/2014, as regards income of the deceased, Rs. 36,120/- per month as Government teacher (headmaster) considered by the learned Tribunal is just and proper, which does not call for any interference. Further, considering the age of the deceased i.e. 50 years, 30% towards future prospect would be added into the income of the deceased further considering the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in ***Sarla Verma, Pranay Sethi,*** (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.36,120/- per month.	Rs. 36,120x 12= Rs. 4,33,440/- per annum
02.	30% of (1) above to be added towards future prospects.	Rs. 4,33,440+ 130,032/-= Rs. 5,63,472/-
03.	After 1/3rd deduction towards personal and living expenses of the deceased	Rs. 5,63,472 -187824= Rs.3,75648/-

04.	Multiplier of 13 to be applied	Rs. 3,75648x13= Rs. 48,83,424/-
05.	Towards loss of funeral expenses, loss of Estate, & consortium	Rs. 70,000/-
07.	**Total Compensation**	**Rs. 49,53,424/-**

Since the Tribunal has already awarded Rs.34,71,520/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.14,81,904/-with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

13. In the result, M.A. (C) No. 568/2014 filed by the appellant/The Oriental Insurance Company is liable to be and is hereby dismissed *whereas* M.A. (C) No. 744 of 2014 is allowed in part.

Sd/-

(Gautam Chourdiya)
Judge

Amita