NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1372 of 2014

1. Smt. Sangeeta Chandrakar W/o Late Shri Vinod Kumar, aged about 35 years.
2. Ku. Tanisha Chandrakar D/o Late Shri Vinod Kumar, aged about 08 years.
3. Vedant Chandrakar S/o Late Shri Vinod Kumar, aged about 07 years.
4. Smt. Dulari Bai W/o Gendu Ram Chandrakar, aged about 65 years,

Appellant No. 2 and 3 are minor through natural guardian mother appellant No.1 Smt. Sangeeta Chandrakar W/o Late Shri Vinod Kumar

(As Genduram died so not impleaded as party in the cause title)

All R/o Qr. No. 13H, Street No.1, Sector-4, Bhilai, P.S. - Bhilai Nagar, Tahsil & District - Durg (C.G.)

---- Appellants

Versus

1. Ravikant Pandey S/o Shiv Kumar Pandey, aged about 35 years, R/o B.N. Road Lines, Lift and Shift Complex, Ring Road No.2, Gondwara Raipur, Tahsil & District Raipur (C.G.)..**Driver.**

2. Daulat Ram Choudhary S/o Hardev Ram Choudhary, aged about 58 years, R/o B.N. Road Lines, Life and Shift Complex, Ring Road No.2, Gondwara Raipur, Tahsil & District - Raipur (C.G.).................................**Owner**

3. The Oriental Insurance Company Limited, Through : Branch Manager, Branch Office - Rajendra Park Chowk, Parmanand Bhawan, G.E. Road, Durg, Tahsil & District - Durg (C.G.)..**Insurer**

---- Respondents

For Appellants	:	Shri P.R. Patankar, Advocate.
For Respondents 1 & 2	:	None.
For Respondent No.3	:	Shri N.K. Malviya, Advocate

Hon'ble Smt Justice Rajani Dubey

Order On Board

24/01/2019

1. This appeal arises out of the award dated 20.10.2014 passed by VI Additional Motor Accident Claims Tribunal (for short the "Tribunal") Durg, District Durg in Claim Case No.08/2014 awarding a compensation of Rs.13,38,750/- in favour of the appellants/claimants for the death of Vinod Kumar Chandrakar.

2. Facts of the case in brief are that on 05.01.2014, Vinod Kumar Chandrakar was going to his house Sector - 4 Bhilai from Sankra on his motorcycle bearing registration No.CG-07-LR-7162. When he reached near Khursipar, Bhilai, a trailer bearing registration No.CG-04-JA-7322, which was going towards Durg and being driven by respondent No.1 herein in a rash and negligent manner came from wrong side and dashed his vehicle, as a result of which Vinod Kumar Chandrakar sustained grievous injuries in his head and succumbed to those injuries on the spot. A claim petition was filed by the appellants/claimants who happen to be the legal heirs (Wife, Daughter, Son and Mother) of the deceased claiming a compensation of Rs.29,15,000/- *inter alia* pleading that the deceased at the relevant time was aged about 40 years, he was working in Bhilai Steel Plant as Attendant-cum-Technician (A.C.T.) (Trainee) and his salary was Rs.10,000/- per month.

3. Pleading of the claimants have, however, been denied by the respondent/insurance company.

4. After evaluating the evidence available on record, the Tribunal has awarded the compensation of Rs.13,38,750/- along with interest @ 6% per annum in favour of the appellants/claimants taking the monthly income of the deceased as Rs.10,000/- per month and Rs.1,20,000/- per annum, applying the multiplier of 15 and deducting 1/4th i.e. Rs.30,000/- towards his personal expenses. The learned Tribunal also recorded the finding that deceased Vinod Kumar Chandrakar was negligent and held that the deceased has contributory negligence in the accident and thereby deducted 25% towards his contributory negligence. Hence, this appeal for enhancement.

5. Counsel for the appellants/claimants submits that the Tribunal has erred in law in holding the deceased to have contributory negligence for causing the accident and thereby deducting 25% of the awarded amount. Learned counsel for the appellants further argued that the claims Tribunal has also failed in not taking future prospect as per the ratio laid down in the case of ***Santosh Devi v. National Insurance Co. Ltd***[1]***.*** Learned counsel for the appellants placed reliance on the decisions of this Court in the matter of ***Oriental Insurance Company V. Smt. Seema Pandey & Ors.***[2] *and*

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1 2012 (6) SCC 421
2 2014 (1) C.G.L.J. 270

Bajaj Allianz Insurance Co. Ltd. v. Smt. Sahodra Bai Kaushik & Ors.[3].

6. On the other hand, counsel for the respondent/insurance company supports the award impugned.

7. Heard counsel for the parties and perused the documents on record.

8. This Court now consider the aspect whether the deceased has contributory negligence in the accident.

The learned Tribunal, after considering the evidence on record, comes to the conclusion that in the accident motorcycle of the deceased bearing registration No.CG-07-LR-7162 was seized vide Ex.P/5 but no procedure was carried out to seize the license of the deceased. That apart, Sangeeta Chandrakar (A-1) has stated in her cross-examination that her husband, the deceased, was having valid and effective driving license but the same was not produced. The learned Tribunal, relying upon the decision of Rajasthan High Court in the matter of ***National Insurance Co. Ltd V. Smt. Mumtaj and Ors*** reported in ***2014 (3) ACCD 1442 (Raj),*** reliance of which placed by Insurance Company, comes to the conclusion that since the deceased was not in possession of license at the time of accident, he was held liable 25% contributory negligent.

09. It is well settled position of law that for proving the

3 2014 (4) C.G.L.J. 4

contributory negligence on the part of the victim/deceased, as the case may be, the Insurance Company must led evidence in that regard and unless such evidence is led by it, the fact of contributory negligence cannot be succeeded. The whole burden lies on the Insurance Company to prove the fact with regard to contributory negligence. But, in the present case, merely on the basis of non availability of license of deceased, the learned Tribunal arrived at the finding that the deceased has contributory negligence. The Insurance Company has failed to prove the fact of contributory negligence on the part of the deceased. The finding recorded by the learned Tribunal, in this regard, is not sustainable in the eye of law. The case laws relied upon by the learned counsel for the appellants/claimants in the matter of ***Oriental*** and ***Bajaj*** (Supra), is not distinguishable on the fact.

10. In a motor accident claim case, what is important is that, the compensation to be awarded by the Courts/Tribunals should be just and proper compensation in the facts and circumstances of the case. It should neither be a meager amount of compensation, nor a Bonanza.

11. Now this Court shall examine as to whether the compensation of Rs.13,38,750/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

12. From the pleadings of the respective parties and the

overall evidence on record it is clear that the accident occurred with the offending vehicle which was insured with Insurance Company-respondent No.3 and was being driven by respondent No.1. Evidence further goes to show that offending vehicle was being driven in rash and negligent manner. There is evidence on record (Ex.P/11) that the salary of the deceased was Rs.10,000/-. In Ex.P/11, deduction of Rs.3251/- has been shown. It is settled position of law that while calculating the salary of the deceased, only the gross salary is to be calculated and not net salary. Furthermore, Narendra Ingle (AW/3), Assistant Manager, was also examined, who has stated that the deceased was working in the Bhilai Steel Plant in the capacity of Assistant-cum-technician (Trainee) and was drawing salary of Rs.10,000/-. He has further stated that after completing training period, the deceased might have drawn Rs.15,830/- including other amenities. Thus, this Court do not find any fault in approach of the Tribunal in assessing the salary of the deceased to the tune of Rs.10,000/- per month.

