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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1146 of 2016**

1. Tarkeshwari Bai Wd/o Lalit Singh Thakur, aged about 39 years.
2. Ram Pujan Singh S/o. Late Lalit Singh Takur, aged about 15 years.
3. Ku. Neha Singh D/o Late Lalit Singh Takur, aged about 13 years.
4. Ku. Nishi SinghD/o. Late Lalit Singh Takur, aged about 11 years.

Appellant No. 2 to 4 are minor through their natural mother namely Tarkehware Bai Wd/o. Lalit Singh Thakur, aged about 39 years.

5. Leela Bai Wd/o Late Chandra Gupta, aged about 67 years.

All are R/o. Village Madanpur, Police Station and Tehsil and District Mungeli (C.G.).

---- Appellants/Claimants**Versus**

1. Hinchh Lal Patel S/o Ugraman Patel Caste Kurmi, aged about 35 years, Driver of Truck Hywa No. K.A. 03D/211 R/o. Village Bithouli, Tehsil Sihawa Police Station Ameliya, District Sidhi (M.P.).
2. Managing Director M/s. Reddy Viranna Constraction Pvt. Ltd. Owner of Truck Hywa No. K.A. 03D/211, Office Purana Court, Second Floor No. 9/1 Richmand Road Banglore, Karnataka.
3. The Oriental Insurance Co. Ltd., New Muslim Hostel Complex, First Floor Maisoor, Karnataka, through Divisional Office, Bilaspur (C.G.).

---- Respondents

For Appellants	: Shri A. L. Singrol, Advocate.
For Respondent No.3	: Shri D.L.Dewangan, Advocate with Shri Amit Buxy, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board**

25.01.2019

(1) This appeal has been filed by the claimants, who are unfortunate wife, children and mother of deceased – Lalit Singh Thakur, against the award dated 16.05.2014 passed by Additional Motor Accident Claims Tribunal, Mungeli, District Bilaspur in Claim Case No.158/2011 whereby the Claims Tribunal has rejected the claim petition filed by the claimants holding that claimants have failed to prove the income of the deceased as deceased – Lalit Singh Thakur was mentally retarded and, therefore, they were not dependent upon the income of the deceased.

(2) Facts of the case, as per claim petition, are that when on 5.3.2008 at about 6 pm deceased Lalit Singh Thakur was returning to his home after visiting the field, at that time, the offending vehicle Hywa bearing registration No. K.A. 03 D/211 was going towards Mungeli from Fasterpur, which was driven by respondent No. 1- Hinchhlal Patel in a rash & negligent manner, dashed Lalit Singh Thakur, as a result of which he sustained severe injuries and was taken to Community Health Centre, Mungeli for his treatment, where he died during the course of treatment.

(3) Learned counsel for the appellants/claimants submits that the deceased was not mentally ill as there is no iota of evidence adduced before the Claims Tribunal regarding his mental illness. Only on the basis of application for postmortem, learned Claims Tribunal recorded finding that the deceased was mentally ill prior to 4 – 5 years from the date of accident and no any mental illness was proved by any of the parties. He also submits that wife of the deceased- Tarkeshwari Bai

was examined before the Claims Tribunal, in which she has specifically denied the factum of mental illness of his husband, and, therefore, the finding recorded by the Claims Tribunal, being devoid of merit, is liable to be set aside. He also submits that this fact is also proved by the claimants by giving oral and documentary evidence that when the deceased was coming to his home from the field, at that time, from the back side, offending vehicle –Hywa bearing registration No. K.A. 03 D/211, which was being driven by respondent No. 1- Hinchh Lal Pate, dashed the deceased, as a result thereof, he suffered grievous injuries and died during the course of treatment, as such, there is no negligence on the part of the deceased in the motor accident occurred on 5.3.2008. He also submits that learned Claims Tribunal has recorded a finding that claimants have failed to prove the income of the deceased as the deceased was suffering from mental disorder and, therefore, they were not dependent upon the income of the deceased but before the Claims Tribunal the statement of the wife of the deceased that her husband was not mentally ill was not rebutted, therefore, the income of the deceased ought to have been considered looking to the minimum wages prevailing at the relevant point of time.

