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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.1297 of 2015

Bharti Axa General Insurance, Through Branch Manager, Branch Raipur, First Floor, Chawla Complex, Devendra Nagar Road, Sai Nagar, Police Station Devendra Nagar, Civil And Revenue District Raipur, Chhattisgarh (Insurer of Vehicle No. CG 08 K 3171).

---- Appellant

Versus

1. Smt. Rameshwari Narang, W/o Late Jitendra Kumar Narang, Aged About 38 Years, R/o Near Yug Nirman School, Baikunth Nagar, Camp-1, Bhilai, Police Station, Chhawni, Civil And Revenue District Durg, Chhattisgarh (Claimant).

2. Ku. Jigyasha, D/o Late Jitendra Kumar Narang, Aged About 5 Years, Minor And Representing Through Her Mother Smt. Rameshwari Narang, R/o Near Yug Nirman School, Baikunth Nagar, Camp-1, Bhilai, Police Station, Chhawni, Civil And Revenue District Durg, Chhattisgarh (Claimant).

3. Master Tushar, S/o Late Jitendra Kumar Narang, Aged About 2 Years, Minor And Representing Through His Mother Smt. Rameshwari Narang, R/o Near Yug Nirman School, Baikunth Nagar, Camp-1, Bhilai, Police Station, Chhawni, Civil And Revenue District Durg, Chhattisgarh (Claimant).

4. Dev Prasad Narang, S/o Dhanwa Narang, Aged About 60

Years, R/o Near Yug Nirman School, Baikunth Nagar, Camp-1, Bhilai, Police Station, Chhawni, Civil And Revenue District Durg, Chhattisgarh (Claimant).

5. Mithlesh Kumar Hariharno, S/o Late Narayan Prasad Hariharno, Aged About 40 Years, R/o Gandhi Chowk, Police Station Kotwali, Civil And Revenue District Rajnandgaon, Chhattisgarh (Driver of Vehicle No. CG 08 K 3171).

6. Mahavir Associate, R/o Manav Mandir Chowk, Police Station Kotwali, Civil And Revenue District Rajnandgaon, Chhattisgarh (Owner of Vehicle No. CG 08 K 3171).

---- Respondents

For Appellant	:	Shri Rohitashva Singh, Advocate.
For Respondents	:	None, though served.

<u>Hon'ble Shri Justice Sanjay Agrawal</u>

<u>Award On Board</u>

<u>06.09.2019</u>

1. This Miscellaneous Appeal has been preferred by the Non-Applicant No.3/Bharti Axa General Insurance under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') questioning the legality and propriety of the award dated 31.07.2015 passed by the 6th Additional Motor Accident Claims Tribunal, Durg (C.G.) (for short 'the Claims Tribunal') in Motor Accident Claim Case No.65/2014, by which the Claims Tribunal while allowing the claim in part has

awarded the total amount of compensation to the tune of Rs.26,31,496/- with 6% interest per annum from the date of filing of the claim petition till its realisation. 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 06.05.2014 at 04:30 PM, the deceased Jitendra Kumar Narang was going along with his friend by his motorcycle towards Nehru Nagar and at the relevant time it was dashed vehemently from its back side by the offending vehicle Hyundai Car bearing its Registration No.CG-08-K-3171, owned by Non-Applicant No.2 namely Mahavir Associate, which was insured by Non-Applicant No.3/Bharti Axa General Insurance. At the relevant time, the vehicle in question was being driven rashly and negligently by its driver namely Mithlesh Kumar Hariharno, as a result of which, the alleged accident occurred in which said Jitendra Kumar sustained serious injuries and was admitted into the Chandulal Chandrakar Memorial Hospital at Bhilai for the period commencing w.e.f. 06.05.2014 upto 11.05.2014 and during the course of his treatment, he expired on 12.05.2014.

3. On account of the aforesaid accident, the claimants being legal representatives of deceased Jitendra Kumar, instituted a claim petition enumerated under Section 166 of the Act of 1988, alleging *inter alia* that deceased was an employee of Bhilai Steel Plant, Bhilai and used to earn Rs.11,650/- per

month, and thus, total amount of compensation to the tune of Rs.33,70,000/- with 12% interest per annum has been claimed on various heads.

4. The aforesaid claim has been contested by the Non-Applicant Nos.1 & 2, driver and the owner of the vehicle in question, by saying that the alleged accident has not occurred due to the rashness and negligent driving of the driver of the vehicle in question and infact, it was due to negligent driving of the driver of the motorcycle and he alone was responsible for the alleged accident. It is pleaded further that since the vehicle in question was insured with Non-Applicant No.3/Insurance Company, therefore, in case of any liability being fastened, the same could be indemnified by the said Insurance Company.

5. While Non-Applicant No.3/Insurance Company contested the claim by saying that the driver of the offending vehicle was not responsible for the alleged accident and pleaded further that if the driving licence of the driver of the offending vehicle is found to be a forged one, in the said event, the Insurance Company cannot be held liable for the alleged accident.

6. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 06.05.2014 due to rashness and negligent driving of the driver of the offending vehicle, resulting into the sad demise of said Jitendra Kumar Narang. It held further that the vehicle in question was not being used in violation of the insurance policy and that while fastening the liability upon the Insurance

Company, awarded total amount of compensation to the tune of Rs.26,31,496/- with 6% interest per annum from the date of filing of claim petition till its realisation.

7. Being aggrieved, the Non-Applicant No.3/Insurance Company has preferred this appeal. Shri Singh learned counsel for the Appellant, submits that the award impugned as passed by the Claims Tribunal is extremely on higher side. He submits further that while determining the income of the deceased, an addition of 100% of his actual salary has been taken into consideration and that apart, an amount of Rs.3,85,000/- has been awarded towards conventional heads without any basis. The award impugned is, therefore, liable to be interfered.

8. I have heard learned counsel for the Appellant and perused the entire record carefully.

9. In order to consider the aforesaid contention of the learned counsel for the appellant, I examined the entire record and from perusal of it, it appears that the Claims Tribunal while considering the monthly income of the deceased to the tune of Rs.10,029/-, an addition of 100% of it, i.e. Rs.20,058/- (Rs.10,029 + Rs.10,029) was taken into consideration towards future prospects of his income and that by deducting 1/3rd of it, i.e., Rs.6,686/- assessed monthly dependency to the tune of Rs.13,372/- (Rs.20,058 - Rs.6,686), yearly Rs.1,60,464/-. Since the deceased was found to be 43 years old at the relevant time, therefore, the multiplier of 14 was applied in order to assess the total amount of dependency and, thus,

awarded a sum of Rs.22,46,496/- in this regard. In addition to this, a sum of Rs.3,85,000/- has been awarded towards conventional heads in following manner:-

(i)	loss of consortium to wife	-	Rs.1,00,000/-
(ii)	funeral expenses	-	Rs.25,000/-
(iii)	loss of estate	-	Rs.10,000/-
(iv)	loss of love and affection to two children at the rate of Rs.1,00,000/- each	-	Rs.2,00,000/-
(v)	filial consortium to father	-	Rs.50,000/-
	Total	=	Rs.3,85,000/-

10. Thus, a total amount of compensation to the tune of Rs.26,31,496/- with 6% interest per annum from the date of filing of the claim petition till its realisation has been awarded. However, the manner in which, the amount of compensation has been assessed by the Claims Tribunal by adding 100% of deceased's monthly income towards future prospects of his income, alongwith the aforesaid amount of Rs.3,85,000/- under conventional heads appears to be highly unjustified and deserves to be set aside. Since the deceased was found to be 43 years old at the time of accident, therefore, an addition of 30% of actual salary of his monthly income towards his future prospects, instead of 100% of it, would have been appropriate in this regard in the light of the principles laid down in the matter of ***National Insurance Company Limited* Versus *Pranay Sethi and Others* reported in (2017) 16 SCC 680.**

11. Considering the monthly income of the deceased as Rs.10,029/-, yearly Rs.1,20,348/- and that by adding 30% of

it, i.e., Rs.36,105/- towards his future prospects, yearly income would be at Rs.1,56,453/- (Rs.1,20,348 + Rs.36,105) and that by deducting 1/3rd of it, Rs.52,151/- towards his personal expenses, the yearly dependency would be worked out at Rs.1,04,302/- (Rs.1,56,453 - Rs.52,151). Since the deceased was found to be 43 years old, therefore, by applying the multiplier of 14, the total dependency which claimants are entitled to would be at Rs.14,60,228/-. In addition to this, the claimants are entitled to a sum of Rs.2,10,000/-, instead of Rs.3,85,000/-, towards conventional heads as under:-

(i)	loss of consortium to wife	-	Rs.40,000/-
(ii)	filial consortium to father	-	Rs.40,000/-
(iii)	loss of love and affection to two children at the rate of Rs.50,000/- each	-	Rs.1,00,000/-
(iv)	funeral expenses	-	Rs.15,000/-
(v)	loss of estate	-	Rs.15,000/-
	Total	=	Rs.2,10,000/-

12. The claimants are, thus, entitled to total sum of Rs.16,70,228/- (Rs.14,60,228 + Rs.2,10,000), instead of Rs.26,31,496/- as awarded by the Claims Tribunal, with 6% interest per annum from the date of filing of claim petition till its realisation.

13. The appeal is accordingly allowed in part and the award impugned is reduced and/or modified accordingly to the extent indicated herein above. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge

Deepti Jha