NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1073 of 2018

1. Royal Sundaram Alliance Insurance Co. Ltd. Through Manager, Branch Office, Raj Chamber, 4th Floor, Under Mova Over Bridge, Thana Pandri Mova District Raipur Chhattisgarh. (**Insurer Of Vehicle No. C.G. - 04-H.M.4940**)

---- Appellant

Versus

1. Smt. Meena Temburkar W/o Late Rajendra Kumar Temburkar Aged About 48 Years,

2. Ku. Priti Temburkar D/o Late Rajendra Temburkar Aged About 27 Years,

3. Vivek Temburkar S/o Late Rajendra Temburkar Aged About 24 Years,

   All are R/o House No. P-15, Dubey Colony, Mova Raipur Chhattisgarh. (**Claimants**)

4. Vivek Chandak S/o Ganesh Chandak, Aged About 20 Years R/o A - 602, Cool Home, Daldal Seoni, Mova Tahsil And District Raipur Chhattisgarh. (**Driver Of Vehicle No. C.G. -04-H.M. 4940**)

5. Suresh Kumar Jethwani S/o Navalmal Jethwani, Address - Reena Electronics, Shop No. 114, Shahid Smarak Complex, Raipur Chhattisgarh. (**Owner Of Vehicle No. C.G. - 04-H.M. 4940**)

---- Respondents

For Appellant	:	Shri Rohitashva Singh, Advocate.
Respondent No. 1 to 3	:	Shri Malay Kumar Bhaduri, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

14/05/2019

1. This appeal is preferred by the Insurance Company/non-applicant No. 3 under Section 173 of the Motor Vehicles Act, 1988 against the award dated 16/04/2018 passed by Second Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No.

186/2016 awarding total compensation of Rs. 56,94,773/- with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicants No. 1, 2 & 3 Driver, Owner and Insurance Company jointly and severally.

2. As per claim petition, on 27/11/2015 around 05:10 AM deceased Rajendra Temburkar, aged about 51 years earning Rs. 60000/- per month as Head Cashier in Punjab National Bank, was seating on his motorcycle bearing No. CG04 A 7302 to cross the road near Friends colony, Vidhan Sabha Road at divider, non-applicant No. 1/Vivek Chandak driver of offending vehicle Car bearing No. CG04 HM 4940 rashly and negligently dashed the motorcycle of Rajendra Temburkar. As a result of this accident, Rajendra Temburkar sustained grievous injury and died during treatment in Balaji Super Specialty Hospital, Raipur. The vehicle in question was owned by non-applicant No. 2/Suresh Kumar Jethwani and insured with non-applicant No. 3/Royal Sundaram Alliance Insurance Co. Ltd.

3. On claim petition filed by claimants' wife and children of deceased under section 166 of Motor Vehicles Act, 1988 the Tribunal considered the evidence led by the parties and passed an award as mentioned above.

4. Learned counsel for the appellant/Insurance Company submits that he has raised various grounds in the memo of appeal, however, he is not pressing of those grounds and is assailing the award of the Tribunal in the grounds :

i) that on the part of rashly and negligently driving the Car by non-applicant No. 1 is not proved, therefore, the application filed under section 166 of Motor Vehicles Act is not tenable.

ii) that future prospect of 30% has wrongly been applied and considering the age of the deceased i.e 51 years and permanent salary paid employee, it should have been 15%.

iii) that reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Surendra Kumar Arora & Another V/s Manoj Bisla & Others, (2012) 4 SCC 552,*** it has been argued that since the claim petition was filed under section 166 of the Motor Vehicles Act the entire responsibilities proving the act of driver rashly and negligently driven by the driver of offending vehicle was on the claimants and since /that was not adducing cogent evidence by the claimants, the Tribunal was not justified in fastened liability on the Insurance company.

5. Learned counsel for the respondents/claimants submits that as per evidence adduced by Meena Temburkar (AW-2) & Balaram Sahu (AW-3), who are eye witness of accident proved this fact that driver of Car (offending vehicle) droved Car rashly and negligently dashed the motorcycle of deceased Rajendra and due to accident he died. Therefore, no substance in contents made by counsel for the appellant only looking to the age of 51 years of deceased as per Pranay Sethi 15% future prospect is applicable thus no issue, it is settled view.

6. No counter appeal or cross objection has been filed by the

respondent as submitted by counsel for the parties.

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

8. First consider in this case the rashly and negligently vehicle is driven by non-applicant No. 1 is proved by Balaram Sahu (AW-3) and no any contrary evidence given by the respondent Driver, Owner or Insurance Company. Looking to the Final Report (Ex. P-4), FIR (Ex. P-5) and evidence adduced by claimants eye witness no contrary evidence given by the respondent driver of offending vehicle and he was not examined himself before Tribunal. Vivek Chandak was not appeared before the Tribunal. The statement of Balaram Sahu (AW-3) is uncontroverted and unchallenged. A per document Final Report (Ex. P-4) already offence under section 279, 337 and 304A of IPC has been registered against non-applicant No. 1 and as per FIR (Ex. P-5) it is also mentioned that the vehicle driven by non-applicant No. 1 rashly and negligently. Looking to the documentary and unchallenged evidence and uncontroverted evidence the claimants proved that non-applicant No.1 driven rashly and negligently even the non-applicant No. 1 is not dared to give evidence and challenge the circumstances and he is not examined himself before Tribunal. Looking to the entire evidence learned Tribunal rightly considered that non-applicant no. 1 driven the vehicle rashly and negligently and application under section 166 is tenable. Therefore, no substance in the contention made by the appellant counsel.

9. As regards income of the deceased, the claimants has pleased

that the deceased was earning gross salary Rs. 55,852 per month as permanent employee in Punjab National Bank working Chief Cashier Category-II and proved the same by document adduced by him (Ex. P-1) and Tribunal has also given his finding in para 21 of the award. Further, considering the age of the deceased i.e 51 years, the dependency, the nature of his job, keeping in view the decisions of the *Hon'ble Supreme Court in* ***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*****,** the claimants are held entitled for awarding compensation in the following manner:-

Sl. No.	**Heads**	**Calculation (in Rupees)**
01.	Income of the deceased after deduction of Income Tax and other allowances.	Rs. 5,90,011 per annum (as assessed by Tribunal)
02.	15 % of (1) above to be added towards future prospects.	(Rs 590011 + 88502) = Rs. 678513/-
03.	1/3 deduction towards personal and living expenses of the deceased	(Rs. 678513 - 226171) = Rs. 452342/-
04.	Multiplier of 11 to be applied	(Rs. 50400 x11) = Rs 4975762/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
	Total compensation	**Rs. 50,45,762/-**

10. From the above, it is evident that claimants are entitled for compensation of Rs. 50,45,762 whereas the Tribunal has awarded Rs. 56,94,773/-. In other words, the Insurance Company is liable to pay a sum of Rs. 50,45,762/- with interest @ 9% as awarded by the Tribunal to the claimants.

11. If the Insurance Company has deposited the amount in excess of

its above liability with the Tribunal and same has not been disbursed to the claimants, the same shall be refunded to the Insurance company.

12. 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

Chandrakant