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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 741 of 2015

- Branch Manager, United India Insurance Company Limited, Branch Office, Bramhroad Ambikapur, District Surguja (C.G.)

---- Appellant/Non-applicant No.1

Versus

1. Jagarsai S/o Mansai, aged about 55 years, occupation agriculture
2. Smt. Mani W/o Jagarsai, aged about 50 years, occupation housewife

Both are R/o Village Gopalpur, Police Station and Tahsil Rajpur, District-Balrampur (C.G.)

(Claimants)

3. Amarjit Agrawal S/o Premchand Agrawal, occupation business, R/o village Baghima, Police Station and Tahsil Rajpur, District- Balrampur (C.G.)

(Non-applicant No.2)

4. Ganesh Gupta S/o Shri Dwarika Gupta, R/o village Amlipara, Post Ara, Tahsil Rajpur, District Balrampur (C.G.)

(Since deceased – Name has been deleted)

---- Respondents

For Appellant	:	Shri H.B. Agrawal, Senior Advocate with Ms. Prabha Sharma, Advocate
For Respondents 1 to 2	:	Shri A.N. Pandey, Advocate
For Respondent No. 3	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

11.03.2019

1. This appeal is by the Insurance Company/Non-applicant No.1 against the award dated 13.03.2015 passed by the Third Additional Motor Accident Claims Tribunal, Ambikapur, Surguja (C.G.) in Claim Case No. 47 of 2012 awarding total compensation of Rs.3,03,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicant No. 1 alongwith non-applicant No 2 jointly and severally.

2. Facts of the case, in brief, are that deceased Surendra was driver of offending vehicle Jeep bearing registration No. CG-15/ZD/0892, owned by non-applicant No. 2 and insured with non-applicant No.1. On 22.04.2007, on instruction

of non-applicant No.2, deceased Surendra was going from Village Dakwa to Kerta for dropping some people by the said Jeep. After returning from Village Kerta to Village Dakwa, when he reached near Village Manpur and wanted to turn the Jeep, the steering of the Jeep got failed and it could not be turned and the accident occurred. As a result thereof, Surendra sustained grievous injuries on his head & other parts of the body and died on spot. At the time of accident, deceased Surendra was aged about 20 years and was earning Rs.3,000/- per month by doing the work of driver.

3. On claim petition being filed by the Claimants, i.e. mother and father of deceased, under Section 163A of the Motor Vehicles Act, 1988 for compensation to the tune of Rs.6,09,000/-for the death of Surendra 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 2 under Order XLI, Rule 22 of the Code of Civil Procedure seeking enhancement of the compensation.

5. Learned counsel for the Appellant/Insurance Company submits that as per claim petition, the deceased was the driver of the Jeep and was not a third party, therefore, the application filed under Section 163A of the Motor Vehicles Act is not tenable under the law.

6. Learned counsel for the Claimants/Respondents No. 1 & 2 submits that no amount towards future prospect has been granted to the Claimants and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. He further submits that as per Second Schedule under Section 163A of the Motor Vehicles Act, 1988, 50% deduction towards personal and living is also against the law whereas it should have been 1/3rd. In support of his contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

7. Learned counsel for the Appellant/Insurance Company opposes the contention made by learned counsel for the Claimants/Respondents No. 1 & 2 and submits that there is no provision to grant future prospects under Section 163A of the Motor Vehicles Act.

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

9. It is not disputed that at the time of accident, the deceased was driving the offending vehicle Jeep, which was owned by non-applicant No.2 and was duly insured with non-applicant No.1 and the liability was on non-applicant No.1 alongwith non-applicant No.2 jointly and severally to pay compensation to the Claimants.

10. It is also not disputed by learned counsel for the parties that the Claimants who are parents of deceased Surendra filed claim petition under Section 163A of the Motor Vehicles Act, and as such, the Second Schedule as prescribed under the Act is applicable in this case. The present case is related to driving of the vehicle Jeep bearing registration No. CG-15/ZD/0892 by the deceased. On the date of accident i.e. 22.04.2007, the deceased was driving the said Jeep on the instruction of non-applicant No. 2 and on account of failure of steering of the said Jeep, it met with an accident due to which the deceased sustained grievous injuries and died on spot.

11. In the present case, insurance policy is not exhibited by the parties, certified copy of the insurance policy is enclosed with the record of claim petition. As per insurance policy, premium was taken by the Insurance Company for owner, driver and one employee, the claim is filed under Section 163A of the Motor Vehicles Act is tenable when the accident arises out of the use of motor vehicle. Section 167 of the Act deals with option regarding claims for compensation in certain cases. Parents of the deceased had an option to file application under Section 163 A or 166 of the Motor Vehicles Act or under the Workmen's Compensation Act, 1923. Therefore, the submission made by learned counsel for the Appellant/Insurance

Company that the claim petition filed by the Claimants is not tenable, is of no substance. the appeal filed by the Appellant/Insurance Company deserves to be set aside.

12. As per law developed by the Supreme Court under Section 166 of the Motor Vehicles Act, future prospect is considered. It is not statutory provision under the Motor Vehicles Act or Workmen's Compensation. For filing application under Section 163A of the Act the maximum per annum income should not exceed Rs.40,000/- but there is no bar for grant of future prospect to the Claimants seeking compensation under Section 163A of the Act. Therefore, in view of the judgment in *Pranay Sethi* (supra), the Claimants are entitled for 40% towards future prospects. Since the Tribunal has awarded low amount under the conventional heads, the Claimants are also entitled Rs.30,000/- under conventional heads.

13. Considering the facts and circumstances of the case, particularly considering the age of the deceased i.e. as per Ex.-P/2 postmortem report 20 years, the dependency, the nature of job, the deceased was self employed, the Second Schedule under Section 163A of the Motor Vehicles Act, 1988 and the decisions of the Hon'ble Supreme Court in the matters of *Pranay Sethi* (supra), the Claimants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.3,000/- per month	Rs.36,000/- per annum (as assessed by the Tribunal)
2.	40% towards future prospects added to annual income	(Rs.36,000/- + Rs.14,400/-) Rs.50,400/-
3.	1/3rd deduction towards personal and living expenses of the deceased	(Rs.50,400/- – Rs.16,800/-) Rs.33,600/-
4.	Multiplier of 16 applied	Rs.33,600/- x 16= Rs.5,37,600/-
5.	<u>Conventional Heads:</u> Loss of estate & funeral expenses	Rs.30,000/-
	Total Compensation	Rs.5,67,600/-

Since the Tribunal has already awarded Rs.3,03,000/-, after deducting the

same from the above amount, the Claimants are held entitled for additional compensation of Rs.2,64,600/-.

14. Resultantly, the appeal filed by the Appellant/Insurance Company/non-applicant No.1 is dismissed.

15. The cross-objection filed by the Claimants/Respondents No. 1 & 2 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.2,64,600/- 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.

Sd/-
(Gautam Chourdiya)
Judge