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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 473 of 2014

- Branch Manager, The Oriental Insurance Company Limited, Branch Jagdalpur, Distt. Bastar C.G.

----Appellant

Versus

1. Smt. Nandani W/o Late Anil Kashyap Aged About 20 Years
2. Ku. Devika D/o Late Anil Kashyap Aged About 3 Years Minor,
3. Nikhil S/o Late Anil Kashyap Aged About 8 months Minor,

   Through Smt. Nandani, W/o Anil Kashyap, mother, natural guardian.
4. Jairam S/o Lakhu, Aged About 46 Years
5. Laxma W/o Jairam, Aged About 43 Years

   All are R/o Lal Bag, Amaguda, Jagdalpur, Distt. Bastar C.G.
6. Vishvjit Mistri S/o Madan Mohan Mistri, Aged About 22 Years

   R/o Behind Orna Camp, Hotel Adval, Distt. Bastar, Jagdalpur C.G.
7. Ashok Kumar Banik S/o Dilip Chand Banik Aged About 25 Years, R/o Adaval Main Road, Jagdalpur C.G.

---- Respondents

For Appellant	Mr. Sudhir Agrawal, Advocate.
For Respondent Nos. 1 to 5	Mr. A.L. Singroul, Advocate.
For Respondent No.6 & 7	Ms. Sareena Khan, Advocate.

MAC No. 503 of 2014

1. Smt.Nandani Wd/o Late Anil Kashyap Aged About 20 Years
2. Miss Devika D/o Late Anil Kashyap Aged About 3 Years
3. Master Nikhil S/o Late Anil Kashyap Aged About 8 months,
4. Jayram S/o Lakhu Aged About 46 Years
5. Lachhama W/o Jayram Aged About 43 Years

Appellant Nos. 2 & 3 are minor through natural guardian Mother Smt. Nandani W/o Late Anil Kashyap. All are R/o Lal Bagh Amaguda, Jagdalpur, Distt. Bastar C.G., District : Bastar(Jagdalpur), Chhattisgarh

----Appellants

Versus

1. Vishwajeet Mishtri S/o Madan Mohan Mishrti Aged About 22 Years R/o Behind Orana Camp, Hotel Adawal Jagdalpur, Distt. Bastar C.G.

2. Ashok Kumar Banik S/o Dilip Chand Banik Aged About 25 Years R/o Main Road, Adawal Jagdalpur, Distt. Bastar C.G.

3. The Branch Manager, The Oriental Insurance Company Ltd., Branch Jagdalpur, Laxman Avenue Medical College Road, Jagdalpur, Distt. Bastar C.G.

---- Respondents

For Appellants	Mr. A.L. Singroul, Advocate.
For Respondent Nos. 1 & 2	Ms. Sareena Khan, Advocate.
For Respondent No.3	Mr. Sudhir Agrawal, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

02/05/2019

1. As both these appeal arise out of the award dated 07.01.2014 passed by the Additional Claims Tribunal (FTC), Bastar Place, Jagdalpur, C.G. in Claim Case No.15/13, they are being disposed of by this common judgment.

2. As per averments in the claim petition, on 30.07.2009 the deceased Guddu @ Anil Kashyup, aged about 26 years, earning Rs.12,000/- per month by running grocery shop, died in the motor vehicular accident caused due to rash and negligent driving of Jeep bearing no.CG15-JD-1647 by non-applicant No.1. At the time of accident, the offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.

3. On claim petition being filed by the claimants i.e. wife, children

and parents of the deceased under Section 166 of the Motor Vehicles Act claiming compensation of Rs.32,22,000/- under various heads, the Tribunal considering the evidence led by both the parties, awarded a compensation of Rs.14,37,400/- with interest @ 6% per annum from the date of application till realization, fastening the liability on the Insurance Company/non-applicant no.3 along with non-applicant nos. 1 & 2 jointly and severally.