(4) Learned counsel for the respondent No. 3/Insurance Company submits that in the application for postmortem(Ex.P/3), it has specifically been mentioned by the officer concerned, who prepared this application, that the deceased was mentally ill and the documents to this effect were produced by the claimants and, therefore, he can not give any contradictory statement regarding mental illness of the deceased. Merg intimation lodged by the brother of the deceased also

reflects the mental illness of the deceased at the time of accident and, therefore, the learned Claims Tribunal has rightly dismissed the claim petition as no negligence on the part of driver of the offending vehicle was proved by the claimants and they also could not prove the fact that the deceased was not mentally ill and earning any income. The instant case is based on evidence adduced by the wife of deceased, and no other evidence was adduced by the claimants to prove the aforesaid facts. Learned Claims Tribunal has passed the impugned award on the basis of mere intimation and the mere intimation is taken into consideration in para 11 of the award therefore, there is no substance in this appeal warranting interference by this Court.

(5) I have heard learned counsel appearing for the parties and perused the impugned award including record of the Claims Tribunal.

(6) It has clearly been proved by the claimants by adducing evidence that at the time of accident, the deceased was aged about 45 years as per postmortem report and he died due to accident occurred on 05.03.2008; FIR (Ex. P-2) is also proved and chargesheet filed against the respondent No. 1/Non-applicant No. 1. As per Ex. P/1 filed & proved by the claimants it has been established that deceased died due to the injuries sustained by him in the vehicular accident occurred on 5.3.2008 and those documents are not challenged by any of the party before the Claims Tribunal.

(7) It is an admitted position on record that when the deceased was going to his home, the respondent No. 1, while driving the offending vehicle rashly and negligently, dashed the deceased from the backside and there is no any cogent and appropriate evidence adduced by the

Insurance Company to the effect that deceased was also negligent in the accident occurred on 5.3.2018. Therefore, the finding recorded by learned Claims Tribunal that negligence on the part of non-applicant No. 1 is not duly proved, is perverse and contrary to the record as per the document filed by the claimants vide Ex. A/1 to Ex A/6.

(8) So far as mental illness of the deceased is concerned, the learned Claims Tribunal, only on the basis of application for postmortem, has recorded a finding that deceased was mentally ill prior to 4 – 5 years of the accident and there is no cogent and clinching evidence adduced in this regard before the Tribunal. As per statement of applicant witness No. 1-Tarkeshwari proved this fact that her husband was mentally fit and driver of the offending vehicle did not examined himself before the Tribunal. Therefore, part of the order by which the deceased was declared mentally challenged & also the finding recorded by the Tribunal as to who is liable for the accident not proved by claimant are liable to be and is hereby set aside. Therefore, The Claims Tribunal has dismissed the claim on the ground that the claimant could not prove the factum of negligence of the deceased being an earning member of their family.

(9) Now, the claimants, in this claim petition, has pleaded that deceased was working at the Medical & grocery shop thus, income of the deceased can be considered as Rs. 3,000/- per month as skilled person as per minimum wages at the relevant time. Regarding the future prospect is concerned, the deceased was aged about 45 years old, therefore, in view of judgment of the Supreme Court in **Pranay Sethy** (supra), 25% of the annual income should be added thereto

towards future prospect and further Rs.70,000/- should be given towards incidental heads. Thus, the claimants are held entitled in the following manner :-

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.3,000/- per month.	Rs. 3,000x12= Rs. 36,000 per annum
02.	25% of (1) above to be added towards future prospects.	Rs.36,000 +Rs.9,000/- = Rs.45,000/-
03.	1/4 th deduction towards personal and living expenses of the deceased	Rs.45,000-Rs.11,250/- = Rs. 33,750/-
04.	Multiplier of 14 to be applied as per aged of the deceased as 45 years.	Rs.33,700 x 14 = Rs.4,72,500/-
05.	Towards loss of consortium, loss of estate & funeral expenses	Rs.70,000/-
06.	Total compensation	Rs. 5,42,500/-

(10) Thus, the claimants are held entitled to Rs. 5,42,800/- along with interest 6% per annum from the date of filing of claim petition, till its actual. The respondent No. 3/The Oriental Insurance Company Ltd. is directed to deposit the aforesaid amount along with interest before the concerned Tribunal. No order as to costs.

(11) In the result, the appeal is allowed in part with modification in the impugned award to the extent indicated hereinabove.

Sd/-

(Gautam Chourdiya)
Judge