NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 670 of 2018

1. Branch Manager Bajaj Allianz General Insurance Company Ltd. Through its Manager Legal Shivmohan Bhawan Vidhansabha Road Pandri Raipur, District Raipur, Chhattisgarh (Insurer).

---- Appellant

Versus

1. Udbati Thakur S/o Late Dharamsingh Thakur Aged About 29 Years Caste Dhakad,

2. Smt. Malti Thakur W/o Late Premsingh Thakur Aged About 60 Years Caste Dhakad,

   Respondent No. 1 & 2 are R/o Balod, Schoolpara, P.S. And District Dantewada, Chhattisgarh (Claimants).

3. Mahendra Patra S/o Mooldhar Patra Aged About 24 Years, Cast Halba, R/o Bhairambandh, P.S. Dantewada, District Dantewada, Chhattisgarh (Driver).

4. Smt. Meena Sood S/o Late Anoop Sood R/o Shanti Nagar Ward Jagdalpur District Bastar, Chhattisgarh (Owner).

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate.
Respondent No. 1 & 2	:	Shri Sanjay Kumar Agrawal, Advocate
For Respondent No. 3	:	Shri Raj Bahadur Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

27/03/2019

1. This appeal is preferred by the Insurance Company/non-applicant No. 3 under Section 173 of the Motor Vehicles Act, 1988 against the award dated 28/07/2017 passed by Additional Motor Accident Claims Tribunal, Dantewada, South Bastar, District Dantewada in Claim Case No. 349/2014 awarding total compensation of Rs. 9,43,000/- with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

2. As per claim petition, on 09/06/2013 deceased Dharam Singh Thakur aged about 40 years earning Rs. 7000/- per month as Huller Mill Technician died in the motor vehicle accident caused due to rash and negligent driving of vehicle bearing No. CG17 H 2231 Pickup by Non-applicant No. 1 Mahendra Patra. The vehicle is question was owned by non-applicant No. 2 Anoop Sood, however, after his death his wife Meena Sood being is legal heir was brought on record as non-applicant No. 1 (A) in the capacity of the owner of the vehicle. At the time of accident the said vehicle was insured with non-applicant No. 3/Insurance Company.

3. On claim petition filed by claimants under section 166 of Motor Vehicles Act, 1988 the Tribunal considered the evidence led by the parties and passed an award as mentioned above.

4. Learned counsel for the appellant/Insurance Company submits that he has raised various grounds in the memo of appeal, however, he is not pressing of those grounds and is assailing the awards of the Tribunal in the grounds that the Tribunal was no justified in granting 50% future prospect after assessing the age of the deceased as 40 years and further the multiplier has wrongly been applied and the amount awarded under the conventional head is also very much on the higher side.

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*** *and* ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

5. Learned counsel for the respondent/claimant submits that the age of the deceased was 35 years as per evidence wife of the deceased (AW-1) Udbati Thakur which remain unchallenged in the cross examination and no contrary evidence has been adduced by the Insurance Company in this regard. Therefore, in this case the multiplier of 16 is applicable; whereas the Tribunal has wrongly applied the multiplier of 15. He also submits that the amount awarded under the conventional head is also just and proper looking to the judgment of Hon'ble Supreme Court in the matter of

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.

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

7. So far as the age of deceased is concerned, the evidence adduced by the claimants as per Ex. A-5, this Post Postmortem report, which shows the age of the deceased in between 36 to 40 years. The said finding is based on proper appreciation of the material available on record. Therefore, considering the age of the deceased, the dependency, the nature of his job, keeping in view the decisions of the *Hon'ble Supreme Court in Sarla Verma, Pranay Sethi and Magma General Insurance Co. Ltd.* (Supra), the claimants are held entitled for awarding compensation in the following manner:-

Sl. No.	**Heads**	**Calculation (in Rupees)**
01.	Income of the deceased @ Rs. 4500. per month.	Rs. 54,000 per annum
02.	40 % of (i) above to be added towards future prospects.	(Rs 54000 + 21600) = Rs. 75,600/-
03.	1/3 deduction towards personal and living expenses of the deceased	(Rs. 75600 - Rs. 25200) = Rs. 50,400/-
04.	Multiplier of 15 to be applied	(Rs. 50400 x15) = Rs 7,56,000/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
06.	Towards medical expenses	Rs. 3,000/- (as awarded by Tribunal)
07.	Towards transportation of body	Rs. 5,000/- (as awarded by Tribunal)
08.	Towards loss of filial consortium to claimant No. 2	Rs. 40,000/-
	Total compensation	**Rs. 8,74,000/-**

8. Since the Tribunal has already awarded compensation to the claimants of Rs. 9,43,000/-, whereas the claimants are entitled for compensation of Rs. 8,74,000/- shall carry interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

9. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant