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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 351 of 2014

- Bajaj Allianz General Insurance Company Limited, Through Branch Manager, G.E. Plaza, Airport Road, Yerawada Pune (Maharashtra) Pin- 411 006.

  At present- Shivmohan Bhawan, Vidhan Sabha Road, Pandri, P.S. Pandri, Civil and Revenue Distt.- Raipur (C.G.) (Insurer)

----Appellant

Versus

1. Smt. Madhvi Thakur, W/o Late Ludar Singh Thakur, Aged about 53 years, caste Shatriya, Profession – House Wife

2. Ku. Shalini Thakur, D/o S Late Ludar Singh Thakur, Aged about 26 years.

3. Harendra, S/o Late Ludar Singh Thakur, Aged about 24 years.

   All R/o Atalbihari Bajpeyee Ward, Ward No. 38, Dharampura Tahsil Jagdalpur, Dist. Bastar, PS Jagdalpur, Civil & Revenue Distt. Jagdalpur (C.G.) (Claimants)

4. Jitendra Nishad, S/o Sukhdev Nishad, aged about 28 years, caste Kewat, R/o Gurugovind Singh Ward, Jagdalpur Civil & Revenue District Jagdalpur, (C.G.) (Driver)

5. Shailendra Singh Kushwah, S/o Satyendra Singh Kushwah, aged about 38 years, Profession Transport – R/o Shanti Nagar Ward Kushwaha Bada, Jagdalpur Distt. Bastara P.S. Jagdalpur, Civil & Revenue Distt. Jagdalpur. C.G. (Owner)

---- Respondents

For Appellant	:	Shri Rohitashv Singh, Advocate.
For Respondents No. 1 to 3	:	Shri P.K. Tulsyan, Advocate.
For Respondent No. 5	:	Shri Ajay Chandra, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

21/01/2019

(1) This is insurer's appeal against the award dated 04.01.2014 passed by Motor Accident Claims Tribunal, Bastar at Jagdalpur in Claim Case No.237/2011 awarding total compensation of Rs.12,83,660/- along with interest @ 8% per annum from the date of application till realization, fastening liability on the Insurance Company.

(2) As per averments in the claim petition on the date of accident i.e. 25.02.2010 deceased Mr. Ludar Singh Thakur riding motor cycle bearing registration No. CG 17 B 2123 and going towards Singarbhata Vaniki Udyan with his colleague Shri R.B.S. Baghel, at that time Non-applicant No. 1/respondent No. 4, while driving the offending vehicle CG-17-H-0901 rashly & negligently, dashed the motorcycle of Ludar Singh Thakur, as a result thereof, Ludar Singh Thakur suffered grievous injuries and succumbed to these injuries.

(3) The instant appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth, “Act, 1988”) has been filed by the appellant/Insurance Company on the ground that learned Tribunal on the one hand decided issue No. 1 holding that there is no negligent on the part of the driver of the offending vehicle bearing No CG-17-AC/0901 in causing accident and on the other hand it awarded Rs. 12,83,660/- along with interest @ 8% per annum in favour of the claimants under Section 163-A of the Act, 1988.

(4) Learned counsel for the appellant/Insurance Company submits that the aforesaid amount as awarded by the Tribunal is bad and unsustainable in law as the learned Tribunal itself found that under the provisions contained in Section 166 of the Motor Vehicles Act, 1988,

the rash & negligence driving of the driver of the offending vehicle is required to be proved by producing cogent evidence but since the respondents No. 1 to 3/claimants have not proved rash and negligence driving by the respondent No. 4 -driver of the offending vehicle, therefore, Claims Tribunal ought to have dismissed the claim petition *but* the Claims Tribunal observed that compensation may be awarded and the aforesaid amount awarded under the provisions of Section 163–A of the Motor Vehicles Act, 1988 and, therefore, it is prayed that the appeal may be allowed by dismissing the claim award by the Claims Tribunal.

(5) It has also been submitted by learned counsel for the appellant on behalf of appellant/Insurance Company that provisions contained in both the sections i.e. 166 of the Act, 1988 and Section 163-A of Act, 1988 simultaneously cannot be considered together, therefore, the learned Claims Tribunal has erred in considering the application filed by the claimants under Section 163-A of the Motor Vehicle Act as they are filed under Section 166 of Act, 1988 and awarding compensation as mentioned above. It has also been submitted that there is no valid & effective driving licence was proved by the respondent No. 4/driver in his favour, therefore, breach of policy is there and the appellant/Insurance Company is not liable to pay compensation to the claimants.

(6) Per contra, learned counsel for respondents No. 1 to 3/claimants, by filing cross-objection under Order 41 Rule 22 of the CPC read with Rule 242(3) of the Chhattisgarh Motor Vehicles Rules, 1994, submits that learned Claims Tribunal has wrongly given the

finding on issue No. 1 regarding negligence on the part of the driver of the offending vehicle. He submits that as per evidence adduced by the claimants, documents of the criminal cases i.e. charge sheet filed against the Non-applicant No. 1/respondent No. 4 vide Ex.A-1 to A-9 and the aforesaid documents are not controverted by the eye witness to the incident, regarding negligence part of the driver of the offending vehicle, even the documents are not controverted and challenged by the appellant/Insurance Company and driver of the offending vehicle, Non-applicant No. 1/respondent No. 4 was also not examined himself or by the appellant/Insurance Company.

(7) It has also been submitted on behalf of the respondents No. 1 to 3/claimants that the quantum of compensation awarded by the Claimants Tribunal is also on the lower side as the appropriate multiplier and future prospect have not been considered by the Claims Tribunal as per judgment rendered by the Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680 and in the matters of Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***. He submits that looking to age of deceased, which was between 55-60 years at the relevant point of time, multiplier of 9 would be appropriate in place of 8 and looking to the age of deceased at the time of accident 15% future prospect should be added to the income of the deceased. He also submits that offending vehicle was insured with the appellant/Insurance Company and all the relevant documents i.e. driving licence, RC book, fitness certificate have been seized by the Investigating Officer and, therefore, the learned Claims Tribunal is absolutely justified in saddling

the liability of payment of compensation upon the appellant/Insurance Company, which does not call for interference in the instant appeal.

(08) I have heard learned counsel appearing for the parties and perused the material available on record including award impugned.

(09) The question of consideration in this appeal is that whether the finding given by the Claims Tribunal on issue No. 1 is against the material available on record.

(10) It is not disputed by both the parties that claimants have filed claim petition before the Claims Tribunal under Section 166 of the Act, 1988 and as per record this fact is also proved.

(11) Learned Claims Tribunal, without any pleadings and without any proof, has held in the impugned award that compensation may be awarded as per ***Structural Formula*** of the provisions contained in Section 163-A of the Act, 1988 by recording a finding in paragraph 12 & (11) of the award that respondent No. 4 is not negligent in driving the offending vehicle at the time of accident, which is bad and unsustainable in law. In the instant case, respondent No. 4 – driver of the offending vehicle and respondent No. 5 – owner of the offending vehicle did not appear before the Claims Tribunal to adduce any evidence, therefore, as per documents adduced and proved by the claimants were not controverted by the driver & owner of the offending vehicle regarding negligence part of the deceased and in absence whereof, the finding given by the Tribunal on issue No. 1 is liable to be set aside and accordingly, the learned Tribunal considered the

application under Section 163-A of the Act is set aside and the appellant Insurance is held liable to pay compensation to the claimants.

(12) The documents i.e. Exs. A-1 to A-8, which were proved by the claimants and these documents were not challenged by the appellant/Insurance Company or the driver & owner of the offending vehicle. After the prompt FIR vide Ex.A-2, offence is registered against the driver of the offending vehicle and also the property like motor cycle was seized from the spot promptly and also vide Ex. A-4, offending vehicle Truck bearing registration No. CG -17-H./0901 was seized from the spot and driver of the offending vehicle himself produced the RC book, driving licence and Insurance Policy, permit, which were seized by the police vide Ex.A-5 by which the accident had occurred. Inquest report vide Ex. A-6 and Postmortem report vide Ex. 9 were proved by the claimants and salary slip is also proved by the claimants vide Exs.P-10 and P-11; and these documents were not challenged by the appellant/Insurance Company. In these circumstances, claim petition was decided by the Claims Tribunal on preponderance of probability.

Looking to the application filed under Section 166 of the Act by the claimant and negligence of respondent No. 4/non-applicant No. 1 is proved, therefore, the application is filed under Section 166 is considered under Section 166 of the Motor Vehicle Act. Further, there is no dispute regarding income of the deceased and the learned Tribunal has already considered the income of the deceased as Rs. 19,940/- per month, therefore, this Court is of the opinion that the application filed by the Claimants before the Claims Tribunal is said to have been treated as only under Section 166 of the Act, 1988.

(13) Now, I consider the Cross Objection filed by the claimants for enhancement of the amount of compensation under award.

(14) It is not disputed by both the parties that the deceased was working as Asstt. Director under the department of State of Chhattisgarh and getting Rs.19,940 per month as per salary slip vide Exs. A-10 & A-11; and the deceased was aged about 58 years at the time of accident as per postmortem report and these facts are not disputed by both the parties. Therefore, I propose to re-compute the amount of compensation by taking into consideration the multiplier of 9 in place of 8 and in view of judgment of the Supreme Court in **Pranay Sethy** (supra), 15% of the annual income should be added thereto towards future prospect and further Rs.70,000/- should be given towards incidental heads. Thus, the claimants are held entitled in the following manner :-

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.19,940 per month.	Rs. 19,940x12= Rs. 2,39,280 per annum
02.	15% of (1) above to be added towards future prospects.	Rs. 2,39,280+ 35,892= Rs. 2,75,172/-
03.	After 1/3rd deduction towards personal and living expenses of the deceased	Rs. 2,75,172- 91,721= Rs. 1,83,451/-
04.	Multiplier of 9 to be applied	Rs. 1,83,451x9= Rs. 16,51,059/-

05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
06	**Total compensation**	**Rs. 1721059/-**

(15) Since the Tribunal has already awarded Rs.12,83,660/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,37,399/- with interest @ 8% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

(16) In the result, appeal filed by the appellant/Insurance Company, being devoid of merit, is liable to be and is hereby dismissed ***whereas*** cross objection filed by the claimants for enhancement of compensation under award is allowed in part with modification in the impugned award to the extent indicated hereinabove.

Sd/-

(Gautam Chourdiya)
Judge

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