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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1568 of 2016

- Shri Ram General Insurance Co. Ltd., Address- Fourth Floor Maruti Heights G.E. Road Mohaba Bazar, Raipur (C.G.) through Branch Manager

---- Appellant/Insurer/Non-applicant No.3

Versus

1. Shri Dhanesh Kumar Daharia S/o Shri Siya Ram Daharia, Aged 25 years
2. Chamanlal S/o Shri Siyaram Daharia, Aged 23 years

   Both resident Gram Tuta, Thana Abhanpur, Tehsil & District Raipur (C.G.)

   (Claimants)
3. Mohd Gas S/o Fakir Moh., aged 59 years, Resident M.M. Pahari Mandak, Rajendra Nagar Thana Rajendra Nagar, District Rangaraddy Telangana

   (Driver of Truck A.P.12/V/7774)/Non-applicant No. 1)
4. Kasim Mohd. S/o Ahmad Hussain, Aged 40 years, Resident 6-13-187 Indra Nagar Hasan Nagar Ward No. 5 Rajendra Nagar, Hydrabad Andhra Pradesh

   (Owner of Truck A.P.12/V/7774)/Non-applicant No.2)

---- Respondents

And

Miscellaneous Appeal (Civil) No. 80 of 2017

1. Shri Dhanesh Kumar Dahariya, Aged about 25 years, S/o Shri Siyaram Dahariya
2. Chaman Lal, Aged about 23 years, S/o Shri Siyaram Dahariya

   Both are R/o Village- Tuta, Thana Abhanpur, Tahsil and District Raipur (C.G.)

---- Appellant/Claimants

Versus

1. Moh. Gous, Aged about 59 years, S/o Fakir Moh., R/o M.M. Pahadi Mandak Rajendra Nagar, Thana Rajendra Nagar, District Rangareddi Telgana

   (Driver of the offending vehicle No. A.P.12/V/7774)/Non-applicant No.1
2. Kasim Moh., Aged about 40 years, S/o Ahmad Husain, R/o 6-13-187 Indira Nagar, Hasan Nagar, Ward No. 5 Rajendra Nagar, Hydrabad (Andra Pradesh)

   (Owner of the offending vehicle No. A.P.12/V/7774)/Non-applicant No.2
3. Shri Ram General Insurance Company Limited Through Branch Manager, Address- 4th Mala Maruti Heights G.E. Road Mohaba Bazar Raipur (C.G.)

   (Insurer of the offending vehicle No. A.P.12/V/7774)/Non-applicant No.3

---- Respondents

For Claimants	:	Shri A.L. Singroul, Advocate
For Non-applicants No. 1 & 2	:	None
For Non-applicant No. 3	:	Shri Deepak Gupta, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

07.03.2019

1. As both above appeals arise out of the same accident occurred on 08.03.2015 involving the vehicle Truck bearing registration No. A.P.-12/V/7774 (hereinafter referred to as the 'offending vehicle'), they are being disposed of by this common judgment.

2. M.A.(C) No. 1568 of 2016 has been filed by the Insurance Company/non-applicant No.3 challenging the dependency and the quantum of compensation. M.A.(C) No. 80 of 2017 has been filed by the Claimants seeking enhancement of compensation. Both appeals arise out of common award dated 03.08.2016 passed by the Sixth Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No. 229 of 2015 awarding compensation in favour of the Claimants of Rs.5,62,000/- with interest @ 6% per annum from the date of claim application till realization, fastening liability upon non-applicant No. 3/Insurance Company alongwith non-applicants No. 1 & 2/driver & owner jointly and severally to pay compensation to the Claimants.

3. Brief facts of the case are that the Claimants are sons of deceased-Kankaiya Bai. On the date of accident i.e. 08.03.2015 Kankaiya Bai was going to Village Tuta from Village Chatauna with one Dildas Dhritlahre by motorcycle bearing registration No. CG-04/CS/7918 in which the deceased was pillion rider. When they reached in the area of police station Mandir Hasaud near *Dharamkata,* non-applicant No.1, driver of the offending vehicle Truck bearing registration No. A.P.-12/V/7774, owned by non-applicant No.2 and was insured with non-applicant No.3, driving the said vehicle in a rash and negligent manner, dashed the motorcycle. As a result thereof, Kankaiya Bai sustained grievous multiple injuries on his head and other parts of the body and succumbed to those injuries. At the time of accident, deceased Kankaiya Bai was a vegetable vendor and was earning Rs.800/- per day.

