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<u>HIGH COURT OF CHHATTISGARH, BILASPUR</u>

<u>Miscellaneous Appeal (Civil) No. 457 of 2013</u>

- Smt. Geetaben Patel, Wd/o Kannubhai @ Rajul Bhai Patel, age 48 years, R/o 753, Shashtri Nagar, Sacharata Chowk Road, Thana Supela, Tahsil & District Durg (C.G.)

---- Appellant/Claimant

Versus

1. Prakash Maganlal Badiya, S/o Maganlal Badiya, age 45 years, R/o Besides Jamnagar Central Jail, Aayapura Chowk, Vimal Apartment, Thana Jamnagar, District Jamnagar (Gujrat)

   (Non-applicant No.1 - Driver)

2. Mukesh Bhai, S/o Dharamji Bhai Rathor, R/o Besides Jamnagar, Central Jail, Aayapura Chowk, Vimal Apartment, Thana Jamnagar, District Jamnagar (Gujrat)

   (Non-applicant No.2 - Owner)

3. Reliance General Insurance Company, District Jamnagar (Gujrat)

   (Non-applicant No.3 - Insurer)

---- Respondents/Non-applicants

For Appellant	:	Shri Sanjay Agrawal, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Rohitashava Singh, Advocate

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

<u>Judgment on Board</u>

<u>02.04.2019</u>

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimant/Appellant, seeking enhancement of the compensation awarded by the Second Additional Motor Accident Claims Tribunal, Durg (C.G.) vide award dated 01.01.2013 passed in Claim Case No. 82 of 2011.

2. The Claimant/Appellant, unfortunate wife of deceased- Kannubhai @ Rajul Bhai Patel aged about 50 years, claimed compensation of Rs.23,60,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of her husband-Kannubhai @ Rajul Bhai Patel in the motor accident.

3. Brief facts of the case are that on 07.04.2009 deceased- Kannubhai @ Rajul Bhai Patel was going by Activa bearing registration No. CG-07/L/6444, while he was crossing the G.E. Road Supela, non-applicant No.1 - Prakash Maganlal Badiya, driver of offending vehicle Truck Trailer bearing registration No. GJ-10/X/9594, owned by non-applicant No.2 and insured with non-applicant No.3, driving the offending vehicle in a rash and negligent manner, dashed the vehicle of the deceased. As a result thereof, Kannubhai @ Rajul Bhai Patel sustained grievous injuries on various parts of his body and died on the spot. At the time of accident, deceased- Kannubhai was doing the tobacco business and was earning Rs.2,41,297/- per annum and he was income-tax payer.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.10,05,000/- in favour of the Appellant/Claimant with interest @ 6% per annum from the date of accident till realization and fastened the liability on non-applicants No. 1 and 2 jointly and severally.

5. Learned counsel for the Appellant/Claimant submits that the Tribunal has considered the income of the deceased as Rs.15,000/- per month which is on the lower side. He also submits that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. He further submits that the no amount towards future prospect has been granted to the Claimant. Further, he submits that the Tribunal has passed the award on 01.01.2013 and awarded compensation of Rs.10,05,000/-, but till now no amount has been received by the Claimant- widow of the deceased due non-availability of non-applicant No.2 – Mukesh Bhai. Therefore, looking to the decision of the Hon'ble Supreme in the matter of ***Manuara Khatun and others*** Vs. ***Rajesh Kumar Singh and others, (2017) 4 SCC 796***, this Court may pass an order for pay and recover in this case.

6. On the other hand, learned counsel for Respondent No.3/Insurance Company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court. Since there is specific breach of policy conditions, no order can be passed for pay and recover.

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

8. It is not in dispute that the deceased was doing tobacco business and as per Ex.-P/9, P/10, P/10-C and P/11 (income-tax return), the deceased was income-tax payer. Looking to the tax deduction on the basis of income-tax return, the Tribunal has rightly considered the monthly income of the deceased as Rs.15,000/-. Therefore, no any scope for enhancing the monthly income of the deceased which is just and proper.

9. Considering the age of the deceased i.e. above 50 years, the dependency, nature of his job and the decisions of the Hon'ble Supreme Court in 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***, the Claimant/Appellant is held entitled for compensation in the following manner:

Sl.No.	**Heads**	**Calculation (In rupees)**
1.	Income of the deceased	Rs.15,000/- per month i.e. Rs.1,80,000/- per annum
2.	10% towards future prospects added to annual income	(Rs.1,80,000/- + Rs.18,000/-) Rs.1,98,000/-
3.	50% deduction towards personal and living expenses of Deceased	(Rs.1,98,000/- – Rs.99,000/-) Rs.99,000/-
4.	Multiplier of 11 applied	Rs.99,000/- x 11 = Rs.10,89,000/-
5.	Towards conventional heads:- loss of estate, funeral expenses and loss of consortium	Rs.70,000/-
	Total Compensation	**Rs.11,59,000/-**

10. Since the Tribunal has already awarded Rs.10,05,000/-, after deducting the same from the above amount, the Claimant/Appellant is held entitled for additional compensation of Rs.1,54,000/- with interest @ 6% per annum from the date of accident till realization. Keeping in view of the decision of the Hon'ble Supreme Court in the matter of *Manuara Khatun* (supra), this Court feels it proper to order for pay and recover in this case. Hence, the Insurance Company/non-applicant No.3 is directed to pay the awarded sum to the Claimant within a period of two months from today and then recover the same from the driver and owner (non-applicant No.1 and 2) of the offending vehicle as per law laid down in ***Manager, National Insurance Company Limited*** Vs. ***Saju P. Paul & Anr., (2013) 2 SCC 41***. However, rest of the conditions of the impugned award shall remain intact.

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

12. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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