NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1075 of 2014

1. Sushma Jaiswal W/o Late Anant Kumar Jaiswal Aged About 38 Years

2. Sweta Jaiswal D/o Late Anant Kumar Jaiswal Aged About 15 Years, Occupation Student

3. Anjali Jaiswal D/o Late Anant Kumar Jaiswal Aged About 13 years, Occupation Student

4. Sitaram Jaiswal S/o Late Mannuprasad Aged About 68 Years

5. Smt. Malti Devi W/o Sitaram Jaiswal Aged About 64 Years

Appellant Nos. 2 & 3 are Minor presented this appeal, through legal Gaurdian Mother Appellant No.1, Shushama Jaiswal Wd/o Anant Kumar Jaiswal, aged about 38 years,

All are R/o B- 692, Sector-13, N.C.L. Nigahi Pariyojna, Near D.P.S. School, Singrauli, Gopadbanas, Nigahi Project Sidhi M.P. 486884, At Present R/o Ketka Road, Surajpur, P.S. Surajpur, Revenue and Civil District Surajpur C.G.

----Appellants

Versus

1. Pradeep Pandey @ Raju S/o Chandra Pratap Pandey Aged About 23 Years, Occupation Driver, Caste Bramhan, R/o Village Kapuda, P.S. Mada, At Present R/o Near M.P.E.B., Morva, P.S. Morva, Distt. Singrauli M.P.

2. Chandra Pratap Pandey S/o R.O. Pandey Aged About 52 Years R/o M.P.E.B. Colony, Morva, R.S. Sidhi, Distt. Sidhi M.P.

3. Branch Manager, C/o Reliance Company Pvt. Ltd., 301-302, Corporate House, 3rd Building, Near Jhabas Tower, R.N.T. Marg, Indore 452001.

---- Respondents

For Appellants	Ms. Uma Sahi, Advocate.
For Respondent Nos. 1 & 2	Shri Shrawan Agrawal, Advocate.
For Respondent No.3	Shri Rohitashva Singh, Advocate.

MAC No. 1145 of 2014

- Branch Manager, Reliance General Insurance Company Limited, 301-302, Corporate House 3rd Floor, Near Jhabak Tower, R.N.T. Marg, Indore, Indore 452001, At Present Branch Office, 5th Floor, National Corporate Park, G.E. Road, P.S. Saraswati Nagar, Distt. Raipur C.G.

----Appellant

Versus

1. Sushma Jaiswal W/o Late Anant Kumar Jaiswal Aged About 38 Years

2. Sweta Jaiswal D/o Late Anant Kumar Jaiswal Aged About 15 Years (Minor)

3. Anjali Jaiswal D/o Late Anant Kumar Jaiswal Aged About 13 years 9 month Minor,

4. Sitaram Jaiswal S/o Late Mannuprasad Aged About 68 Years

5. Smt. Malti Devi W/o Sitaram Jaiswal Aged About 64 Years

   Respondent Nos. 2 & 3 through their mother Sushma Jaiswal

   All are R/o B- 692, Sector-13, N.C.L. Nigahi Pariyojna, Near D.P.S. School, Singrauli, Gopadbanas, Nigahi Project Sidhi M.P., At Present- Ketka Road, Surajpur, P.S. Surajpur, Tahsil and District Surajpur C.G.

6. Pradip Pandey @ Raju S/o Chandra Pratap Pandey, aged about 23 Years R/o village Kapuda, P.S. Mada, At Present R/o Near M.P.E.B., Morba, P.S. Morva, Distt. Singrauli, Distt. Singrauli M.P. (Driver of vehicle no.MP66-C-0317)

7. Chandra Pratap Pandey S/o R.O. Pandey R/o M.P.S.E.B. Colony, Morva, R.S. Sidhi, P.S. Morva, Distt. Sidhi, At Present Distt. Singrauli, Distt. Singrauli M.P. (Owner fo the vehicle no.MP66-C-0317)

---- Respondents

For Appellant	Shri Rohitashva Singh.
For Respondent Nos. 1 to 5	Ms. Uma Sahi, Advocate.
For Respondent Nos. 6 & 7	Shri Shrawan Agrawal, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

27/02/2019

1. As both these appeal arise out of the award dated 20.08.2014 passed by the Motor Accident Claims Tribunal, Surajpur, District Surajpur, C.G. in Claim Case No.79/2013, they are being disposed of by this common judgment.
2. As per averments in the claim petition, on 04.03.2013 the deceased Late Anant Kumar Jaiswal, aged about 42 years, earning Rs.72,218.86/- per month, working in NECL as AG-1, died in the motor vehicular accident caused due to rash and negligent driving of Bolero bearing no.MP66-C-0317 by non-applicant No.1. At the time of accident, the offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.
3. On claim petition being filed by the claimants i.e. wife, children and parents of deceased under Section 166 of the Motor Vehicles Act claiming compensation of Rs.1,41,09,295/- under various heads, the Tribunal considering the evidence led by both the parties, assessed total compensation of Rs.70,26,992/- and after deducting 25% contributory negligence on the part of the deceased awarded a compensation of Rs.52,95,244/- with interest @ 8% per annum from the date of application till realization, fastening the liability on the Insurance Company/non-applicant no.3 jointly and severally along with non-applicants no. 1 & 2.

