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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A(C) No.276 of 2013

1. Rameshwar Patel S/o Late Shri Shukla Prasad Patel Aged About 45 Years R/o Village And Post- Ghuichunwa, P.S. And Tah. Sakti, Distt. Janjgir-Champa C.G., Chhattisgarh
2. Smt. Sukwara Bai W/o Rameshwar Patel Aged About 41 Years R/o Village And Post- Ghuichunwa, P.S. And Tah. Sakti, Distt. Janjgir-Champa C.G., District : Janjgir-Champa, Chhattisgarh
3. Smt. Rajkunwar W/o Late Shri Sukla Prasad Patel Aged About 66 Years R/o Village And Post- Ghuichunwa, P.S. And Tah. Sakti, Distt. Janjgir-Champa C.G., District : Janjgir-Champa, Chhattisgarh

---- Appellants

Versus

1. Nikhil Dewangan, S/o Ramadhar Dewangan Aged About 23 Years R/o At Post Dewanganpara, Juna Bilaspur, P.S. City Kotwali, Bilaspur, Distt. Bilaspur C.G., Chhattisgarh
2. Rahul Dewangan S/o Ramadhar Dewangan Aged About 27 Years R/o At Post Dewanganpara, Juna Bilaspur, P.S. City Kotwali, Bilaspur, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh
3. Branch Manager S/o Bajaj Allianz Insu.Co.Ltd., V.R. Plaza, Link Road, Bilaspur, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh
4. Laxmi Prasad Patel S/o Rameshwar Prasad Patel Aged About 25 Years R/o Village And Post- Ghuichunwa, P.S. Sakti, Distt. Janjgir-Champa C.G., District : Janjgir-Champa, Chhattisgarh
5. Dev Prasad Patel S/o Rameshwar Prasad Patel Aged About 22 Years R/o Village And Post- Ghuichunwa, P.S. Sakti, Distt. Janjgir-Champa C.G., District : Janjgir-Champa, Chhattisgarh
6. Shanti Bai D/o Rameshwar Patel Aged About 28 Years R/o Village And Post- Ghuichunwa, P.S. Sakti, Distt. Janjgir-Champa C.G., District : Janjgir-Champa, Chhattisgarh

----Respondents

For Appellants:	Shri RS Patel, Advocate.
For Respondents No.1 & 2:	Shri Keshav Dewangan, Advocate.
For Respondent No.3:	Shri Abhishek Sinha along with Shri DL Dewangan, Advocate.
For Respondents No.4 to 6:	None, though served.

Single Bench:Hon'ble Shri Sanjay Agrawal, J

Order on Board

14.03.2019

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') questioning the award dated 05.01.2013, passed by the Motor Accident Claims Tribunal, Janjgir-Champa (for short 'the Claims Tribunal') in Claim Case No.78/2011 by which, the Claims Tribunal, while allowing the claim in part, has awarded a total sum of Rs.4,96,000/- with 7% interest per annum, from the date of Claim Petition till its realization.

2. Briefly stated, the facts of the case are that on 09.10.2011, deceased Ram Prasad was coming by his motorcycle and as soon as he reached near Lakshiband tank, he was dashed vehemently by the offending vehicle Maruti van bearing its registration No.CG 10 FA 4406 which was being driven in a rash and negligent manner by its driver namely Nikhil Dewangan, Respondent No.1 herein. The vehicle in question was owned by Rahul Dewangan, Respondent No.2 herein, which was insured by Bajaj Allianz Insurance Company Ltd, Respondent No.3 herein. On account of the alleged accident, the deceased received several injuries and expired.

3. Based upon the aforesaid incident, a Claim Petition was made by the Appellants/Claimants under Section 166 of the Act claiming total amount of compensation of Rs.53,55,000/- on various heads by submitting *interalia* that the deceased, 22 years old, was unmarried and used to earn Rs.10,000/- per month while working as an employee of M/s Pradeep Kumar Goyal Transporter and Transport Contractor.

4. Respondents No.1 & 2, the driver and owner respectively have

contested the claim on the ground that the deceased himself was responsible for the alleged accident and, submitted further that the driver of the offending vehicle was having valid and effective driving license, therefore in case of liability to be fastened, the same would be indemnified by the Insurance Company i.e. Respondent No.3 herein.

5. Respondent No.3, the Insurance Company, while contesting the aforesaid claim, has stated that the alleged accident has not occurred due to rash and negligent driving of Respondent No.1 and pleaded further that since the said driver was not holding an effective and valid driving license, therefore, the Insurance Company cannot be held liable.

6. After considering the evidence led by the parties, the Claims Tribunal, vide its award impugned dated 05.01.2013, has held that the alleged accident occurred on 09.10.2011 due to rash and negligent driving of the driver of the offending vehicle namely Nikhil Dewangan, Respondent No.1 herein and held further that the alleged vehicle was not being used in violation of the policy as the driver of the offending vehicle was holding valid and effective driving license at the relevant point of time. It held further that the deceased, though was not a permanent employee, but was used to earn Rs.8,000/- per month and that by deducting half of his income, depedency has been assessed to the tune of Rs.4,000/- per month and that by applying multiplier of 10, awarded total amount of compensation to the tune of Rs.4,96,000/- along with funeral expenses of Rs.5,000/- and also by awarding Rs.5,000/- and Rs.6,000/- towards medical and traveling expenses respectively, with 7% interest p.a from the date of Claim Petition till its realization.

7. Being aggrieved, the Claimants have preferred this Appeal. Shri

Patel, learned Counsel for the Appellants submits that the award impugned as passed by the Claims Tribunal is apparently contrary to law as the Claims Tribunal, while passing the award impugned, has wrongly applied multiplier of 10 instead of 18 and submits further that the monthly income of the deceased ought to have been taken into consideration as Rs.10,000/-. The Claims Tribunal has thus committed in not awarding just and fair compensation payable to the Claimants.

8. On the other hand, learned Counsel for the Respondents supported the impugned award.

9. I have heard learned Counsel for the parties and perused the entire record carefully.

10. A Claim Petition was filed by the Claimants on account of the accident occurred on 09.10.2011 when, deceased Ram Prasad was coming by his motorcycle and was dashed by the offending vehicle Maruti van due to rash and negligent driving of its driver namely Nikhil Dewangan, Respondent No.1. The said vehicle was owned by Respondent No.2 and insured by Respondent No.3 herein. A perusal of the record would show that though the income certificate as submitted showing the monthly income of the deceased as Rs.10,000/- however, it was only for a period of 2 months. Thus, the Claims Tribunal has rightly come to the conclusion that the deceased was not a permanent employee and accordingly, his monthly income was assessed at Rs.8,000/- and I do not find any infirmity in the same.

11. While assessing the monthly income of the deceased at Rs.8,000/- and that by deducting half of it, the Claims Tribunal has assessed the dependency to the tune of Rs.4,000/- per month. However, future

prospect of his income has not been taken into consideration. The deceased was held to be 22 years old, yet multiplier of 10 has been applied. However, in view of the principles laid down in ***Sarla Verma (smt) And Others vs. Delhi Transport Corporation And Another*** reported in **(2009) 6 Supreme Court Cases 121,** the proper multiplier should have been 18 in order to provide just and proper compensation to the Claimants. That apart, a sum of Rs.5,000/- has been awarded towards funeral expenses without considering the other conventional heads. At this juncture, the principles laid down in the matter of ***National Insurance Company Limited vs. Pranay Sethi And Others*** reported in **(2017) 16 Supreme Court Cases 680** are to be noted where the Supreme Court has assessed the total conventional heads to the tune of Rs.70,000/- and has considered the future prospects of the deceased as well.

12. By applying the aforesaid principles to the case in hand, the Appellants/Claimants are entitled to Rs.65,000/- (70,000 – 5,000) towards conventional heads apart from medical and travelling expenses as awarded by the Tribunal. The monthly dependency, as observed herein above, has been assessed at Rs.4,000/- and by adding 40% towards future prospects, in the light of the aforesaid judgment, it would come to Rs.5,600/-, yearly Rs.67,200/- and that by applying multiplier of 18 to it, the total loss of dependency would be Rs.12,09,600/- (67,200 X 18). The Claimants are thus entitled to total amount of compensation to the tune of Rs.12,85,600/- (12,09,600 + 65,000 + 11,000) instead of Rs.4,96,000/-, as held by the Claims Tribunal, with 7% interest per annum from the date of Claim Petition till its realization.

13. Consequently, the Appellants/Claimants are entitled to enhanced

amount of compensation i.e. Rs.7,89,600/- (12,85,600 – 4,96,000) in addition to Rs.4,96,000/- as awarded by the Tribunal, with 7% interest per annum from the date of Claim Petition till is realization. Respondents No.1 to 3 shall be liable to pay the said amount jointly and severally to the Appellants within a period of two months from today.

14. In view of the foregoing discussion, the appeal is allowed in part to the above extent. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya