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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 745 of 2014**

- National Insurance Company Limited, Through- Branch Manager, Branch Office, Rajnandgaon, C.G.

----Appellant**Versus**

1. Smt. Bisahin Bai W/o Late Dular Singh Netam Aged About 60 Years, Caste Gond,
2. Deepak Kumar S/o Late Guman Singh Netam Aged About 24 Years, Caste Gond,
3. Ku. Deepmala D/o Late Guman Singh Netam Aged About 20 Years, Caste Gond,
4. Praveen Kumar S/o Late Guman Singh Netam Aged About 18 Years, Caste Gond,

Respondents no. 1 to 4 are resident of village Sangli, P.S. And Tahsil Mohla, Distt. Rajnandgaon C.G.

5. Lalliram S/o Fatturam Aged About 40 Years R/o Bharritola, Now R/o Village- Matewa, P.S. And Tahsil Mohla, District Rajnandgaon C.G.
6. Santram Lodhi S/o Jeeturam Lodhi Aged About 40 Years, Through Shriram Heights Shankar Nagar, Raipur, R/o Village Achholi, Tahsil and P.S. Dhamdha, Distt. Durg C.G.

---- Respondents

For Appellant	Shri Goutam Khetrapal, Advocate.
For Respondent Nos. 1 to 4	Shri Samir Singh, Advocate along with Shri A.L. Singroul, Advocate.
For Respondent Nos. 5 & 6	None.

MAC No. 746 of 2014

- National Insurance Company Limited, Through- Branch Manager, Branch Office, Rajnandgaon C.G.

----Appellant**Versus**

1. Tularam Baghel S/o Anandram, Caste Gond, Aged About 55 Years R/o Nadekal, Post- Marri, P.S. And Tah. Mohla, Distt. Rajnandgaon C.G.

2. Lalliram S/o Fatturam Aged About 40 Years R/o Bharritola, Now R/o Village- Matewa, P.S. And Tah. Mohla, Distt. Rajnandgaon C.G.
3. Santram Lodhi S/o Jeeturam Lodhi Aged About 40 Years, Through- Shriram Heights Shankar Nagar, Raipur, R/o Achholi, Tah. And P.S. Dhamdha, Distt. Durg C.G.

---- Respondents

For Appellant	Shri Goutam Khetrapal, Advocate.
For Respondent No.1	Shri Samri Singh, Advocate along with Shri A.L. Singroul, Advocate.
For Respondent Nos. 2 & 3	None.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

18/03/2019

1. As both these appeal filed by Insurance Company/non-applicant no.3 arise out of the award dated 03.12.2013 passed by the Additional Motor Accident Claims Tribunal (FTC), Rajnandgaon, C.G. in Claim Case No.19/2012 (MAC No.746/2014) and Claim Case No.21/2012 (MAC No.745/14), involving the same vehicle, they are being disposed of by this common judgment.
2. As per averments in the claim petitions, on 23.11.2011 the deceased Lomendra, aged about 27 years, earning Rs.9,000/- per month, as Driver and deceased Guman, aged about 47 years, earning Rs.6000/- per month, as Labour, died in the motor vehicular accident caused due to rash and negligent driving of Pickup bearing no. CG04-Z-0987 by non-applicant No.1/respondent no.5. At the time of accident, the offending vehicle was also owned by non-applicant no.2/respondent no.6 and insured with non-applicant no.3/appellant herein.
3. On claim petition i.e. Claim Case No.21/12 being filed by the

claimants i.e. widow mother and children of against the death of Guman Singh u/s 166 of the Motor Vehicles Act claiming compensation of Rs.19,83,000/- under various heads, the Tribunal considering the evidence led by the parties, by the impugned award granted a total compensation of Rs.3,67,000/- with interest @ 6% p.a from the date of application till its realization, fastening the liability on Insurance Company/non-applicant no.3 jointly and severally along with non-applicant nos. 1 & 2. On claim petition i.e. Claim Case No.19/12 being filed by the claimant i.e. father against the death of Lomendra u/s 166 of the Motor Vehicles Act claiming compensation of Rs.39,93,000/- under various heads, the Tribunal considering the evidence led by the parties, by the impugned award granted a total compensation of Rs.4,33,000/- with interest @ 6% p.a. from the date of application till its realization, fastening the liability on Insurance Company/non-applicant no.3 jointly and severally along with non-applicant nos. 1 & 2.

