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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1671 of 2016

- Divisional Manager, The Oriental Insurance Co. Ltd., Near Ambedkar Chowk, Manendragarh Road, Ambikapur, District- Surguja (C.G.)

---- Appellant/Insurer/Non-applicant No.4

Versus

1. Larang Paikra S/o Bodhan Ram, Age 52 years, Occupation- Agriculturist
 2. Smt. Lakhni Paikra W/o Larang Paikra, Age 49 years, Occupation- House Wife
 3. Sachin Kumar Paikra S/o Larang Paikra, Age 18 years, Occupation- Student
 4. Devnath Paikra S/o Larang Paikra, Age 15 years, Occupation- Student
 5. Ku. Mahima Paikra D/o Larang Paikra, Age 11 years, Occupation- Student
- Respondent No.4 & 5 are minor through natural guardian father Respondent No.1 Larang Paikra S/o Bodhan Ram, All R/o Village- Bakaspur, Post-Bhuslikala, P.S. & Tahsil – Kusmi, District- Balrampur, Ramanujganj (C.G.)

(Claimants)

6. Radhoram @ Raghav S/o Dashai Nageshiya, Age 40 years, R/o Village- Champa, P.S. - Champa, Tahsil – Bagicha, District- Jashpur (C.G.)

(Driver/Non-applicant No.1)

7. Ravi Kumar S/o Leelaram, Age 21 years, R/o Village Parsa, P.S.- Ambikapur, District – Surguja (C.G.)

(Conductor/Non-applicant No.2)

8. Majhrun Khan W/o Mohd. Shameem, Age 45 years, R/o Village- Dumardih (Kadampara), P.S.- Lundra, District- Surguja (C.G.)

(Owner/Non-applicant No.3)

---- Respondents

For Appellant/non-applicant No.4/ Insurance Company	:	Shri Raj Awasthi, Advocate
For Respondents No. 1 to 5/ Claimants	:	Shri A.N. Pandey, Advocate
For Respondents No. 6 & 8/ Non-applicants No. 1 & 3	:	Shri Pramod Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

11.03.2019

1. This appeal is by the Insurance Company/non-applicant No.4/Appellant under Section 173 of the Motor Vehicles Act, 1988 against the award dated 22.07.2016 passed by the Motor Accident Claims Tribunal, Ambikapur, District

Surguja (C.G.) in Claim Case No. 302 of 2015 awarding total compensation of Rs.48,13,916/- with interest @ 7% per annum from the date of application till realization, fastening liability on the non-applicants No.4 along with non-applicants No. 1 and 3 jointly and severally.

2. Claimants 1 & 2 who are father & mother and Claimants 3 to 5 who are brothers and sister of deceased Dinesh Kumar Paikra claimed compensation of Rs.75,67,400/- by filing a claim petition under Section 166 of the Motor Vehicles Act for the death of deceased Dinesh Kumar Paikra in the motor accident.

3. Facts of the case, in brief, are that on 09.11.2015 deceased Dinesh Kumar Paikra was coming from Kakna to Ambikapur travelling as passenger in the offending vehicle bus bearing registration No. CG-15/A/6593 which was being driven by non-applicant No.1, owned by non-applicant No.3 and insured with non-applicant No.4. When the said bus reached nearby mineral barrier situated at village Sonpurkala, Ambikapur, non-applicant No. 1 drove the said bus in a rash and negligent manner due to which Dinesh Kumar Paikra fell down from running bus as the door of the said bus got opened. As a result thereof, Dinesh Kumar Paikra sustained grievous injuries on head, hands and leg and he was given primary treatment in Jeevan Jyoti Hospital, Ambikapur. Thereafter, on 10.11.2015, when Dinesh Kumar Paikra was being taken to Raipur, he died on the way.

4. Learned counsel for the Appellant/Insurance Company raises various grounds in the appeal, but he only challenges that the Tribunal has committed a gross error by not deducting the allowances like tribal area allowance, house rent allowance, medical allowance and also CPS & GIS etc from the gross salary of the deceased whereas these allowances are legally not permissible to be added in monthly income of the deceased.

5. On the other hand, learned counsel for Respondents 1 to 5/Claimants and learned counsel for Respondents 6 & 8/non-applicants No.1 & 2 support the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation, which needs no interference by

this Court.

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

7. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

8. As per Ex.-P/8-C (Pay Bill), entire description of salary of the deceased is given. In column No.4, it was mentioned that the deceased was getting allowances, such as Rs.300/- as tribal area allowance; Rs.945/- as HRA and Rs.200/- as medical allowance and only medical allowance and HRA is applicable to be added in assessing the income of the deceased. At the time of accident, the deceased was posted in tribal area, therefore, he was receiving tribal area allowance as Rs.300/-. Therefore, the Tribunal was justified in not deducting the above allowances from the salary of the deceased.

9. It is not disputed by learned counsel for the parties that the accident occurred on 09.11.2015 due to rash and negligent driving of the offending vehicle bus by non-applicant No.1. The deceased was Sub-Engineer posted at tribal area in the office of Executive Engineer, Public Works Department, Division Ambikapur and at the time of accident, his gross salary was Rs.30,200/- including allowances, after deducting Rs.2,876/- as CPS and Rs.150/- as GIS, he was getting net salary of Rs.27,174/-. The Tribunal has assessed the age of the deceased as 24 years on the basis of service-book (Ex.P/7) of the deceased and as per Ex.-P/8, the income has been assessed Rs.30,200/- per month i.e. Rs.3,62,400/- per annum. After deducting Rs.9,517/- towards income tax, the total annual income comes to Rs.3,52,883/-. Therefore, the Tribunal keeping in view the decisions in **Rajesh & Others Vs. Rajbir Singh & Others, 2013 ACJ 1403 (SC)** and in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, granted 50% towards future prospects, made 50% deduction towards personal and living expenses of the deceased as he was unmarried, applied the multiplier of 18, and assessed the total loss of dependency at Rs.47,63,919/-and in view of the

decision of Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No. 9581/2018 arising out of SLP (Civil) No. 3192/2018***, the Tribunal was justified in awarding Rs.25,000/- towards funeral expenses and Rs.25,000/- towards loss of love & affection. Thus, total amount of compensation comes to Rs.48,13,916/-. In view of the above, the Tribunal was justified in awarding total compensation of Rs.48,13,916/- in favour of the Claimants, which needs no interference by this Court.

10. In the result, the appeal filed by the Insurance Company being without any substance deserves to be dismissed and is, accordingly, dismissed.

Sd/-

(Gautam Chourdiya)
Judge