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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A(C) No.905 of 2013

1. Ramkali Bai Chandrakar, W/o Ishwar Chandrakar Aged About 22 Years R/o Biranpur, Post- Guda, P.S Pipariya, Tah. Kabirdham, Distt. Kabirdham C.G.

2. Aaditya Kumar S/o Ishwar Chandrakar Aged About 3 Years Minor, Thru- Mother Smt. Ramkali Bai Chandrakar, R/o Biranpur, Post- Guda, P.S Pipariya, Tah. Kabirdham, Distt. Kabirdham C.G., District : Kawardha (Kabirdham), Chhattisgarh

3. Falguni D/o Ishwar Chandrakar Minor, Thru- Mother Smt. Ramkali Bai Chandrakar, R/o Biranpur, Post- Guda, P.S Pipariya, Tah. Kabirdham, Distt. Kabirdham C.G.

4. Judawan S/o Faguwa Chandrakar Aged About 55 Years R/o Biranpur, Post- Guda, P.S Pipariya, Tah. Kabirdham, Distt. Kabirdham C.G., District : Kawardha (Kabirdham), Chhattisgarh

5. Bhajiharin Bai D/o Faguwa Chandrakar Aged About 50 Years R/o Biranpur, Post- Guda, P.S Pipariya, Tah. Kabirdham, Distt. Kabirdham C.G., District : Kawardha (Kabirdham), Chhattisgarh

---- Appellants

Versus

1. Chandu Lal Satnami, S/o Lakhan Lal Rai Aged About 40 Years R/o Pipariya, Satnamipara, Tah. Kabirdham, Distt. Kabirdham C.G., Chhattisgarh

2. Amar Das S/o Dhalgan Satnami Aged About 60 Years R/o Gargawa, Post- Pipariya, P.S. Pipariya, Tah. Kabirdham, Distt. Kabirdham C.G., District : Kawardha (Kabirdham), Chhattisgarh

3. Reliance General Insurance Co.Ltd. S/o Branch- Indore M.P., District : Indore, Madhya Pradesh

---- Respondents

Ms. Laxmin Kashyap, Counsel for the Appellants.
Shri Vijay K. Deshmukh, Counsel for Respondents No.1 & 2.
Shri Sachin Singh Rajput, Counsel for Respondent No.3.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Award On Board

27.09.2019

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 29.08.2013 passed by the Motor Accidents Claims Tribunal, District Kabirdham (Kawardha) (CG) (for short 'the Claims Tribunal') in Claim Case No.14/2011 by which, the Claims Tribunal, while allowing the claim in part, awarded a total sum of Rs.1,87,000/- with 7.5 % interest per annum from the date of filing of the claim Petition till its realization while fastening the liability upon the Insurance Company. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 01.01.2011, deceased Ishwar Chandrakar was returning by his motorcycle towards his village Krit Bandha and as soon as he reached near the village Khairjhiti, it was dashed vehemently from its opposite side by the offending vehicle 'tractor' attached with its trolley bearing its registration No.CG 09 C/5416 and CG 09 C/5417 respectively, which was owned by Non-Applicant No.2-Amardas and insured with Non-Applicant No.3-Reliance General Insurance Company Limited. According to the Claim Petition, the vehicle in question was being driven in a rash and negligent manner by its driver Chandulal Satnami, Non-Applicant No.1, as a result of which, the deceased sustained serious multiple injuries and died on the spot.

3. On account of the aforesaid accident, the Claimants being legal representatives of the deceased, instituted a Claim Petition enumerated under

Section 166 of the Act of 1988 by alleging *inter alia* that the deceased was employed as a trainer in a Private Company known as LCG and used to earn Rs.20,000--25,000/- per month and thus, claimed total amount of compensation of Rs.54,00,000/- under various heads.

4. Non-Applicants No.1 & 2, the driver and owner respectively of the offending vehicle contested the claim by saying that the deceased himself was responsible for the alleged accident as he himself came in contact with the offending vehicle. It is pleaded further that since the vehicle in question was insured with Non-Applicant No.3, therefore, in case any liability being fastened, the same would be indemnified by the Insurance Company. While Non-Applicant No.3/Insurance Company contested the claim by saying that the vehicle in question was being used in violation of the insurance policy, therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 01.01.2011 due to rash and negligent driving of the driver of the offending vehicle resulting into the sad demise of Ishwar Chandrakar. It held further that the vehicle in question was not being used in violation of the insurance policy as alleged by the said Insurance Company. As a consequence, while fastening the liability upon the Insurance Company, awarded an amount of compensation to the tune of Rs.1,87,000/- with 7.5% interest p.a from the date of filing of the Claim Petition till its realization.

6. Being aggrieved, the Claimants have preferred this Appeal. Ms. Kashyap, learned Counsel for the Appellants submits that while awarding the amount of compensation, the Claims Tribunal has neither considered the future prospects of the income of the deceased nor the proper amount of

compensation towards conventional heads has been awarded. The Tribunal has thus erred in awarding the meagre amount of compensation payable to the Claimants. In support, she placed her reliance upon the decisions rendered in the matters of *National Insurance Company Limited vs. Pranay Sethi And Others* and *Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram And Others* reported respectively in **(2017) 16 Supreme Court Cases 680 and (2018) 18 Supreme Court Cases 130.**

7. I have heard learned Counsel for the Appellants and perused the entire record carefully.

8. From perusal of the record, it appears that the Claims Tribunal has assessed the notional income of the deceased to the tune of Rs.15,000/- per annum as the Claimants have failed to produce any documentary evidence in relation to the income of the deceased and I do not find any infirmity in the same. However, while determining the amount of compensation, an addition of 40% of it towards future prospects of his income ought to have been taken into consideration based upon the aforesaid decisions as relied upon by the Counsel for the Appellants. Likewise, a sum of Rs.7,000/- alone has been awarded under the conventional heads, which appears to be on the lower side. The award impugned therefore deserves to be modified and/or enhanced.

9. Considering the notional income of the deceased to the tune of Rs.15,000/- per annum as assessed by the Claims Tribunal and that by deducting 1/3rd of it towards his personal and living expenses, the annual dependency would be Rs.10,000/- and that by adding 40% of it i.e. Rs.4,000/- towards future prospects of the income of the deceased, the total annual dependency would thus arrive at Rs.14,000/- (10,000/-+4,000/-). Since the

deceased was 22 years old at the time of accident, therefore, by applying the multiplier of 18, the total dependency would arrive at Rs.2,52,000/-. In addition to this, the Claimants would be entitled to a further sum of Rs.2,10,000/-, instead of Rs.7,000/- under conventional heads, as under:-

i. Consortium to wife	=	Rs. 40,000
ii. Filial Consortium to father	=	Rs. 40,000
iii. Loss of love and affection to 2 children @ 50,000/- each	=	Rs. 1,00,000
iv. Funeral Expenses	=	Rs. 15,000
v. Loss of estate	=	Rs. 15,000
Total	=	Rs.2,10,000

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10. The Claimants would thus be entitled to a total amount of compensation to the tune of Rs.4,62,000/-, instead of Rs.1,87,000/- as assessed by the Claims Tribunal, with 7.5% interest per annum from the date of filing of the Claim Petition till its realization. As far as other conditions as observed by the Claims Tribunal are concerned, the same shall remain intact.

11. In view of the foregoing discussions, the Appeal is allowed in part to the extent indicated hereinabove. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Priya