4. Learned counsel for the Insurance Company/non-applicant No.3 submits that the Claimants are not dependant on the deceased because they are major sons, aged about 25 years & 23 years. He also submits that the amount awarded by the Tribunal towards funeral expenses of Rs.25,000/- and Rs.1,00,000/- towards equitability, fairness, reasonableness and non-arbtrariness is on the higher side which deserves to be reduced. He further submits that looking to the age of deceased in between 40-45 years, the Tribunal has granted 30% future prospects to the Claimants whereas it should have been 25%. In support of above contention, reliance has been placed on the decisions of the Hon'ble Court in the matters of ***Smt. Sarla Verma and others*** Vs. ***Delhi Transport Corporation and another, (2009) 6 SCC 121*** and ***National Insurance Co. Ltd.*** Vs. ***Pranay Sethi, (2017) 16 SCC 680***.

5. Learned counsel for the Claimants submits that the deceased was a vegetable vendor, was earning Rs.800/- per day, but the income of the deceased has wrongly been considered by the Tribunal as Rs.4,000/- per month whereas it should have been considered at least Rs.8,000/- per month. He also submits that 50% deduction towards personal and living expenses of the deceased is also against the law and it should have been 1/3rd. He further submits that no amount towards loss of parental consortium has been granted to the Claimants. In support of above contention, reliance has been placed on the decisions of the Hon'ble Court in the matters of *Smt. Sarla Verma* (supra) and ***Magma General Insurance Co. Ltd.*** Vs. ***Nanuram @ Chuhru Ram and others in Civil Appeal No. 9581/2018 arising out of SLP (Civil) No. 3192/2018.***

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

7. So far as argument advanced by learned counsel for the Insurance Company/non-applicant No.3 relating to the Claimants being aged about 25 & 23 years, not dependant on the deceased is concerned, as per para-19 of the impugned award, the deceased was deserted by her husband since 20 years and the Claimants have no knowledge of whereabouts of their father. Therefore, the Claimants were dependant on the deceased because they are unmarried and as per evidence of Claimant No.1 (AW-1), he passed the examination of B.A. IInd year and Claimant No.2 was appearing in the exam of 10^{th} Class at the time of accident. No contrary evidence has been adduced by the Insurance Company that the Claimants are not dependant on the deceased before the Tribunal. Considering the facts and circumstances of the case, it was proved by the Claimants that they were fully dependant on the deceased.

8. As regard income of the deceased, the Claimants have pleaded that the deceased was earning Rs.800/- per day as vegetable vendor, but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as 5,500/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. in between 40-45 years, the dependency, the nature of her job and the decisions of Hon'ble Supreme Court in *Pranay Sethi*; *Smt. Sarla Verma* and *Magma General Insurance Co. Ltd.* (supra), the Claimants are held entitled to compensation in the following manner:

Sl.No.	**Heads**	**Calculation (In rupees)**
1.	Income of the deceased @ Rs.5,500/- per month	Rs.66,000/- per annum
2.	25% towards future prospects added to annual income	(Rs.66,000/- + Rs.16,500/-) Rs.82,500/-
3.	1/3rd deduction towards personal and living expenses of the deceased	(Rs.82,500/- – Rs.27,500/-) Rs.55,000/-
4.	Multiplier of 14 applied (as applied by the Tribunal)	Rs.55,000/- x 14= Rs.7,70,000/-

5.	Conventional Heads: Loss of estate & funeral expenses	Rs.30,000/-
6.	Loss of parental consortium @ Rs.25,000/- to each of the Claimants	Rs.50,000/-
	Total Compensation	**Rs.8,50,000/-**

Since the Tribunal has already awarded Rs.5,62,000/-, after deducting the same from the above amount, the Claimants are held entitled for additional compensation of Rs.2,88,000/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

9. In the result, the appeal i.e. M.A.(C) No. 80 of 2017 filed by the Claimants is allowed in part with modification in the impugned award to the above extent and the appeal i.e. M.A.(C) No. 1568 of 2016 filed by the Insurance Company/non-applicant No.3 is dismissed.

10. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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