4. **MAC No.473 of 2014**: Learned counsel for the Insurance Company submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award on the sole ground that as per Ex.P-7 and P-8 income considered for assessing the loss of dependency but both the documents are not genuine documents. As per Income Tax Officer namely NAW-2 C.P. Dhanpalan Nair, he proved that no any (Ex.P-7 and Ex.P-8) Income Tax return were filed before Income Tax Department and Pan Card mentioned in these documents is not issued in favour of Guddu @ Anil Kashyup, who is the deceased in this case. Therefore, Ex.P-7 and Ex.P-8 are only for the purpose of seeking compensation after the death of deceased and not submitted before the Department. Therefore, the income considered on the basis of Ex.P-7 and Ex.P-8 is not tenable and it needs to be reduced and there is no breach of policy.

5. On the other hand, learned counsel for respondents/claimants supports the impugned award insofar as it relates to fastening of

liability on the insurance company. However, the claimants have also challenged the award on the point of quantum and has filed a separate appeal i.e. MAC No.503 of 2014 for enhancement of compensation.

6. Counsel for the driver and owner supports the impugned award.

7. **MAC No.503 of 2014**: Learned counsel for the appellants/claimants submits as under:

(i) that no amount towards future prospect has been granted to the claimants.

(ii) that multiplier of 13 has wrongly been applied and considering the age of the deceased, it should have been 17.

(iii) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

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 & 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.***

8. Learned counsel for the respondent/insurance company opposes the contention made by the claimants counsel and submits that the Tribunal has wrongly assessed the compensation by taking the income of the deceased on higher side, therefore, the same deserves to be reduced suitably.

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

10. Considering the facts and circumstances of the case, the statement of AW-1 Nandani, wife of the deceased who has categorically stated that the deceased used to give her only Rs.3,000-4,000/- per month, she has not produced any document to show that the deceased was running a grocery shop, the evidence of NAW-2 C.P. Dhanpalan that the income tax return of Ex.P-7 and Ex.P-8 were never filed before the Income Tax Department by the deceased, which remained unchallenged, keeping in view the minimum wages at the relevant time, this Court is of the opinion that the Tribunal was not justified in assessing the income of the deceased as Rs.12,000/- per month and it can safely be taken as Rs.3,300/- per month. Further, considering the age of the deceased i.e. 26 years as per claim petition, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma, Pranay Sethi & Magma General Insurance Co. Ltd. (supra)*, the claimants are held entitled for compensation in the following manner:

S.I. No.	**Heads**	**Calculation (in rupees)**
1.	Income of the deceased @ Rs.3,300/- per month	Rs.39,600/- per annum
2.	40% of (i) above to be added towards future prospects.	Rs.15,840/- Rs.39,600 + Rs.15,840 = Rs.55,440/-
3.	1/4 deduction towards personal and living expenses of the deceased	Rs.13,860/- Rs.55,440 – 13,860 = Rs.41,580/-

4.	Multiplier of 17 to be applied	Rs.7,06,860/-
5.	Towards loss of estate, spousal consortium and funeral expenses	Rs.70,000/-
6.	Towards loss of parental consortium to claimants no. 2 & 3 @ of Rs.20,000/- each.	Rs.40,000/-
7.	Towards loss of filial consortium to claimant nos. 4 & 5 @ of Rs.10,000/- each	Rs.20,000/-
	Total Compensation	Rs.8,36,860/-

On the basis of aforesaid discussion, it is held that claimants are held entitled for a sum of Rs.8,36,860/- whereas the Tribunal has awarded Rs.14,37,400/-. The said amount of Rs.8,36,860/- shall carry interest as awarded by the Tribunal.

12. In the result:-

- **MAC No.473 of 2014** filed by the Insurance Company is allowed in part and consequently **MAC No.503 of 2014** filed by the claimants stands disposed of in the above terms.

Sd/-
Gautam Chourdiya
Judge

Akhilesh