AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1641 of 2017

- Branch Manager, The New India Insurance (correct name Assurance) Akashwani Road, Gandhi Nagar Ward, M.M. Tower Jagdalpur, District- Bastar (C.G.).

---- Appellant

Versus

1. Smt. Muki Sodi Wd/o Late Kosaram Sodi, aged about 43 years.
2. Naveen Kumar Sodi S/o Late Kosaram Sodi, aged about 21 years.
3. Rajesh Kumar Sodi S/o Late Kosaram Sodi, aged about 19 years.
4. Lakhmaram Sodi S/o Late Kosaram Sodi, aged about 17 years.
5. Pramila Sodi S/o Late Kosaram Sodi, aged about 12 years.
6. Vipul Kumar Sodi S/o Late Kosaram Sodi, aged about 09 years.
7. Vijay Kumar Sodi S/o Late Kosaram Sodi, aged about 07 years.
8. Ku. Lalita Sodi D/o Late Kosaram Sodi, aged about 05 years.
9. Budhram Sodi (as per order dated 31.01.2008 name is deleted as the appellant died) S/o. Late Kosa aged about 61 years;

   No. 4 to 8 are minor, through natural guardian mother Muki Sodi.

   All are R/o village Pondum, Gadiras, Police Station gadiras, District Sukma (C.G.)
10. Ramesh Kumar Baghel S/o Chaituram Baghel, aged about 34 years, R/o Kundanpal, Kukanar, Police Station Kukanar, District Sukma (C.G.).
11. Ranu Baghel S/o Mahadev Baghel, aged about 35 years, R/o Village Khaspara, Kukanar, Police Station Kukanar, District- Sukma (C.G.)

---- Respondents

For Appellant : Shri Pankaj Agrawal, Advocate

For Respondents/claimants : Shri Praveen Kumar Tulsyan, Advocate.

For Respondents/driver & owner : Shri Praveen Dhurandhar, Advocate.

<u>MAC No. 173 of 2018</u>

1. Smt. Muki Sodi Wd/o Late Kosaram Sodi, aged about 43 years.

2. Naveen Kumar Sodi S/o Late Kosaram Sodi, aged about 21 years.

3. Naveen Kumar Sodi S/o Late Kosaram Sodi, aged about 21 years.

4. Lakhmaram Sodi S/o Late Kosaram Sodi, aged about 17 years.

5. Pramila Sodi S/o Late Kosaram Sodi, aged about 12 years.

6. Vipul Kumar Sodi S/o Late Kosaram Sodi, aged about 09 years.

7. Vijay Kumar Sodi S/o. Late Kosaram sodi aged about 07;

8. Miss Lalita Kumar Sodi D/o. Late Kosaram Sodi aged about 05 years;

9. Budhram Sodi (as per order dated 31.01.2008 name is deleted as the appellant died) S/o. Late Kosa aged about 61 years;

Appellant No. 4 to 8 are minor therefore represented through natural guardian Smt. Muki Sodi (Mother)

All are Residence of Village Pondum Gadiras P.S. Gadiras District Sukma (C.G.).

---- Appellants

Versus

1. Ramesh Kumar Baghel S/o Chaitu Ram Baghel aged about 34 years R/o. Kundanpal Kukanar P.S. Kukanar District- Sukma (C.G.) (Driver of the Vehicle)

2. Ranu Baghel S/o Mahadev Baghel aged about 35 years R/o Village Khaspara Kukanar P.S. Kukanar District Sukma (C.G.) (Owner of the Vehicle)

3. The Branch Manager, The New India Assurance Co. Ltd., Akaswani Road Gandhi Nagar Ward M.S. Tower Jagdalpur

District- Bastar (C.G.) (Insurer).

---- Respondents

For Appellants : Shri Praveen Kumar Tulsyan, Advocate.

For Respondent/Insurance Company. : Shri Pankaj Agrawal, Advocate.
For Respondent/Driver & Owner :Shri Praveen Dhurandhar, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

29/03/2019

1. As both these appeals filed by the Insurance Company & the claimants under Section 173 of the Motor Vehicles Act arising out of the common award dated 05.08.2017, passed by the Motor Accident Claims Tribunal, Dakshin Bastar, Dantewara, (C.G.) in claim case No. 77/2016, they are heard together and are being disposed of by this common judgment.

2. As per claim petition, on 21.05.2016, when Kosaram (since deceased) along with his father & cousin brother was going to Chhindgarh sitting in a vehicle bearing registration No. CG-06-B/5145, near village- Pakela- Bagheldipara turning, Non-applicant No. 1/driver- Ramesh Baghel, driving the said in a rash and negligent manner suddenly applied the break due to which deceased fell down from the Jeep, sustained grievous injuries and died during treatment.

3. On claim petition being filed by the claimants, who are unfortunate wife, Children & parents of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award to the tune of Rs. 6,99,160/-

alongwith interest @ 9% per annum from the date of filing of claim petition in favour of the claimants, fastening liability of payment of compensation upon the non-applicants jointly and severally.

4. **MAC No. 1641/2017:** In this appeal appellant/Insurance Company is challenging the liability fastened upon it on the ground that the deceased was occupant of the jeep, therefore he was not a third party. Learned counsel for the appellant/Insurance Company submits that the Claims Tribunal has erred in fastening liability upon the Insurance Company because the insurance policy was liability only policy and the premium of 50/- only was taken for personal accident and no other premium was paid by the owner, therefore, the Tribunal should have awarded only Rs. 1,00000/-. Thus, the finding recorded by the Tribunal that the Appellant/Insurance Company is liable to pay compensation to the claimants is liable to be set aside. He further submits that interest awarded on the amount of compensation @ 9% is on the higher side which deserves to be reduced suitably.

5. Learned counsel for the respondents/ claimants, owner & driver supported the award regarding the liability to pay compensation to the claimants.

In MAC No. 173/2018 Appellants/claimants, who are the widow, children & parents of the deceased- Kosaram Sodi, have filed this appeal seeking enhancement of the amount of compensation under the award.

6. Learned counsel appearing for the appellants/claimants submits that the Claims Tribunal after considering all the relevant aspects of the matters has rightly fastened liability on the Insurance Company as it

could not establish the violation of policy conditions. He submits that in the insurance policy no any limited liability is mentioned and no any clause is mentioned regarding GR/36, therefore, learned Tribunal rightly fastened the liability on the Insurance Company to pay compensation.

7. Learned counsel for the claimants further submits that the learned Tribunal has erred in assessing monthly income of the deceased as Rs. 3,000/-, therefore, it is prayed that it ought to have been assessed as Rs. 6,000/- per month as per minimum wages at the relevant point of time. He further submits that no amount towards future prospect was granted to the claimants. Looking to the age of deceased i.e. 45 years at the time of accident, 25% future prospect should be added to the income of the deceased. He additionally prays that the amount awarded towards love & affection to the claimants may be converted towards loss of filial consortium.

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 Insurance Company also opposes the contention made by learned counsel for the claimants regarding enhancement of compensation.

9. Learned counsel for the driver & owner opposed the award to the

extent of enhancement of compensation.

10. Heard learned counsel for the parties and perused the material available on record and the award impugned.

11. So far as MAC No.1641/2017 filed by Insurance Company is concerned, it is not disputed by both the parties as per Ex. D/1 policy taken by the owner of the offending vehicle there is no breach of policy. The only issue raised before this Court by the Insurance Company is that Insurance Company has a limited liability. Ex. D/1 is Act only policy and premium was taken by the Insurance Company for occupant passenger. The policy is also proved by Lakhpati Borkar NAW No. 1. In para 1 & 2 of statement of NAW No. 1, he stated that deceased was occupant passenger and premium was taken by the Insurance Company and as per GR/36 the Insurance Company is liable only for Rs. 1,00000/- towards the occupant passenger. However, there is no any specific limited liability mentioned in the insurance policy and no any particular regarding GR/36 was issued by the Insurance Company in favour of the owner. Therefore, no any limited liability of the Insurance Company is made out to pay compensation of Rs. 1,00000/-.

12. So far as the interest part is concerned, the accident occurred on 21.05.2016 and therefore, the interest awarded by the Tribunal @ 9% on the compensation can not be said to be excessive and as such it does not call for any reduction and the learned Claims Tribunal is absolutely justified in fastening the liability upon the Insurance Company to pay compensation to the claimants, which does not call for any interference.

12. **MAC 173/2018**: So far as income of the deceased is concerned, though the claimants have pleaded that the deceased was earning Rs. 13,500/- per month as a mason, however, no evidence in support thereof has been adduced by them. In these circumstances, monthly income of the deceased is considered as Rs. 6000/- per month of skilled labour at the relevant point of time. Further, looking to the age of the deceased i.e. 45 years, 25% towards future prospect would be added to the yearly income of the deceased. In the light of Supreme Court judgment Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram & Ors. (supra), the amount awarded towards love & affection to the claimants as Rs. 50,000/- by the Tribunal is kept intact as filial & parental consortium. Further, considering the job, dependency and the judgments of the Supreme Court in the matter 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***, I propose to re-compute the amount of compensation as under :-

Sl. No.	Heads	Calculation
01.	Income of the deceased @ Rs. 6,000/-pm	Rs. 6000x12= Rs. 72,000/- per annum
02.	25% of above to be added towards future prospects	Rs. 72,000+ 18,000 = Rs. 90,000/-
03.	After 1/5th deduction towards personal and living expenses of the deceased	Rs 90,000-18,000 = Rs. 72,000/-
04.	Multiplier of 14 to be applied	Rs.10,08,000/-

05.	Towards loss of estate, funeral expenses & loss of spousal consortium	Rs. 70,000/-
06	Towards loss of filial consortium & loss of parental consortium	Rs. 50,000/- (As awarded by the Tribunal)
07	**Total compensation**	Rs. 11,28,000/-

Since the Tribunal has already awarded Rs.6,99,160/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,28,840/- along with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

13. In the result:

- MAC No. **1641/2017** preferred by the insurance company being without any substance is hereby dismissed.
- **MAC No. 173/2018** filed by the claimant is allowed in part with the modification to the above extent.

Sd/-

(Gautam Chourdiya)
Judge

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