

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 611 of 2014

- Authorised Officer Future General India Insurance Co. Ltd. 001 001, Trade Plaza, 414 Prabha Devi, Mumbai, Branch Manager, Branch Office- Future General India Insurance Co. Ltd., Shop No. 1, Dhuppad Petrol Pump, Raipur, P.S. Saraswati Nagar, Distt. Raipur C.G.

---- Appellant/insurer

Versus

1. Smt. Rahi Chouhan W/o Late Kaushal Chouhan Aged About 33 Years
2. Ranu Chouhan S/o Late Kaushal Chouhan Aged About 14 Years Minor,
3. Rohni Chouhan D/o Late Kaushal Chouhan Aged About 13 Years Minor,
4. Dipak Chouhan S/o Late Kaushal Chouhan Aged About 7 Years Minor,
5. Sunita Chouhan D/o Late Kaushal Chouhan Aged About 5 Years Minor,
6. Smt. Mehatarin Bai W/o Late Firtu Chouhan Aged About 65 Years
Respondents No. 2 to 5 minors through their mother Smt. Rahi Chouhan, All R/o Durga Chawh, ACC Labour Camp, Jamul, Ward No.12, PS Jamul, Tahsil Bhilai, Civil and Revenue Distt. Durg (CG). - *Claimants*
7. Rajesh Banchhor S/o Kishore Banchhor Aged About 36 Years R/o Basin, Post- Bhilai Karanja, P.S. Durg, Distt. Durg C.G. (Owner and Driver)

---- Respondents

For Appellant	:	Shri Rohitashva Singh, Advocate.
For Respondent Nos. 1 to 6	:	Shri Tarun Dadsena, Advocate.
For Respondent No.7	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

06/03/2019

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 26.2.2014 passed by First Additional Claims Tribunal, Durg (CG) in Claim Case No.114/2010 awarding total compensation of Rs.9.30 lacs with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.2/insurance company jointly and severally along

with non-applicant No.1/driver & owner.

02. As per claim petition, on 22.4.2010 Kaushal Chouhan, aged 34 years, earning Rs.3300/- per month as a mason, was going on motorcycle bearing No. CG 07 LS 8626 as a pillion rider, which was being ridden by Chitrasen Chouhan, from Pahandor towards Labour Camp, Jamul. However, near Ghasidas Nagar, ACC Square turning, non-applicant No.1 Rajesh Banchhor by riding motorcycle bearing No. CG 07 LP 4464 (offending vehicle) in a rash and negligent, dashed the motorcycle of Kaushal Chouhan, as a result of which Kaushal Chouhan suffered grievous injuries and succumbed to the same on the way while being taken to hospital for treatment.

03. On claim petition being filed by the claimants, wife, children and mother of the deceased, under Section 163A of the Motor Vehicles Act, 1988 (in short "the Act") the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurance company submits that the claim petition was filed under Section 163A of the Act and therefore, compensation has to be awarded as per structured formula given in Second Schedule under the said section. However, the Tribunal ignoring the provisions of Section 163A of the Act and Second Schedule, awarded Rs.25,000/- for funeral expenses, Rs.1 lac for loss of spousal consortium; Rs. 1 lac for loss of estate and Rs.4 lacs for loss of love and affection to children of the deceased, which is against the compensation provided under Second Schedule of Section 163A of the Act. Therefore, the aforesaid amount deserves to be reduced suitably.

05. On the other hand, learned counsel for the respondents/claimants supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

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

07. Admittedly, the claim petition was filed under Section 163A of the Act by the claimants before the Tribunal and compensation in such claim petition is granted as provided in Second Schedule under Section 163A of the Act. From perusal of the award, it is found that the Tribunal has awarded compensation towards funeral expenses, loss of consortium, loss of estate and love and affection very much on the higher side, which is not permissible under the law. As per Second Schedule, Rs.2000/- is to be awarded for funeral expenses, Rs.5,000/- for loss of consortium if beneficiary is the spouse and Rs.2,500/- for loss of estate. However, considering the decisions of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680*** and the increase in price index since 1994, this Court is of the opinion that a lumpsum of Rs.70,000/- under the conventional heads would be justified in this case. So far as award of Rs.4.05 lacs towards loss of dependency is concerned, considering the facts and circumstances of the case, the same is kept intact. Thus, the claimants are entitled for a total compensation of Rs.4.75 lacs with interest @ 6% per annum from the date of application till realization.

08. In the result, the appeal is allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge