NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 719 of 2015

Branch Manager, Cholamandalam Ms (Wrongly Mentioned ML) General Insurance Company Ltd. Opp. Lic Office, Near Railway Line, Pnadri, Raipur, District Raipur, Chhattisgarh

----Applicant

Versus

1. Smt. Savitri Bai W/o Mannu Dhruv Aged About 44 Years R/o Village Kounjhar Police Station Tumgaon, Tahsil And Distt. Mahasamund Chhattisgarh.
2. Mannu Dhruv S/o Late Trilochan Dhruv Aged About 46 Years R/o Village Kounjhar, Police Station Tumgaon, Tahsil And Distt. Mahasamund Chhattisgarh.
3. Ku. Indrani Dhruv D/o Mannu Dhruv Aged About 18 Years R/o Village Kounjhar, Police Station Tumgaon, Tahsil And Distt. Mahasamund Chhattisgarh.
4. Digeshwri Dhruv D/o Mannu Dhruv Aged About 15 Years Minor Through Father R/o Village Kounjhar, Police Station Tumgaon, Tahsil And Distt. Mahasamund Chhattisgarh.
5. Durga Dhruv D/o Mannu Dhruv Aged About 12 Years Minor Through Father R/o Village Kounjhar, Police Station Tumgaon, Tahsil And Distt. Mahasamund Chhattisgarh.
6. Rani Dhruv D/o Mannu Dhruv Aged About 10 Years Minor Through Father R/o Village Kounjhar, Police Station Tumgaon, Tahsil And Distt. Mahasamund Chhattisgarh.
7. Dilip Dhruv S/o Mannu Dhruv Aged About 8 Years Minor Through Father R/o Village Kounjhar, Police Station Tumgaon, Tahsil And Distt. Mahasamund Chhattisgarh.
8. Umesh Kumar Jaiswal S/o Late Gyan Jaiswal Aged About 30 Years R/o Village Tandipar, Police Station Sarangarh, Distt. Raigarh Chhattisgarh.
9. Niranjan Singh S/o Pradeep Singh Aged About 36 Years R/o Gram Pateva, Thana Pateva, Tahsil And Distt. Mahasamund Chhattisgarh.

---- Respondents

For Appellant:	: Shri D.L. Dewangan apperas along with Vaibhav Maheshwari, Advocate
For Respondents No. 1 to 7	: Shri Sumit Shrivastava, Advocate
For Respondents No. 8 to 10	: None, though served.

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board

08.08.2019

1. This Miscellaneous Appeal has been preferred by Non-applicant No. 3/Cholamandalam MS General Insurance Company Limited under Section 173 of the Motor Vehicle Act, 1988(hereinafter referred to as the 'Act of 1988'), questioning the legality and propriety of the award dated 23.01.2015 passed by the Motor Accident Claims Tribunal, Mahasamund(hereinafter referred to as the 'Claims Tribunal') in Claim Case No. H-89/2014, by which, the learned Claims Tribunal has awarded a total amount of compensation to the tune of Rs. 10,51,000/- (Ten Lakhs Fifty One Thousand Only) with 6% interest per annum from the date of filing of Claim Petition till its realization while fastening the liability upon the Insurance Company. 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 01.12.2013 at 10:30 A.M., deceased Dinesh Kumar Dhruv was coming by his motorcycle along with his friends from village Tumgaon to Kauwajhar. As soon as he reached near the house of one Bedram Satnami, it was dashed vehemently from its opposite side by the offending vehicle “Mini Bus” bearing its Registration No. CG-06-B-1755, resulting into the said demise of deceased Dinesh Kumar Dhruv. At the relevant time, it was being driven rashly and negligently by its driver Umesh Kumar Jaiswal, the Non-Applicant No. 1, insured with Non-Applicant No. 2 Niranjan Singh and which was insured with Non-Applicant No. 3, Cholamandalam MS General Insurance Company Limited.
3. On account of the aforesaid accident, the Claimants, being legal representatives of the deceased, instituted a claim petition enumerated under Section 166 of the Act of 1988 by submitting *inter alia* that

deceased Dinesh Kumar Dhruv, a 19 years old, was unmarried and used to earn Rs. 6,000/- (Six Thousand Only) per month while working as a mechanic and thus, total amount of compensation of Rs. 24,50,000/- (Twenty Four Lakhs Fifty Thousand Only) has been claimed.

4. The Non-Applicants No. 1 and 2, the driver and owner of the vehicle in question contested the claim by saying that the driver was holding the effective and valid driving license and pleaded further that since the vehicle in question was insured with the Non-Applicant No. 3, therefore, in case of any liability being fastened, the same could be indemnified by the said Insurance Company.

5. The Non-Applicant No.3/Insurance Company while disputing the monthly income of the deceased contested the claim mainly on the ground that the deceased himself was responsible for the alleged accident and pleaded further that since the vehicle in question was being driven by the driver of the offending vehicle without possessing any valid driving license, therefore, no liability as such could be fastened upon it.

6. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the accident occurred on 01.12.2013 at 10:30 A.M., due to rashness and negligent driving of the driver of the offending vehicle resulting into the said demise of deceased Dinesh Kumar Dhruv who was unmarried and was 19 years old. It held further that the Insurance Company has failed to produce any evidence in order to establish the fact that the driver of the offending vehicle was not possessing the valid and effecting driving license and in

consequence, while fastening the liability upon the Insurance Company awarded total amount of compensation to the tune of Rs. 10,51,000/- (Ten Lakhs Fifty One Thousand Only) with 6% interest per annum from the date of filing of Claim Petition till its realization.

7. Being aggrieved, Non-Applicant No.3/the Insurance Company has preferred this appeal. Learned Counsel for the Appellant submits that the award impugned as passed by the Claims Tribunal holding that the driver was holding the valid and effective driving license is apparently contrary to law. He submits further that the amount of compensation as assessed by the Claims Tribunal is extremely on higher side and therefore deserves to be modified in order to provide just and fair compensation payable to the claimants.

8. On the other hand, Shri Shrivastava, learned counsel for Respondents No. 1 to 7 while supporting the award impugned submits that in absence of any evidence led by the Insurance Company, the Claims Tribunal has not committed any illegality in fastening the liability upon the Insurance Company by holding that the driver of the offending vehicle was possessing the effective and valid driving license at the relevant time. He submits further that while assessing the monthly income of the deceased to the tune of Rs. 6,000/-, the Claims Tribunal has not committed any illegality in awarding the amount of compensation as such. The order impugned is, therefore, not liable to be interfered.

9. I have heard, learned counsel for the Parties and perused the entire record carefully.

10. It appears from the perusal of the record that the alleged accident was

occurred on 01.12.2013 due to rashness and negligent driving of the driver of the offending vehicle. It appears further from the record that in order to establish the fact that the driver of the offending vehicle was not possessing the valid and effective driving license, no evidence has been led by the Insurance company, though burden was heavily upon it to establish the said fact. In absence thereof, the Claims Tribunal has not committed any illegality in holding that the driver of the offending vehicle was possessing the effective and valid driving license at the relevant time. The finding so recorded by the Claims Tribunal in this regard deserves to be and is hereby affirmed.

11. In so far as the amount of compensation as assessed by the Claims Tribunal, it appears that it is on higher side. While assessing the monthly income of the deceased at Rs. 6,000/- (Six Thousand Only), yearly 72,000/- (Seventy Two Thousand Only) and that by deducting half of it towards his personal expanses, the yearly dependency has been assessed at Rs. 36,000/- (Thirty Six Thousand Only) and that by applying the multiplier of 16, looking to the age of the deceased at 19 years old, the total dependency has been assessed to the tune of Rs. 5,76,000/- (Five Lakhs Seventy Six Thousand Only). Upto this there is no infirmity in the award impugned, however, while awarding the amount of compensation, the Claims Tribunal has erred in awarding a sum of Rs. 4,75,000/- (Four Lakhs Seventy Five Thousand Only) towards conventional heads as under:-

(I) Rs. 1,00,000/- each to Applicants 1 and 2 i.e. Rs. 2,00,000/-.

(II) Rs. 50,000/- each to Applicants 3 to 7 i.e. Rs. 2,50,000/-

towards love and affection,

(III) Rs. 25,000/- towards funeral expenses.

12. The Claims Tribunal has thus, awarded a sum of Rs. 4,75,000/- as aforesaid towards conventional heads. It, however, ought not to have been more than Rs. 30,000/- in view of the principles laid down in the matter of *National Insurance Company Limited Vs. Pranay Sethi And Others* reported in **(2017) 16 SCC 680**, wherein it has been held at paragraph 52 as under:-

> "52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in *Rajesh V. Rajbir Singh, (2013)* 9 SCC 54. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- towards loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though *Rajesh V. Rajbir Singh, (2013)* 9 SCC 54 refers to Santosh Devi(Santosh Devi V. National Insurance Co. Ltd., (2012) 6 SCC 421, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000, Rs.40,000 and Rs. 15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have

> quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

13. Considering the aforesaid facts and circumstances of the case and in view of the principles laid down in the aforesaid decision, the conventional heads, as awarded appears to be extremely on higher side and therefore, deserves to be modified accordingly in order to provide just and proper amount of compensation payable to the claimants. Consequently, I deem it proper to award a sum of Rs. 30,000/- (Thirty Thousand Only) towards conventional heads and as such the claimants would be entitled to a sum of Rs. 6,06,000/- (Six Lakhs Six Thousand Only) (5,76,000 + 30,000) instead of 10,51,000/- (Ten Lakhs Fifty One Thousand Only), with 6% interest per annum from the date of filing of Claim Petition till its realization.

14. In view of the foregoing discussions, the appeal is allowed in part and the award impugned is modified to the extent indicated hereinabove. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

vivek