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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 135 of 2014

- Bajaj Allianz General Insurance Company Limited, Shivmohan Bhawan, Vidhan Sabha Road, Pandri, P.S. Pandri, Civil and Revenue District Raipur (C.G.)

**---- Appellant/Insurer/non-applicant No.3
Versus**

1. Devnandan S/o Sukhan Bhatnagar, Aged about 45 years
2. Smt. Sonmat W/o Shri Devnandan, aged about 43 years
3. Geeta D/o Devnandan, aged about 18 years
4. Ramprasad S/o Devnandan, aged about 20 years

All R/o Village Lakhanpur, Tahsil Bhaiyyathan, P.S. Bhaiyyathan, Civil and Revenue District Surajpur (C.G.)

(Claimants)

5. Rajesh Agrawal S/o Mamanchand Agrawal, R/o Mayapur, Ward No. 27, Ambikapur P.S. Ambikapur, Civil & Revenue District Sarguja (C.G.)

(Owner/non-applicant No.1)

6. Nandkumar Singh S/o Haricharan Singh, R/o Mayapur, Ambikapur, C/o Rajesh Agrawal S/o Mamanchand Agrawal, R/o Mayapur, Ward No. 27, Ambikapur P.S. Ambikapur, Civil & Revenue District Sarguja (C.G.)

(Driver/non-applicant No.2)

---- Respondents

For Appellant	:	Shri Rohitashava Singh, Advocate
For Respondents 1 to 4	:	Shri D.N. Prajapati, Advocate
For Respondents 5 & 6	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

07.02.2019

1. Being aggrieved with the award dated 27.08.2013 passed in Claim Case No. 70 of 2012 by the Additional Motor Accident Claims Tribunal, Pratappur, District Surajpur (C.G.), the Appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the quantum of compensation and dependency.
2. The Claimants/Respondents 1 to 4 who are parents, sister and brother of deceased- Sunita Patil claimed compensation of Rs.14,42,993/- by filing a claim petition under Section 166 of the Motor Vehicles Act for death of Sunita Patil in the

motor accident.

3. Facts of the case, in brief, are that on 08.01.2012 deceased- Sunita Patil was going from Lakhanpur to Pratappur by a motorcycle bearing registration No. CG-15/CD/0368 with her brother Ramautar, when they reached near Village Sattipara, non-applicant No.2, driver of the offending vehicle Truck bearing registration No. CG-15/AC/5011, owned by non-applicant No.1 and insured with non-applicant No.3/Appellant, driving the said offending vehicle in a rash and negligent manner, dashed the motorcycle in which Sunita Patil was a pillion rider. As a result thereof, Sunita Patil sustained grievous injuries and succumbed to those injuries.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.11,84,493/- in favour of the Claimants/Respondent 1 to 4 with interest @ 7.5% per annum from the date of filing of the application till realization and has fastened the liability upon the Appellant/Insurance Company along with driver and owner/Respondents 5 & 6 jointly and severally to pay compensation.

5. As submitted by learned counsel for the parties, no counter appeal has been filed by the Claimants, driver and owner.

6. Learned counsel for the Appellant/Insurance Company submits that Claimants/Respondents 1 & 2 are parents and Claimants/Respondents 3 & 4 are sister and brother of deceased- Sunita Patil and the deceased was married with one Ashok Choudhary in the year 2001 as per pleadings of the Claimants, therefore, the Claimants are not entitled for any compensation as they were not dependent on the deceased and the Claimants are competent to do for their livelihood. He further submits that income of the deceased has wrongly been considered by the Tribunal as Rs.9,000/- per month which is on the higher side and award is passed against the settled principle of law.

7. On the other hand, learned counsel for Claimants/Respondents 1 to 4 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation. He further

submits that marriage of deceased- Sunita Patil performed in the year 2001, but her husband did not take Sunita Patil to his home and her husband married another woman. On account of this, Sunita Patil was residing at her parental home, running a tailoring shop thereby earning Rs.9,000/- per month and was thus maintaining the family of her parents because they were dependent on the deceased.

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

9. It is not disputed that the deceased died due to rash and negligent driving of the offending vehicle Truck bearing registration No. CG-15/AC/5011 by its driver/non-applicant No.2, owned by non-applicant No.1 and insured with non-applicant No.3/Appellant. As per statement of Devnandan (AW-1), father of deceased, the deceased was earning Rs.9,000/- per month by running a tailoring shop. AW-1 was proved Ex.-P/37, a register of tailoring shop and the writing of deceased. Further, Chandramani (AW-2) who was learning the tailoring work in the shop of deceased has proved Ex.-P/37 and also proved the writing of deceased in that register. AW-2 also stated that the deceased was earning Rs.9,000/- per month. Ex.-P/33 is the experience certificate regarding tailoring work which was also proved before the Tribunal. But, in that regard, the Insurance Company has not adduced any evidence in rebuttal. Therefore, this Court is of the view that the Tribunal was justified in assessing the income of the deceased as Rs.9,000/- per month.

10. So far as dependency is concerned, the deceased- Sunita Patil was married with one Ashok Choudhary and their marriage was performed in the year 2001, but her husband did was not take her to his home and married another woman, therefore, on account of this, Sunita Patil was residing with her parents at their home, running a tailoring shop thereby earning Rs.9,000/- per month and was maintaining the family of her parents who were dependent on her. The dependency has not been challenged before the Tribunal by the non-applicants. In view of the above, it was proved that the Claimants were dependent on the deceased- Sunita

Patil.

11. Therefore, the total amount of compensation of Rs.11,84,493/- awarded by the Tribunal appears to be based on proper appreciation of overall evidence available on record and therefore, it cannot be said to be on higher side. Further, there is no breach of policy conditions and the Tribunal has rightly fastened liability on the non-applicants jointly and severally. Being so, this Court is of the opinion that there is no scope for reduction of the compensation awarded by the Tribunal.

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

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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