AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 656 of 2018

- National Insurance Company Limited Through The Divisional Manager, National Insurance Co. Ltd. G.E.Road Raipur, Tahsil And District Raipur, Chhattisgarh

---- Appellant

Versus

1. Kauslesh S/o Rikhiram Dhruv Aged About 28 Years

2. Ku. Soni D/o Kauslesh Dhruv Aged About 4 Years Minor Represented Through Legal Guardian And Father Kauslesh Dhruv,

   Both are resident of Chauroti, PS Latua, Distt. Balodabazar-Bhatapara (CG)

3. Satyanarayan @ Sattu S/o Hem Lal Dhruv R/o Bahnakari, P.O. And Police Station Mandir Hausod, District Raipur, Chhattisgarh (Driver Of Vehicle No. C.G.04 J.C. 4896)

4. Vinod Kumar S/o Hanuman Prasad Jain R/o A-3, Jiwan Vihar Colony, Telibandha, Raipur, P.S. Telibandha, District Raipur, Chhattisgarh (Owner Of Vehicle No. C.G.04 J.C. 4896)

---- Respondents

For Appellant	:	Shri G. Khetrapal, Advocate.
For Respondent Nos. 1 & 2	:	Shri Rakesh Thakur, Advocate.
For Respondent No.4	:	Smt. Uma Sahu, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

14/02/2019

Heard on IA No.01, application for condonation of delay of 39 days in filing the appeal.

02. For the reasons mentioned in the said application, which is duly supported by affidavit, delay in filing the appeal is hereby condoned.

03. Heard on admission.

04. This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 4.12.2017 passed by III Motor Accident Claims Tribunal, Raipur in Claim Case No. 109/2014 awarding total compensation of Rs.11,01,800/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 & 2/driver & owner jointly and severally while exonerating the insurance company of its liability on the ground of breach of policy conditions. However, the Tribunal has ordered for pay and recover in this case.

05. As per claim petition, on 23.10.2013 while the Kauslesh was riding bicycle in which his wife was also sitting, non-applicant No.1 Satyanarayan by driving the vehicle bearing No. CG 04 JC 4896 in a rash and negligent manner, dashed his bicycle. As a result thereof, Kauslesh sustained injuries and his wife Smt. Maheshwari also suffered grievous injuries and she succumbed to the same. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

06. Learned counsel for the appellant has assailed the award of the Tribunal on the two grounds, firstly that on account of there being specific breach of policy conditions when the insurance company has been exonerated of its liability, the Tribunal should not have ordered for pay and recover and secondly, the Tribunal while computing the compensation has wrongly assessed the income, future prospects and the amount under the conventional heads on higher side without any justification. Therefore, he prays for setting aside of the order of the Tribunal with respect to pay and recover and reduction of the compensation amount suitably.

07. On the other hand, learned counsel for the respondents/claimants supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation and ordered for pay and recover in this case, which needs no interference by this Court.

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

09. So far as order of pay and recovery is concerned, admittedly on the date of accident the offending vehicle was duly insured with non-applicant No.3 and the deceased was a third party. Therefore, keeping in view the decisions of the Hon'ble Supreme Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796*** and ***Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762*** this Court is of the opinion that the Tribunal has not committed any illegality in passing the order of pay and recover in this case.

10. As regards the quantum of compensation, the Tribunal has assessed the age of the deceased as 28 years on the basis of documents produced by the claimants and the income has been assessed as per minimum wages prevalent at that time as Rs.4,500/-. Further, the Tribunal keeping in view the decisions in ***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***, applied the multiplier of 17, made 1/3rd deduction towards personal and living expenses and granted 40% towards future prospects, which cannot be faulted with. So far as grant of amount under the conventional heads is concerned, considering the principles of law laid down in *Pranay Sethi* (supra) 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***, the amount awarded under the conventional heads also cannot be said to be excessive or exorbitant.

11. In the result, the appeal filed by the insurance company being without any substance deserves to be dismissed at the admission stage itself and is, accordingly, dismissed.

Sd/

(Gautam Chourdiya)
Judge

Khan