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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 182 of 2016

- Branch Manager, Bajaj Allianz General Insurance Co. Ltd., Raigarh, Head Office- Kutchery Chouk, Raipur, At present- Shivmohan Bhawan, Vidhan Sabha Road, P.S. Pandri Civil and Revenue District Raipur (C.G.) (Insurer of Veh. Regn. No. OR-23-C-0254)

---- Appellant/Non-applicant No.3

Versus

1. Smt. Tejaswari Wd/o Late Bhaskar Rao, Aged about 29 years
2. Drakasyani D/o Late Bhaskar Rao, Aged about 08 years (minor)
3. Ishwari Rao S/o Late Bhaskar Rao, aged about 06 years (minor)
4. Bhawani Prasad Rao S/o Late Bhaskar Rao, aged about 08 years (minor)
5. J. Simhadri S/o Padyanarayana, aged about 65 years
6. Smt. Chandrawati W/o J. Simhadri, aged about 62 years

(Respondents No. 2 to 4 are minor represented through natural guardian their mother respondent No.1 Smt. Tejaswari)

All resident of Village Peddabidimi, Post Ganguwada, District Shrikakulam. At present Patrapali, Police Station, Raigarh, Civil and Revenue District Raigarh (C.G.)

(Claimants)

7. Shankar Raut S/o Balaram Raut, aged about 21 years, R/o Village Bhikhampali, PO Kapilapur, Police Station Rengali, District Jharsugda (Odisha)

(Driver/Non-applicant No.1)

8. Mahendra Parasad Jaiswal S/o Chitro, Prasad Jaiswal, aged about 40 years, R/o Village Katarbaga, PO Samarbaga, Tahsil Lakhanpur, Police Station Lakhanpur, District Jharsugda (Odisha)

(Owner/Non-applicant No.2)

9. Branch Manager, Oriental Insurance Company Limited, Itwari Bazar, Police Station Raigarh, Civil and Revenue, District Raigarh (C.G.)

(Non-applicant No.4)

(Ins. Co. of Veh. No. CG-13-ZD-0259)

10. Tirupati Transport Corporation Ltd. Patrapali, Jindal Road, Raigarh Through Pravin Kumar Gupta, S/o Ramkumar Gupta, aged about 42 years, Patrapali Police Station Patrapali, Civil and Revenue District Raigarh

(Non-applicant No.5)

(Owner of Veh. CG-13-ZD-0259)

---- Respondents

For Appellant	:	Shri Rohitashava Singh, Advocate
For Respondents 1 to 6	:	Shri Krishna Tandon, Advocate appears on behalf of Shri Amit Sharma, Advocate
For Respondent No. 9	:	Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J
Judgment on Board

29.04.2019

1. This appeal is by the Insurance Company/Non-applicant No.3 against the award dated 18.09.2015 passed by the First Additional Motor Accident Claims Tribunal, Raigarh (C.G.) in Claim Case No. 193 of 2011 awarding total compensation of Rs.20,44,370/- with interest @ 6% per annum from the date of applicant till realization, fastening liability on non-applicant No. 3 alongwith non-applicants No 1 & 2 jointly and severally.
2. Facts of the case, in brief, are that deceased- Bhaskar Rao was working in Tirupati Transport Corporation as driver and on 31.10.2010 while he was going by Maruti Car, non-applicant No.1- Shankar Raut, driver of the offending vehicle Bolero bearing registration No. OR-15/P/23/C/0254, owned by non-applicant No.2 and insured with non-applicant No.3, driving the said vehicle in a rash and negligent manner, dashed the Maruti Car which was being driven by Bhaskar Rao. As a result thereof, Deceased- Bhaskar Rao sustained grievous injuries on his chest, head and his both legs & one hand were fractured. Thereafter, during treatment in the hospitals, he died on 18.12.2010.
3. On claim petition being filed by the Claimants, i.e. wife, children, mother and father of deceased, under Section 166 of the Motor Vehicles Act, 1988 for compensation to the tune of Rs.32,20,000/-for the death of Bhaskar Rao in the motor accident. The Tribunal considering the evidence led by both the parties passed an award as mentioned above.
4. In this appeal, a cross-objection has also been filed by the Claimants/Respondents 1 to 6 under Order XLI, Rule 22 of the Code of Civil Procedure seeking enhancement of the compensation alongwith I.A. No. 6 of 2019, application for condonation of delay of 1121 of days in filing cross-objection.
5. Heard I.A. No. 6 of 2019 and for the reasons mentioned in the application (I.A. No. 6 of 2019) which is supported by affidavit as also looking to the Claimants

i.e. wife, children and parents (mother and father aged 62 & 65 years), the Insurance Company has not filed any counter affidavit in that regard and has orally objection by the Insurance Company, the same is allowed and the delay in filing the cross-objection is condoned.

6. Heard the appeal on merits alongwith cross-objection.

7. Learned counsel for the Appellant/non-applicant No.3 submits that there is contributory negligence on the part of the deceased because the deceased was driving the Maruti Car in a rash and negligent manner and the Tribunal has wrongly fastened entire liability on non-applicants No. 1 to 3. He further submits that the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 was not tenable before the Tribunal. He also submits that the income of the deceased has wrongly been considered by the Tribunal as Rs.9,000/- which is on the higher side.

8. Learned counsel for Respondents 1 to 6/Claimants opposes the contention made by the learned counsel for the Appellant/non-applicant No.3 and submits that the author of the F.I.R. (Ex.-P/1) was not examined. He also submits that as per evidence of eye-witness namely Hanuman Prasad (AW-2), there is negligence on the part of offending vehicle-Bolero which was being driven by non-applicant No.1. He further submits that as per evidence of Tejaswari (AW-1) and Ashish Kumar (AW-3) who is Accountant in Tirupati Transport Corporation, the deceased was earning Rs.9,000/- per month as Crane-operator and the Tribunal has rightly considered the income of the deceased as Rs.9,000/- per month, but no amount towards future prospect has been granted to the Claimants. Therefore, looking to the age of the deceased i.e. 38 years and he was self employed person, 40% towards future prospect should be granted to the Claimants. In support of above contention, reliance has been placed on the decision of Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

9. Learned counsel for the Appellant/non-applicant No.3 opposes the contention made in cross-objection by learned counsel for Respondents No. 1 to 6/Claimants.

10. Learned counsel for Respondent No.9 supports the impugned award and no argument advanced by him on the contentions made by learned counsel for the Appellant as well as learned counsel for Respondents No. 1 to 6.

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

12. First consider, the appeal filed by the Insurance Company/non-applicant No.3. Eye-witness of the accident i.e. Hannuman Prasad (AW-2) examined by the Claimants and the pleading of the Claimants, it was proved this fact that non-applicant No.1- Shankar Raut, driver of offending vehicle- Bolero No. OR-15/P/23/C/0254, driving the said Bolero in a rash and negligent manner. Hannuman Prasad (AW-2) has specifically and categorically stated in para-2 of his evidence that at the time of accident, he was present and seen that the offending vehicle Bolera was coming towards Raigarh in rash and negligent manner, dashed the Maruti Car which was being driven by the deceased. No any evidence regarding negligence on the part of the deceased adduced by the Insurance Company in rebuttal.

13. F.I.R. (Ex.-P/1) and Roznamchasaha (Ex.P/2) was lodged by Chita Ranjan Sahoo, but author of Ex.-P/1 & Ex.-P/2 was not examined before the Tribunal. The allegations regarding accident occurred due to rash and negligent of the deceased is that definitely Ex.-P/2 filed by the Claimants, but it was proved by NA-2- Hannuman Prasad that the accident occurred due to rash and negligent driving of the offending vehicle Bolero No. OR-15/P/23/C/0254 by its driver. But, the Insurance Company/non-applicant No.3 has failed to proved that the accident occurred due to rash and negligent driving of the Maruti Car by the deceased. Apart from this, Shankar Raut/non-applicant No.1, driver of the offending vehicle, has not been examined by the non-applicants before the Tribunal. Therefore, the application filed under Section 166 of the Motor Vehicles Act by the Claimants before the Tribunal was tenable and the appeal filed by the Appellant/Insurance Company/non-applicant No.3 deserves to be dismissed.

14. As regards the cross-objection for enhancement of compensation filed by the Claimants/Respondents 1 to 6 regarding income of the deceased as Rs.9,000/- considered by the Tribunal is concerned, as per statement of Tejaswari, wife of the deceased, she mentioned in para-2 that the deceased was earning Rs.9,000/- per month as crane-operator in Tirupati Transport Corporation and he was also provided pocket-money by the employer. Further, Ashish Kumar, Accountant, who stated in his evidence that the deceased was getting Rs.9,000/- as salary and Rs.200/- per day was also provided towards D.A. Therefore, the Tribunal has rightly considered the income of the deceased as Rs.9,000/- per month.

15. As far as argument advanced by the learned counsel for the Claimants/Respondents 1 to 6 with regard to non-grant of future prospects, looking to the age of the deceased i.e. 38 years, the dependency, the nature of job as the deceased was self employed person, 40% towards future prospects can also be given to the Claimants. In view of *Pranay Sethi (supra) & Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 680*, the compensation is calculated as under:-

Sl.No.	Head	Calculation (In Rupees)
1	Income of the deceased	Rs.9,000/- per month i.e. Rs.1,08,000/- per annum
2	40% towards future prospects added to annual income	(Rs.1,08,000/- + Rs.43,200/-) Rs.1,51,200/- per annum
3	1/4th deduction towards personal and living expenses of Deceased	(Rs.1,51,200/- – Rs.37,800/-) Rs.1,13,400/-
4	Multiplier of 15 applied	Rs.1,13,400/- x 15 = Rs.17,01,000/-
5	For medical expenses	Rs.7,94,370/- (as awarded by the Tribunal)
6	Funeral expenses	Rs.5,000/- (as awarded by the Tribunal)
7	For love and affection to Parents i.e. Claimants/ Respondents 5 & 6	Rs.10,000/- (as awarded by the Tribunal)
8	For loss of consortium to wife	Rs.5,000/- (as awarded by the Tribunal)

	i.e. Claimant No.1/ Respondent No.1	Tribunal)
9	For love and affection to Children i.e. Claimants/ Respondents 2, 3 & 4	Rs.15,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.25,30,370/-

Since the Tribunal has already awarded Rs.20,44,370/-, after deducting the same from the above amount, the Claimants/Respondents 1 to 6 is held entitled for additional compensation of Rs.4,86,000/-.

16. Resultantly, the cross-objection filed by the Claimants/Respondents 1 to 6 is allowed in part and the impugned award is modified to the extent that the Claimants shall be entitled to a total enhanced amount of compensation of Rs.4,86,000/- with further direction of payment of interest on the enhanced amount of compensation @ 6% per annum from the date of applicant till realization. However, rest of the conditions of the impugned award shall remain intact.

17. The appeal filed by the Appellant/Insurance Company/non-applicant No.3 is dismissed.

18. Consequently, stay order granted on 09.04.2019 stands vacated.

Sd/-
(Gautam Chourdiya)
Judge