NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 265 of 2013

1. The Oriental Insurance Co.Ltd. Thru- Branch Manager, The Oriental Insu.Co.Ltd., Near Ambedkar Chowk, Manendragarh Road, Ambikapur, Distt. Surguja C.G. **---- Appellant**

Versus

1. Smt.Anju Gupta Wd/o Late Ajay Prasad Gupta Aged About 30 Years Occupation housewife R/o Village- Kusmi, P.S. Kusmi, Distt. Surguja C.G.
2. Aman Gupta S/o Late Ajay Prasad Gupta Aged About 5 Years Minor, Thru- Mother, Smt. Anju Gupta, R/o Village- Kusmi, P.S. Kusmi, Distt. Surguja C.G.
3. Ku. Suman Gupta D/o Late Ajay Prasad Gupta Aged About 12 Years Minor, Thru- Mother, Smt. Anju Gupta, R/o Village- Kusmi, P.S. Kusmi, Distt. Surguja C.G.
4. Irshad Ali S/o Arshad Ali Aged About 35 Years R/o Dhutrapara, Mayapur, P.S. Mayapur, Distt. Surguja C.G. (Driver of vehicle)
5. Smt. Pushpa Devi W/o Shivpujan Yadav Aged About 32 Years, Caste Ahir R/o Village Rata, P.S. Lundra, Distt. Surguja C.G.

---- Respondents

M.A.(C) No. 290 of 2013

1. Smt. Anjoo Gupta W/o Late Ajay Prasad Gupta Aged About 30 Years R/o Kujawi, P.S. Kusami, Distt. Surguja C.G.
2. Aman Gupta S/o Late Ajay Prasad Gupta Aged About 5 Years Minor, Thru- Mother Smt. Anjoo Gupta, R/o Kujawi, P.S. Kusami, Distt. Surguja C.G.
3. Ku. Suman Gupta D/o Late Ajay Prasad Gupta Aged About 12 Years Minor, Thru- Mother Smt. Anjoo Gupta, R/o Kujawi, P.S. Kusami, Distt. Surguja C.G., **---- Appellants**

Versus

1. Irshad Ali And Ors. S/o Arsad Ali Aged About 35 Years R/o Ghutaro Para, Mayapur, P.S. Ambikapur, Distt. Surguja C.G.
2. Shrimati Pushpadevi W/o Shivpoojan Yadav Aged About 32 Years Caste Ahir, R/o Village Rata, P.S. Lundra, Distt. Surguja C.G.
3. The Oriental Insu. Co.Ltd. W/o Thru- The Branch Manager, The Oriental Insu.Co.Ltd., Near Ambedkar Chowk, Manendragarh Road, Ambikapur, Distt. Surguja C.G. **---- Respondents**

M.A.(C) 265/2013

For Appellants:	Shri H. B. Agrawal, learned senior counsel along with Shri Pankaj Agrawal, Advocate.
For Respondents No. 1 to 3:	Shri S. D. Singh, Advocate.

M.A.(C) 290/2013

For Appellants: Shri S. D. Singh, Advocate.

For Respondent No.3: Shri H. B. Agrawal, learned senior counsel along with Shri Pankaj Agrawal, Advocate.

Single Bench:Hon'ble Shri Sanjay Agrawal, J

Award On Board

01.10.2019

1. Both these appeals arise out of the common award dated 14.12.2012 passed by the Third Additional Motor Accident Claims Tribunal, Ambikapur, Surguja (hereinafter referred to as 'the Claims Tribunal') in Motor Accident Claim Case No.03/2012, by which, the learned Claims Tribunal while allowing the claim in part, has awarded total amount of compensation to the tune of Rs. 10,50,000/- with 6% interest per annum from the date of filing of the claim petition till its realization while fastening the liability upon the insurance company, therefore, they are being disposed of by the common award. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 22.10.2010, deceased Ajay Prasad Gupta was going towards village Kamarha from village Bhapauli on his motorcycle and at the relevant time, it was dashed vehemently by the offending vehicle “Pickup Van” bearing its registration number CG-15A/3718, which was owned by Non-applicant No. 2 Smt. Pushpa Devi, insured with Non-applicant No.3 Oriental Insurance Company Limited. At the relevant time, the alleged vehicle was being driven rashly and negligently by its driver Irshad Ali. Owing to which, the alleged accident occurred, by which, deceased Ajay Gupta sustained

serious injuries and expired on the spot.

3. On account of the aforesaid accident, the Claimants being legal representatives, instituted a claim petition enumerated under Section 166 of the Act, 1988 by submitting *inter alia* that the deceased, who was 34 years old, was a petty contractor and was also engaged in selling the motor parts and used to earn Rs.30,000/- per month, and thus, total amount of compensation to the tune of Rs. 50,00,000/- has been claimed under various heads.

4. Non-applicants No. 1 & 2, driver and owner of the offending vehicle while disputing the monthly income of the deceased, contested the claim by saying that since the vehicle in question was insured with Non-applicant No.3, therefore, in case of any liability being fastened, the same could be indemnified by the Insurance Company. While Non-applicant No.3/Insurance Company contested the claim mainly on the ground that the driver of the offending vehicle was not holding the valid and effective driving licence nor the deceased was holding any licence. It is pleaded further that the amount of compensation as claimed is apparently on higher side.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 22.10.2010 due to rashness and negligent driving by the driver of the offending vehicle, resulting into the sad demise of Ajay Gupta. It held further that the vehicle in question was not being used in violation of the insurance policy and that by considering the income of the deceased at Rs. 8000/- per month, Tribunal awarded total amount of compensation as mentioned herein above while fastening the liability upon the Insurance Company.

6. Being aggrieved, these appeals have been preferred by the Insurance Company as well as by the Claimants. Shri H. B. Agrawal, learned senior counsel along with Shri Pankaj Agrawal, counsel for the Appellant in M.A.(C) No.265/2013 submits that the award under appeal as passed by the Claims Tribunal while fastening the liability upon the Insurance Company is apparently contrary to law. According to him, the vehicle in question was being driven by the driver of the offending vehicle who was not holding the valid and effective driving licence. However, without considering the said fact in its proper manner, the Claims Tribunal has committed an illegality in fastening the liability upon the Insurance Company. It is contended further that the monthly income of the deceased as assessed by the Claims Tribunal to the tune of Rs.8000/- without any basis, is also liable to be set aside. While Shri S. D. Singh, learned counsel for the Appellants in M.A.(C) No.290 of 2013 submits that the monthly income of the deceased as assessed by the Claims Tribunal at Rs.8000/- is just and proper. He, however, submits that while awarding the amount of compensation, future prospects of the income of the deceased ought to have been taken into consideration and submits further that the Tribunal has awarded a meagre sum of Rs.26,000/- only towards conventional heads whereas, it ought to have been just and proper in this regard. In support, he placed his reliance upon the principles laid down in the matters of ***National Insurance Company Limited Vs. Pranay Sethi and others*** and ***Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram and Others*** reported respectively in **(2017) 16 SCC 680** and **(2018) 18 SCC 130.**

7. I have heard learned Counsel for the parties and perused the entire

record carefully.

8. In M.A.(C) No.265 of 2013 preferred by the Insurance Company, the contention of Shri Agrawal that the driver was not holding the valid and effective driving licence, and therefore, no liability as such could be fastened upon it. However, no cogent and liable evidence has been produced in order to substantiate the said fact. As such, the Claims Tribunal has not committed any illegality in holding that the driver of the offending vehicle was possessing the valid and effective driving licence at the relevant time. The finding so recorded by the Claims Tribunal appears to be due and proper appreciation of the evidence led by the parties and, deserves to be and is hereby affirmed. In so far as the monthly income of the deceased assessed to the tune of Rs.8000/- is concerned, it appears to be unreasonable as it was based upon no any cogent and reliable evidence. Having considered the fact that the deceased was a motor mechanic and considering further the minimum wages prevailing at the time of accident, i.e. on 22.10.2010, I hold the monthly income of the deceased at Rs.4500/-. It, therefore, deserves to be modified.

9. It appears further from the perusal of the record, as contended by Shri Singh, learned counsel for the Appellants in M.A.(C) No.290/2013, that while awarding the amount of compensation, future prospects of the income of the deceased was not taken into consideration. As the deceased was found to be 35 years old at the relevant time, therefore, while determining the income of the deceased, it would be just and proper to add 40% of his income in the light of the principles laid down in the matter of ***National Insurance Company Limited Vs. Pranay Sethi and others*** (supra) in order to assess the just and proper amount of compensation

payable to the Claimants. It appears further that only a sum of Rs.26,000/- has been awarded towards conventional heads which also deserves to be enhanced in view of the principles laid down in the matter of ***Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram and Others*** **(**supra).

10. Considering the aforesaid facts and circumstances of the case and considering further the monthly income of the deceased at Rs.4500/-, yearly Rs.54,000/- and by adding 40% of it, i.e., Rs.21,600/-, the total income of the deceased would be at Rs.75,600/- and that by deducting one-third of it, i.e., Rs.25,200/- towards his personal and living expenses yearly dependency would be worked out at Rs.50,400/-(Rs.75,600/- - Rs.25,200/-). As the age of the deceased at the time of the accident was 35, the multiplier applicable would be 16. As such, by applying multiplier of 16, the total dependency would be worked out at Rs.8,06,400/- (Rs.50,400 x 16). In addition to this, the Claimants are also entitled to a sum of Rs.1,70,000/- towards conventional heads instead of Rs.26,000/- as assessed by the Claims Tribunal, as under:-

(i) Loss of consortium to wife	-	Rs.40,000/-
(ii) Loss of love and affection to two children at Rs.50,000/- each	-	Rs.1,00,000/-
(iii) funeral expenses	-	Rs.15,000/-
(iv) Loss of estate	-	Rs.15,000/-
Total	**-**	**Rs.1,70,000/-**

11. The Claimants are thus entitled to a total amount of compensation to the tune of Rs.9,76,400/- instead of Rs.10,50,000/- as determined by the Claims Tribunal. The amount of compensation so assessed herein, i.e.,

Rs.9,76,400/- shall carry interest at rate of 6% per annum from the date of filling of the claim petition till its realization.

12. In view of the foregoing discussions, both these appeals are accordingly disposed of to the extent indicated hereinabove. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

Nikita