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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 739 of 2013

1. Lalmani Bai Wd/o Late Jangiram Uranv Aged About 55 Years R/o Sondbar, P.S. And Tah. Ambikapur, Distt. Surguja C.G.
2. Ramesh Kumar S/o Late Jangiram Uranv Aged About 37 Years R/o Sondbar, P.S. And Tah. Ambikapur, Distt. Surguja C.G.
3. Rakesh Chandra Bhagat S/o Late Jangiram Uranv Aged About 30 Years R/o Sondbar, P.S. And Tah. Ambikapur, Distt. Surguja C.G.

---- Appellants

Versus

1. Sukhandas Rajwade S/o Shri Gudandas Rajwade Aged About 47 Years R/o Village Bhitthikala, P.S. And Tah. Ambikapur, Distt. Surguja C.G. (Owner of Tractor No. C.G. 15 AE/0815)
2. Bhajan Das S/o Shivdas Panika Aged About 35 Years R/o Shivpur, P.S. Darima, Tah. Ambikapur, Distt. Surguja C.G. (Driver of Tractor No. C.G. 15 AE/0815)
3. The Branch Manager iffco Tokio General Insurance Company Ltd., Lalganj Shopping Mall, 3rd Floor, G.E. Road, Ring Road, Raipur, Distt. Raipur C.G. (Insurer of Tractor No. C.G. 15 AE/0815)

---- Respondents

For Appellants:	: Shri Vikrant Pillay, Advocate .
For Respondents No. 1 and 2:	: None, though served.
For Respondent No. 3:	:Shri Amrito Das along with P. Acharya, Advocate .

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J

Award On Board

03.12.2019

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act of 1988') questioning the legality and validity of the award dated 26.04.2013 passed by the Third Additional Motor Accident Claims Tribunal, Ambikapur District Sarguja in Claim Case No.210 of 2012 whereby the learned Claims Tribunal while allowing the claim in part awarded total amount of compensation to the tune of Rs. 72,000/-

(Rupees Seventy Two Thousand) with 6 % interest per annum from the date of filing of the claim petition till its realisation. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 27.10.2011, at about 09:30 AM, deceased Jangiram Uranv was returning by his bicycle to Ambikapur and as soon as he reached near the Barnai Nala of Village Sandband, it was dashed vehemently from its back side by the offending vehicle "Tractor" bearing its Registration No. C.G. 15-A-E/0815 which was owned by Non-Applicant No. 1 Sukhandas, insured with Non-Applicant No. 3 Iffco Tokiyo, General Insurance Company Limited was being driven in a rash and negligent manner by its driver Bhajan Das, Non-Applicant No. 2. As a result of which, the alleged accident occurred and the deceased sustained serious injuries and during the course of his treatment he expired in the hospital, giving rise to the institution of the claim petition under Section 166 of the Act of 1988 by the Claimants, claiming total amount of compensation to the tune of Rs.8,80,000/- (Rs. Eight Lakhs Eighty Thousand Only) under various heads by submitting *inter alia* that the deceased Jangiram after his retirement was involved in agricultural business by holding 2 acres of land and used to earn Rs.4,000/- (Rupees Four Thousand Only) per month.

3. Non-Applicants have contested the aforesaid claim. According to Non-Applicants No. 1 and 2, since the vehicle in question was being driven by his driver who was holding the effective and valid driving license, therefore, in case of any liability being fastened, the same could be

indemnified by the insurance company. While Non-Applicant No. 3, the insurer refuted the claim on the ground that the driver of the alleged offending vehicle was not holding the effective and valid driving license, therefore, no liability could be fastened upon it.

4. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 27.10.2011 resulting the sad demise of Jangiram. It held further that the driver of the alleged offending vehicle was holding effective and valid driving license. In consequence, while fastening the liability upon the Insurance Company awarded total amount of compensation to the tune of Rs.72,000/- with 6% interest per annum from the date of filing of claim petition till its realisation.

5. Being aggrieved, the claimants have preferred this appeal. Shri Pillay, learned counsel appearing for the Appellants submits that while passing the award impugned, the Claims Tribunal has committed an illegality in holding that the deceased was not earning anything after his retirement and thereby erred in awarding the meagre amount of compensation. While inviting attention to the statements of Lalmi Bai, examined as Applicant Witness No. 1, the widow of deceased Jangiram and the statement of Ramesh Kumar and while referring further to the documentary evidence like, B-1 Kishtbandi Khatauni (Ex. P-10), it is contended that the deceased was involved in the agricultural business after his retirement as a peon and used to earn Rs. 4,000/- per month. However, without considering these un-rebutted material piece of evidence, the Claims Tribunal has erred in passing the award impugned without assessing the monthly income of the deceased as such.

6. Countering the aforesaid contention, learned counsel appearing for Respondent No. 3 while supporting the award impugned submits that since the deceased's sons were involved in the agricultural business and, therefore, the Claims Tribunal has not committed any illegality in arriving at a conclusion that the deceased was not used to earn anything from agricultural business.

7. I have heard learned counsel for the parties and perused the entire record carefully.

8. From perusal of the record, it appears that the amount of compensation as awarded by the Claims Tribunal without considering the monthly income of the deceased deserves to be modified and/or enhanced. It appears from the perusal of the record that the deceased Jangiram after his retirement as a peon was involved himself in the agricultural business as he owned 2 acres of land as evidenced by the documentary evidence Ex. P-10, Kishtbandi Khatauni. The evidence of his widow and sons, who were examined as Applicant Witness Nos. 1 and 2, it is evident that from his agriculture business he used to earn Rs. 4,000/- per month and these oral as well as documentary evidence could not have been rebutted in their cross examinations.

9. Considering the aforesaid evidence, vis-a-vis, the documentary evidence marked as Ex.P.10, it appears that the deceased engaged himself after his retirement in farming and used to earn Rs.4,000/- per month, yearly Rs.48,000/- (Rupees Fourty Eighty Thousand Only) and that by deducting half of it, the yearly dependency would come to Rs.24,000/- (Rupees Twenty Four Thousand Only). Since the deceased was 62 years old at the time of accident, the proper multiplier would be

7, in view of the principles laid down in the matter of ***Sarla Verma (Smt) and others*** vs. ***Delhi Transport Corporation and another*** reported in **(2009) 6 SCC 121**. By applying multiplier of 7, the total dependency would, thus arrived at Rs.1,68,000/- (Rupees One Lakh Sixty Eight Thousand Only). In addition to this, the Claimants would be entitled to a sum of Rs. 70,000/- towards conventional heads as under:-

	Head of Mode	Amount
1.	loss of consortium to wife	Rs.40,000/-
2.	loss of funeral expenses	Rs.15,000/-
3.	loss of estate	Rs.15,000/-
	Total-	Rs.70,000/-

10. Thus, the claimants would be entitled to the total amount of compensation to the tune of Rs.2,38,000/- (Rupees Two Lakhs Thirty Eight Thousand Only). instead of Rs. 72,000/- as assessed by the Claims Tribunal along with interest at the rate of 6% per annum from the date of the filing of claim petition till its realisation.

11. The appeal is, accordingly, allowed in part to the extend indicated herein above. As far as, the other observations as made by the Claims Tribunal are concerned, they shall remain intact. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE

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