4. **MAC No.1145/2014**: This appeal has been filed by the insurance company challenging its liability and quantum. Learned counsel for the appellant/Insurance Company submits that the Tribunal has wrongly fastened liability of satisfying the award on the Insurance Company whereas according to the evidence adduced by the Insurance Company, on the date of accident deceased was himself riding the motorcycle in rash and negligent manner but learned Tribunal only considered 25% contributory negligence on the part of the deceased. He also submits that looking to the head on collision of two vehicles deceased was equally liable for 50% contributory negligence. He further submits that compassionate appointment is already given to his wife after the death of deceased, therefore, no any loss of income is caused to the deceased's family. He also submits that pay slip of deceased is also not proved by the concerned Authority, therefore, the income considered by the learned Tribunal according to Ex.A-11 is not just and proper and needs to be reassessed suitably.

5. On the other hand, learned counsel for respondents/claimants supports the impugned award insofar as it relates to fastening of liability on the insurance company. However, the claimants have also challenged the award on the point of quantum and liability and has filed a

separate appeal i.e. MAC No.1075/2014 for enhancement of compensation.

6. **MAC No.1075 of 2014**: This appeal has been filed by the claimants for enhancement of compensation. Learned counsel for the appellants/claimants submit that the Tribunal has wrongly considered 25% contributory negligence on the part of the deceased whereas no any evidence is adduced by the non-applicants in this regard. He also submits that Tribunal has wrongly applied multiplier 14 whereas it should have been 15. Further, according to ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680*** claimants are also entitled for no future prospects.

7. Opposing the above contention, learned counsel for the Insurance Company submits that the Tribunal has already awarded compensation on the higher side and, therefore, there is no need for its enhancement by this Court.

8. Learned counsel for the respondent/owner and driver has duly assisted the Court.

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

10. So far as contributory negligence on the part of the deceased is concerned, the Tribunal considering the evidence of AW-2 Neel Ratan Jaiswal, eywitness to the accident who has stated that the accident occurred in the middle of the road, there was head on collision, and observed that looking

to the manner in which the accident occurred, it appears that had the deceased been vigilant he could have avoided the accident but since the deceased failed to do so he is liable to the extent of 25% for causing the accident. From perusal of the record, it is seen that FIR Ex.A-2 was registered against non-applicant no.1 driver under Sections 279 and 337 of IPC and after completing investigation charge sheet Ex.A-1 was filed against him for the offence under Sections 279, 337 and 304A of IPC. AW-2 Neel Ratan Jaiswal has nowhere stated that the deceased was riding the motorcycle in a negligent manner. Merely on the basis of it being a head on collision, it cannot be held that deceased was liable for the accident in any manner. No evidence whatsoever has been adduced by the non-applicants to prove negligence on the part of the deceased. Even the driver of the offending vehicle has not been examined before the Tribunal. Therefore, considering the over all facts and circumstances of the case, the manner in which the accident occurred the oral and documentary evidence available on record, this court is of the opinion that the Tribunal was not justified in holding the deceased 25% negligent in causing the accident and the said finding deserves to be set aside.

11. So far as income of the deceased is concerned, the Tribunal while considering the said issue in para 12 of the award has taken into account the statement of Shushma Jaiswal AW-1,

salary slip Ex.A-11 of the deceased for the month December, 2012, income tax form for the year 2013-14 and further considering that no evidence in the rebuttal of the above oral and documentary evidence has been adduced by the non-applicants assessed the annual income of the deceased as Rs.7,52,891/-. The said assessment is based on proper appreciation of the evidence available on record and needs no interference by this Court.

12. So far as the issue of compassionate appointment is concerned, though in para 10 wife of the deceased AW-1 Sushma Jaiswal has stated that she has got compassionate appointment but it is a well settled principle of law that the amount received by the family member of the deceased is not liable to be deducted from the income of the deceased for calculating compensation. Therefore, the said argument on behalf of the Insurance Company is rejected.

13. As regard the quantum of compensation, the Tribunal was justified in assessing the annual income of the deceased as Rs.7,52,891/- after deducting the permissible tax. However, the Tribunal has fallen an error by not granting any amount towards future prospect and considering the age of the deceased, the nature of his job and the principle of law laid down in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,*** 30% is required to be added to the annual income which comes to Rs.2,25,867/- after deducting

20% from the same towards income tax i.e. Rs.45,173/-, which comes to Rs.1,80,694/-. Thus, after deducing income tax, the total annual income of the deceased comes to Rs.9,33,585/-.

14. Hence, keeping in view the total annual income of the deceased after income tax deduction, the dependency and the decisions of Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121 &*** *Pranay Sethi (supra), t*he claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Annual Income of the deceased with 30% future prospect after deduction of income tax	Rs.9,33,585/- per annum
02.	1/3 deduction towards personal and living expenses of the deceased	Rs.3,11,195/- Rs.9,33,585 – Rs.3,11,195 = Rs.6,22,390/-
03.	Multiplier of 14 to be applied	Rs.87,13,460/-
04.	Towards loss of estate, funeral and loss of spousal consortium	Rs.70,000/-
	Total compensation	**Rs.87,83,460/-**

Since the Tribunal has already awarded Rs.52,95,244/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.34,88,216/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

11. In the result:

- **<u>MAC No.1145 of 2014</u>** preferred by the insurance company being without any substance is liable to be dismissed and is, accordingly, dismissed.

- **<u>MAC No.1075 of 2014</u>** filed by the claimants is allowed with modification in the impugned award to the above extent that the claimants shall be entitled for additional compensation of Rs.34,88,216/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh