NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 735 of 2014

1. Sri Ram General Insurance Company Limited Through Official In Charge/Employee Plot No. 1, Maruti Height Fourth Flore, G.E. Road, Raipur C.G.

----Appellant

Versus

1. Smt.Sangita Sahu W/o Late Krishna Kumar Sahu Aged About 40 Years
2. Harish Kumar S/o Late Krishna Kumar Sahu Aged About 17 Years
3. Manish @ Madhusudan S/o Late Krishna Kumar Sahu Aged About 15 Years
4. Roshan Kumar S/o Late Krishna Kumar Sahu Aged About 13 Years
5. Smt. Shyam Bai Natural Guardian Mother of Appellant Nos. 2 to 4

   All are R/o Ninwa, Thana- Dharshiva, Distt. Raipur C.G.

   Dhrindra Kumar Sinha S/o Santram Sinha R/o Saragaon, Thana-Kharora, Distt. Raipur C.G.
6. Manoj Kumar Verma S/o Ghanaram Verma R/o Manoj Bhavan, Gandhi Chauk, Kharora, Thana- Kharora, Distt. Raipur C.G.

---- Respondents

For Appellant	Shri Deepak Gupta, Advocate.
For Respondent Nos. 1 to 4	Shri Amiyakant Tiwari, Advocate.
For Respondent No.5	Shri C.R. Sahu, Advocate.
For Respondent No.6	None.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

01/04/2019

1. This appeal is by the Insurance Company against the award dated 28.04.2014 passed by 7th Additional Motor Accident Claims Tribunal, Raipur, District Raipur C.G. in Claim Case No.178/2013 awarding total compensation of Rs.4,13,415/- with interest @ 6

per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

2. Respondents/Claimants have filed cross objection under Order 41 Rule 22 of CPC seeking enhancement of compensation.

3. As per claim petition, on 15.02.2013 deceased Krishna Kumar Sahu, aged about 42 years, earning Rs.40,000/- per annum by running grocery shop died in the motor vehicular accident involving Bus bearing no. CG04-E-2774 driven by Dhrindra Kumar Sinha/non-applicant no.1. At the time of accident, vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.

4. On claim petition being filed by the claimants i.e. wife and children of the deceased under Section 163A of the Motor Vehicles Act for compensation to the tune of Rs.8,10,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned above in para 1 of this judgment.

5. Counsel for the appellant has assailed the award only on the sole ground that the compensation awarded by the Tribunal without there being any evidence is on the higher side and needs to be reduced suitably.

6. On the other hand learned counsel for the respondents/claimants submits that amount awarded by the Tribunal is not on the higher side, therefore, he has also filed cross objection in this appeal seeking enhancement of the same. He also submits that at the time of accident deceased was earning Rs.40,000/- per annum, but learned Tribunal only considered Rs.36,000/- per annum,

whereas it should have been Rs.40,000/- per annum as per minimum wages at the relevant time and that no amount towards future prospect has been granted to the claimants.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121 & National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

7. Learned counsel for the respondent no.5 supports the impugned award.

8. Learned counsel for the appellant/Insurance Company submits that there is no need to enhance the award as per the cross objection filed by the claimants.

9. Heard both the parties on appeal as well as on cross objection and perused the material available on record.

10. The only issue to be considered by this Court in the appeal filed by the Insurance Company as well as the cross objection filed by the claimants, as the quantum of compensation assessed by the Tribunal.

11. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.40,000/- per annum by running grocery shop 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 Rs.40,000/- per annum as per minimum wages at the relevant time. Further, the Tribunal was

also not justified in ignoring the future prospect to the claimants which should have been 25% in the present case as the deceased was 48 years of age. Therefore, keeping in view the decisions of the Hon'ble Supreme Court in *Sarla Verma & Pranay Sethi*, the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased	Rs.40,000/- per annum
02.	25% of (i) above to be added towards future prospects.	Rs.10,000/- Rs.40,000/- + Rs.10,000 = Rs.50,000/-
03.	1/3 deduction towards personal and living expenses of the deceased	Rs.16,666/- Rs.50,000 - Rs.16,666 = Rs.33,334/-
04.	Multiplier of 13 to be applied	Rs.4,33,342/-
05.	Towards loss of estate	Rs.2,500/- (as awarded by the Tribunal)
06.	Towards funeral expenses	Rs.2,000/- (as awarded by the Tribunal)
07.	Towards loss of consortium	Rs.5,000/- (as awarded by the Tribunal)
08.	For Medical Expenses	Rs.91,915/- (as awarded by the Tribunal)
	Total Compensation	**Rs.5,34,757/-**

Since the Tribunal has already awarded Rs.4,13,415/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.1,21,342/- with interest @ 6%

per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

12. In the result, the appeal filed by the Insurance Company being without any substance is hereby dismissed. However, the cross objection filed by the claimants is allowed with modification in the impugned award to the above extent.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh