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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 214 of 2014

1. Smt. Chhat Bai W/o Late Kanhaiya Rohidas; aged about 25 years
2. Kumari Rajani D/o Late Kanhaiya Rohidas; aged about 8 years
3. Kumari Rambai D/o Late Kanhaiya Rohidas; aged about 6 year
4. Rohan S/o Late Kanhaiya Rohidas; aged about 3 years
Applicant No. 2 to 4 minor through the mother (natural guardian) appellant No.1 Smt. Chhat Bai
5. Budhawara Bai W/o Harihar Rohidas; aged about 55 year
6. Harihar Rohidas S/o Late Kanduri; aged about 59 years (Since dead)
All R/o Village- Chakarbhatta, Achankpur; Police Station- Chakarbhatta, Tahsil & District (Revenue & Civil)- Bilaspur (C.G.)

---- Appellants/Claimants

Versus

1. Dipeshwar Diwan S/o Laxmi Prasad; R/o Village- Rainpur; Police Station- Pali; Tahsil & District (Revenue & Civil)- Korba (C.G.) - **Driver**
2. Mahendra Kumar Yadav S/o Brijmohan Lal; R/o House No. 374, Ward No 2, Jyotinagar Pali Road, Dipika, Police Station Dipika; Tahsil & District (Revenue & Civil)- Korba (wrongly written as District- Bilaspur, (C.G.) - **Owner**
3. The Branch Manager, Shri Ram General Insurance Company Ltd. 4th Floor Maruti Height, G.I. Road, Raipur; Police Station- Raipur, Tahsil & District (Revenue & Civil)- Raipur (C.G.) - **Insurer**

---- Respondents/Non-applicants

And

Miscellaneous Appeal (Civil) No. 215 of 2014

1. Smt. Rekha Bai W/o Late Gorelal @ Santkumar Rohidas; aged about 20 years
2. Sahil Rohidas D/o Late Gorelal @ Santkumar Rohidas; aged about 7 months
Appellant No. 2 minor through the mother (natural guardian) appellant No.1 Smt. Rekha Bai
3. Budhawara Bai W/o Harihar Rohidas; aged about 55 years
4. Harihar Rohidas (Since dead)
All R/o Village- Chakarbhatta, Achankpur; Police Station- Chakarbhatta, Tahsil & District (Revenue & Civil)- Bilaspur (C.G.)

---- Appellants/Claimants

Versus

1. Dipeshwar Diwan S/o Laxmi Prasad; R/o Village- Rainpur; Police Station-

Pali; Tahsil & District (Revenue & Civil)- Korba (C.G.) - **Driver**

2. Mahendra Kumar Yadaw S/o Brijmohan Lal; R/o House No. 374, Ward No 2, Jyotinagar Pali Road, Dipika, Police Station Dipika; Tahsil & District (Revenue & Civil)- Korba (wrongly written as District- Bilaspur, (C.G.) - **Owner**
3. The Branch Manager, Shri Ram General Insurance Company Ltd. 4Th Floor Maruti Height, G.I. Road, Raipur; Police Station- Raipur, Tahsil & District (Revenue & Civil)- Raipur (C.G.) - **Insurer**

---- Respondents/Non-applicants

For Appellants	:	Shri Anand Kesharwani, Advocate
For Respondents 1 & 2	:	None
For Respondent No. 3	:	Shri Sachin Singh Rajput, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

21.01.2019

1. Above both appeals arise out of the same accident occurred on 04.12.2011 involving the same vehicle Truck Trailer bearing registration No. CG-12/S/8901 (hereinafter referred to as "offending vehicle"), they are being disposed of by this common judgment.
2. In M.A.(C) No. 214 of 2014, the Claimants/Appellants, unfortunate wife, children, mother and father of deceased- Kanhaiya Rohidas, claimed compensation of Rs.7,30,000/- by filing a claim petition under Section 163-A of the Motor Vehicles Act for death of deceased in the motor accident.
3. In M.A.(C) No. 215 of 2014, the Claimants/Appellants, unfortunate wife, daughter, mother and father of deceased- Gorelal @ Santkumar Rohidas, claimed compensation of Rs.7,30,000/- by filing a claim petition under Section 163-A of the Motor Vehicles Act for death of deceased in the motor accident.
4. M.A.(C) No. 214 of 2014 arise out of separate award dated 27.08.2013 in Claim Case No. 17/2012 and M.A.(C) No. 215 of 2014 arise out of separate award dated 27.08.2013 in Claim Case No. 16/2012 passed by First Additional Motor Accident Claims Tribunal, Bilaspur awarding compensation in favour of the

Claimants of Rs.3,14,800/- in Claim Case No. 17/2012 and Rs.4,41,500/- in Claim Case No. 16/2012 with interest @ 6% per annum from the date of claim applications till realization respectively fastening liability on non-applicants/Respondents jointly and severally.