13. Accordingly, the monthly income of the deceased is taken to be Rs.10,000/- which makes the annual income as Rs.1,20,000/-. The deceased was married, 40 years of old and at the time of accident he was working as Assistant-cum-Technician in Bhilai Steel Plant. Hence, future prospects at 30% of the actual income of the deceased is required to be

taken, thus, the amount comes to Rs.36,000/- (30% of 1,20,000/-). Further, there being in all 4 claimants, the deduction of 1/4 towards personal expenses of the deceased from his annual income would be just and proper. Accordingly, by deducting 1/4th from the annual income of the deceased, the claimant's dependency is assessed at Rs.1,17,000/- (Rs.1,56,000 - Rs.39,000).

14. The appellants/claimants have stated in their claim petition that the deceased at the time of accident was 40 year old. Further, in the postmortem report the age of the deceased has been recorded as 40 years. Thus, considering the aforesaid material aspect, he was 40 year of age, and for this group the multiplier of 15 has been fixed. This Court is of the opinion that the Tribunal has rightly applied the multiplier of 15 in this case. This Court has already assessed the claimants' dependency at Rs.1,17,000/- after deducting 1/4th towards person expenses. Therefore, the compensation is assessed to Rs.1,17,000/- x 15 = Rs.17,55,000/-. That apart, the Tribunal has awarded Rs. 4,35,000/- under the conventional heads, which in the facts and circumstances of the present case, and considering that the deceased was a young boy aged 40 years leaving behind his wife, two minor children and mother and also in view of the judgment of Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. v. Pranay Sethi & Ors***[4], is adequate. The Supreme

4 (2017) 16 SCC 680

Court in the matter of ***National Insurance (Supra)*** dealt with the various heads under which compensation is to be awarded in a death case. Thus, keeping in view all these things, above discussion and in view of decisions of Hon'ble Supreme Court in the matter of ***Santosh*** and ***National Insurance (supra),*** this Court is of the view that the amount awarded by the Claims Tribunal is on lower side and requires reconsideration. The appellants/claimants are entitled for compensation in the following manner:-

<table>
<tr><th>Head</th><th>Compensation awarded</th></tr>
<tr><td>Income</td><td>Rs.10,000/-</td></tr>
<tr><td>Future Prospect</td><td>Rs.3,000/- (i.e. 30% of the income)</td></tr>
<tr><td>Deduction towards living and personal expenses</td><td>Rs.3,250/- (i.e. 1/4th of Rs.10,000/- + Rs.3,000/-)</td></tr>
<tr><td>Total Income</td><td>Rs.9,750/- (Rs.13,000 - Rs.3,250)</td></tr>
<tr><td>Yearly Income</td><td>Rs.1,17,000/- (Rs.9,750/- x 12)</td></tr>
<tr><td>Multiplier applied</td><td>15</td></tr>
<tr><td>Loss of future income</td><td>Rs.17,55,000/- (Rs.1,17,000/- x 15)</td></tr>
<tr><td>Loss of Estate</td><td rowspan="3">The Tribunal has awarded Rs.4,35,000/- under the conventional heads, which in the facts and circumstances of the case, is adequate, and this Court do not deem it appropriate to reduce the same.</td></tr>
<tr><td>Loss of Consortium</td></tr>
<tr><td>Funeral Expenses</td></tr>
<tr><td>Total compensation Awarded</td><td>Rs.21,90,000/-</td></tr>
</table>

15. Thus, the total compensation including the amount awarded on conventional heads comes to **Rs.21,90,000/-** (17,55,000/- + 4,35,000/-) for which the appellants/claimants are entitled to receive as compensation for the death of deceased Vinod Kumar Chandrakar. Since the Tribunal has

already awarded **Rs.13,38,750/-,** after deducting the same the claimants/appellants are entitled for enhanced amount of **Rs.8,51,250/-.** This additional amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till realization. The amount received by the claimants, if any, shall be adjusted in the enhanced sum.

16. Appeal is thus allowed in part with the modification in the award impugned as indicated above.

Sd/-

(Rajani Dubey)
Judge

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