4. MAC No.745 of 14 arises out of claim case no.21/12 whereas MAC No.746 of 14 arises out of claim case no.19/12.
5. MAC No.745 of 2014:- Learned counsel for the appellant submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award to the extent that the Tribunal was not justified in applying multiplier of 17 instead of 15 and further erred in deducting 1/3 towards personal and living expenses of the deceased whereas the claimants are the mother and major son

of the deceased. Further, he submits that the Tribunal has not considered the issue of contributory negligence whereas considering the manner in which the accident occurred, the deceased Guman Singh was equally liable for the accident and the amount already awarded under the conventional heads is also on the higher side. Hence, the amount awarded by the Tribunal is liable to be reduced suitably.

6. Learned counsel for the claimants opposes the contention made by the appellant's counsel.
7. In MAC No.746 of 2014:- Learned counsel for the appellant submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award to the extent that the Tribunal was not justified in deducting 1/3 towards personal and living expenses of the deceased whereas the claimant in claim case no.19/12 is the father of the deceased. Further, the Tribunal has not considered the issue of contributory negligence on the part of the deceased and the amount already awarded under the conventional heads is also on the higher side. Hence, the amount awarded by the Tribunal is liable to be reduced suitably.
8. Learned counsel for the claimant opposes the contention made by the appellant's counsel.
9. So far as income of the deceased persons considered by the Tribunal as Rs.3,600/- per annum on notional basis is concerned, since claimants could not adduce any evidence regarding annual income of the deceased persons, the Tribunal was justified in

assessing the income of the deceased persons as per minimum wages prevalent at the relevant time. Further, considering the age of the deceased Lomendra in between 20-25 and the age of deceased Guman Singh in between 45-50 on the basis of medical documents and other material available on record, the Tribunal was justified in applying multiplier of 17 and 13 respectively. Likewise, the amount awarded by the Tribunal of Rs.10,000/- towards funeral expenses, Rs.10,000/- towards loss of filial consortium and Rs.5000/- towards loss of consortium in claim case no.19/12. Thus, the Tribunal awarded Rs.4,33,000/- which appears to be just and proper. Similarly, the amount of Rs.10,000/- awarded towards funeral expenses, Rs.10,000/- awarded to the mother of the deceased towards loss of filial consortium, Rs.10,000/- each to claimants no. 2,3 & 4 towards loss of parental consortium and Rs.5,000/- towards loss of estate by the Tribunal in claim case no.21/12. Thus, the Tribunal awarded Rs.3,67,000/- which cannot be said to be on higher side.

10. So far as deduction towards personal and living expenses of the deceased is concerned, in claim case no.21/12 considering the number of dependents i.e. 4, who are widow mother and children of deceased and that no evidence is there on record to show that they were not dependent upon the deceased in this case & in claim case no.19/21 considering the number of dependent i.e. 1 father of the deceased and the fact that no amount towards future prospect has been granted to the claimants, the Tribunal has

rightly deducted 1/3 towards personal and living expenses of the deceased persons which cannot be said to be erroneous.

11. So far as contributory negligence on the part of the deceased is concerned, neither any such issue was framed by the Tribunal nor any evidence in respect thereof was adduced by the Insurance Company before the Tribunal, therefore, this Court finds no substance in the argument of counsel for the Insurance Company regarding contributory negligence on the part of either of the deceased persons.

12. In the result, both the appeals filed by the Insurance Company being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge