AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1084 of 2013

1. Smt. Usha Bai Wd./o Late Nand Kumar Thakur Aged About 50 Years,

2. Smt. Monika Thakur D/o Late Nand Kumar Thakur Aged About 27 Years,

3. Manish Thakur S/o Late Nand Kumar Thakur Aged About 24 Years,

All are R/o Nayapara, Titurdih, Durg, P.S. Mohan Nagar, Tahsil & District Durg (C.G.)

---- Appellants/Claimants

Versus

1. Donald Kulbhushan Bara S/o Walter Bara, aged about 28 Years, R/o House No. 815/J, Ward No. 21, Asha Nagar, Durg, Tahsil and District Durg (C.G.)

   Driver *of Tawera No. CG 07/LN-7771*

2. National Insurance Company Limited, Through the Divisional Manager, Near Gurudwara, Durg, Tahsil & District Durg (C.G.).

   Insurer *of Tawera No. CG 07/LN-7771*

---- Respondents

For Appellants	: Shri Vedant Bhelonde, Advocate on behalf of Shri P. R. Patenkar, Advocate.
For Respondent No. 1	: Shri Manish Upadhyaya, Advocate.
For Respondent No. 3.	: Shri B. N. Nande, Advocate

MAC No. 521 of 2014

- National Insurance Company Ltd., Through - Divisional Manager, Nearby Gurudwara, Durg, Tahsil & District Durg (C.G.) (**Insurer**)

---- Appellant

Versus

1. Smt. Usha Bai Wd./o Late Nandkumar Thakur, Aged About 50 Years,

2. Smt. Monika Thakur D/o Late Nandkumar Thakur, Aged About 27 Years,

3. Manish Thakur S/o Late Nandkumar Thakur Aged About 24 Years,

   All are R/o Nayapara, Titurdih, Durg, P.S. Mohan Nagar, Tahsil & District Durg (C.G.)

4. Donald Kulbushan Bara S/o Walter Bara Aged About 28 Years, R/o Qr. No. 815/J Ward No. 21, Asha Nagar, Durg, Tahsil & District Durg (C.G.)

---- Respondents

For Appellant	: Shri B. N. Nande, Advocate.
For Respondent Nos. 1 to 3	: Shri Vedant Bhelonde, Advocate on behalf of Shri P. R. Patenkar, Advocate
For Respondent No. 4	: Shri Manish Upadhyaya, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

16/05/2019

1. As both these appeals filed under section 173 of Motor Vehicles Act, 1988 by the Insurance Company as well as claimants arise out of the common award dated 27/09/2013 passed by 5th Additional Motor Accident Claims Tribunal Durg (C.G.) in Claim Case No. 02/2013, they heard together and are being disposed of by this common judgment.

2. Appellant/Insurance Company has filed the appeal being **MAC No. 521 of 2014** challenging the liability fastened upon it and also challenging the quantum part of the impugned award stating that amount of compensation awarded by the Claims Tribunal is on higher side, which deserves to be reduced suitably *whereas* claimants have also filed an appeal being **MAC No. 1084 of 2013** seeking enhancement of the amount of compensation under the award.

3. As per claim petition, on 24.09.2012 at about 07.00 am, Nand Kumar Thakur (since deceased), aged about 54 years, earning

Rs. 47,921/- pm by working as Civil Engineer in the Bhilai Steel Plant was returning along with his friend in Tawera Jeep bearing registration No. CG-07-L.N.-7771 from Jagdalpur to Durg on the National Highway No. 30 at village- Jaitpur, due to rash & negligence driving of Non-applicant No. 1, the Driver of the vehicle (Tavera) dashed the same into Mango tree, as a result thereof, Nand Kumar sustained grievous injuries and thereafter he was taken to Medicine Hospital, Raipur and thereafter, he was admitted in Sector- 9, Hospital Bhilai and ultimately on 10.10.2012 he died due to injuries sustained by him in the motor accident occurred on 24.09.2012. The offending vehicle is insured with non-applicant No. 2.

4. On claim petition being filed by the claimants, who are unfortunate wife & children of the deceased - Nand Kumar Thakur under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

In MAC 521/2014 filed by the claimants.

5. Heard on IA No. 03/2019, application under order 41 Rules 27 of CPC for taking documents on record i.e. certified copy of the order dated 27.09.2013 passed by Chhattisgarh State Consumer Disputes Redressal Commission, Pandri, Raipur (C.G.) and another document i.e. certified copy of the order dated 24.10.2016 passed by District Consumer Forum, Durg in case No. C.C./15/779 decided on 24.10.2016 regarding application filed by the owner of the offending vehicle seeking damages.

6. Learned counsel for the appellant/Insurance Company would submit that both the documents have been obtained after passing of the award by the Claims Tribunal i.e. on 27.09.2013, therefore, the aforesaid documents may be taken on record as the said documents are necessary for disposal of the appeal filed by the Insurance Company.

7. Learned counsel for the respondent/claimants, while opposing the application for taking aforesaid documents on record, submits that aforesaid documents are not necessary for just and proper disposal of the appeal as both the proceedings have separately been considered and decided by Consumer Forums, Durg & Raipur, respectively.

8. I have heard counsel for the parties on application (I.A. No. 3) for taking documents on record.

9. It is not disputed by the learned counsel for the parties that both the documents related to the owner of the offending vehicle who filed an appeal for personal damages and that issue has been separately decided by the consumer forums, and therefore, these documents, in the opinion of this Court, are not necessary for deciding the liability part of the award. Thus, I.A. No. 3 stands rejected.

10. Learned counsel for the appellant/ Insurance Company submits that at the time of accident, the offending vehicle was plying on hire & reward basis and this fact is established by Smt. Usha Bai, claimant witness No.1 herein and as per terms & condition of the insurance policy, it is a breach of policy conditions, therefore, the learned Claims Tribunal has erred in fastening the liability upon the Insurance Company. He also submits that learned Claims Tribunal has committed a gross legal error while allowing only 10% deduction towards income tax whereas it should be more than 10%. He also submits that since children of the deceased are major, therefore, they can not be treated as dependent upon the deceased, thus, only widow of the deceased can be considered as dependent of the deceased, therefore, deduction toward personal & living expenses should be 1/2 of the income of the deceased whereas the Claims Tribunal has assessed the deduction as 1/3rd of the income of the deceased towards his personal expenses.

11. Learned counsel for the respondents/ claimant & owner of the offending vehicle supports the impugned award.

<u>In MAC No. 1084 of 2013</u>

12. Learned counsel for the claimants submits that the amount awarded by the Claims Tribunal is shockingly on lower side for death of deceased, who was working as Civil Engineer in the Bhilai Steel Plaint, and the same deserves to be suitably enhanced. He further submits that in this case no future prospect has been considered by the learned Tribunal; and the multiplier of 10 has wrongly been assessed by the learned Claims Tribunal whereas it ought to have been considered as 12 instead of 10.

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***.

13. Learned counsel for the respondents opposes the submission so made by counsel for the appellants/claimants stating that amount awarded by the Claims Tribunal is just & proper, which does not call for any interference.

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

15. So far as the contention made by learned counsel for the Insurance Company is concerned, in this case at the time of accident, the vehicle was using as hire & reward basis but any witness or evidence did not adduce by the Insurance Company in support thereof. Non-applicant witness No. 1- Sandeep Kumar Malik, in paragraph 2 of his statement has stated that at the time of accident, the vehicle was insured with the Insurance Company and the policy issued in this case is private car policy and he did not know the fact that whether such policy covers the risk of third party or not. Thus, it is apparent from the aforesaid statement, there is no breach of policy conditions in this case. No other evidence has been adduced by the Insurance Company with regard to the fact that the vehicle was using on hire & reward basis at the relevant point of time. Thus, it is clear it is not a case of

“hire & reward” therefore, as per Insurance policy, if the vehicle was using for hire & reward, Insurance Company ought to have proved the same, but the Insurance Company has failed to do so and further claimant- Usha Bai in her statement in paragraph 10 has denied the fact that the vehicle in question was being used for hire & reward as such, the Claims Tribunal is absolutely justified in fastening the liability of payment of compensation upon the Insurance Company.

16. As regards income of the deceased, it is not disputed by learned counsel for the parties that the deceased was salaried person and as per salary slip (Ex. P/1) his monthly income is Rs. 47,921/-, therefore, Claims Tribunal has rightly assessed the income of the deceased as Rs. 47,921/- per month i.e. 5,75,052/-pa. After deduction of 10% towards income tax it comes to Rs. 5,17,546/- per annum. The said deduction towards income tax is based on standard deduction prevalent at the relevant time and therefore, the same needs no interference by this Court. Further, considering the age of the deceased i.e. 54 years, as is evident from the document available on record in particular his pay slip (Ex.P/1) and the evidence of the claimants, the applicable multiplier would be 11 in this Case in view of the Supreme Court decision in the matter of Sarla Verma (Smt.) (supra). This apart the claimant are also entitled for 15% future prospect considering the age of the deceased and nature of his job in view of the decision of the Hon'ble Supreme Court in the matter of ***Pranay Setthi, (supra).*** Considering the fact that the claimant are dependent upon the deceased as per their evidence, in view of the decision in Sarla Verma (Smt.) 1/3rd deduction towards personal & living expenses done by the learned Tribunal appears to be just & proper. On the basis of aforesaid discussion the claimants are held entitled for compensation in the following manner:-

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	After deduction of 10% towards income tax deduction income of the deceased	Rs. 5,17,546/- p.a.

02.	15% of (1) above to be added towards future prospects.	Rs. 5,17,546+ 77632= Rs. 5,95,178/-
03.	After 1/3 deduction towards personal and living expenses of the deceased	Rs.5,95,178-198393= Rs. 3,96,785/-
04.	Multiplier of 11 to be applied	Rs. 43,64,635/-
05.	Towards spousal consortium, loss of funeral expenses & loss of estate	Rs. 70,000/-
06.	**Total Compensation**	**Rs. 44,34,635/-**

Since the Tribunal has already awarded Rs. 25,00,320/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 19,34,315/- along with interest @ 7% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

17. In the result, appeal filed by the Insurance Company (MAC No. 521/2014), being devoid of merit, is liable to be and is hereby dismissed *whereas* the appeal filed by the claimants (MAC No. 1084/2013) seeking enhancement of compensation amount under award is allowed in part as indicated hereinabove.

Sd/-

(Gautam Chourdiya)
Judge

Amita