5. Brief facts necessary for disposal of both appeals are that on 04.12.2011 at about 09:00 p.m. deceased persons namely- Kanhaiya Rohidas and Gorelal @ Santkumar Rohidas both are brothers in relation were going from Dipika to Chakarbhatta by the motorcycle, on the way he wanted to go ahead from the offending vehicle by blowing horn and using upper-dipper light, while they were overtaking the offending vehicle which was being driven by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3, non-applicant No.1 stopped the offending vehicle on the road and the motorcycle was dashed from the back side of the offending vehicle. Deceased- Kanhaiya Rohidas was rider of the motorcycle and deceased- Gorelal @ Santkumar Rohidas was the pillion rider of the said motorcycle. Due to the accident, Kanhaiya Rohidas and Gorelal sustained grievous injuries on their heads and succumbed to those injuries on spot.

6. As submitted by both the parties, no counter appeal has been filed by the Respondents.

7. In both appeals, learned counsel for the Appellants/Claimants submits that income of the deceased persons has wrongly been considered by the Tribunal as Rs.3,000/- per month whereas it should have been Rs.3,300/- per month. He also submits that no amount towards future prospect has been granted to the Claimants and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably in view of the decision of Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***. He further submits that in Claim Case No. 17/2012, the Tribunal has illegally deducted 20% on account of contributory negligence on the part of deceased- Kanhaiya Rohidas and awarded compensation of Rs.3,14,800/-.

8. On the other hand, learned counsel for Respondent No. 3/Insurance

Company supporting the impugned award submits that the amount of compensation awarded by the Tribunal in both claim cases is just and proper and needs no interference by this Court. He also submits that in Claim Case No. 17/2012, there is contributory negligence on the part of deceased- Kanhaiya himself and the Tribunal has rightly deducted 20% from compensation amount and opposes the contention made by learned counsel for the Appellant regarding grant of future prospect and submits that as per Section 163A, no amount can be granted towards future prospect.

9. I have heard the learned counsel appearing for the parties and perused the impugned award including the records of claim petition.

10. Considering facts and circumstances of the case and the fact that in a proceeding under Section 163A of the Motor Vehicle Act, it is not open for the Insurer to raise any defence of negligence on the part of the victim/deceased, the award in Claim Case No. 17/2012, insofar as it relates to 20% contributory negligence on the part of deceased- Kanhaiya, is set aside. As per Second Schedule under Section 163 of the Motor Vehicle Act, the Tribunal has rightly deducted 1/3rd towards personal and living expenses of the deceased persons.

11. As regards income of the deceased namely Kanhaiya Rohidas and Gorelal @ Santkumar Rohidas, the Claimants have pleaded that the deceased persons were earning Rs.3,300/- per month as Labour respectively 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 persons are considered as Rs.3,300/- per month respectively as per minimum wages at the relevant time. Further, in view of Second Schedule under Section 163A of the Act, considering the age of deceased- Kanhaiya Rohidas in between 35 to 40 years and deceased- Gorelal in between 25 to 30 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Pranay Sethi* (supra), the Claimants/Appellants are held entitled for compensation in the following manner:-

(A) In M.A.(C) No. 214 of 2014 arise of Claim Case No. 17/2012:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.3,300/- per month	Rs.39,600/- per annum
2.	40% towards future prospects added to annual income	(Rs.39,600/- + Rs.15,840/-) Rs.55,440/-
3.	1/3rd deduction towards personal and living expenses of Deceased	(Rs.55,440/- – Rs.18,480/-) Rs.36,960/-
4.	Multiplier of 16 applied	Rs.36,960/- x 16 = Rs.5,91,360/-
5.	Towards loss of estate; loss of consortium and funeral expenses	Rs.70,000/-
	Total Compensation	Rs.6,61,360/-

Since the Tribunal has already awarded Rs.3,14,800/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.3,46,560/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

(B) In M.A.(C) No. 215 of 2014 arise of Claim Case No. 16/2012:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.3,300/- per month	Rs.39,600/- per annum
2.	40% towards future prospects added to annual income	(Rs.39,600/- + Rs.15,840/-) Rs.55,440/-
3.	1/3rd deduction towards personal and living expenses of Deceased	(Rs.55,440/- – Rs.18,480/-) Rs.36,960/-
4.	Multiplier of 18 applied	Rs.36,960/- x 18 = Rs.6,65,280/-
5.	Towards loss of estate; loss of consortium and funeral expenses	Rs.70,000/-
	Total Compensation	Rs.7,35,280/-

Since the Tribunal has already awarded Rs.4,41,500/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.2,93,780/- with interest @ 6% per annum from the

date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

12. In the result, the appeals are allowed in part with modification in the impugned awards to the above extent. The Insurance Company/Non-applicant No.3 is directed to deposit the amount of compensation within a period of two months from today with the concerned Tribunal.

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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