NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1635 of 2015

1. United India Insurance Company Limited, Paras Complex, In Front of S.B.I., Near Gurudwara, Station Road Durg, Distt.- Durg, Chhattisgarh (Insurer of Motorcycle No. C.G.-17-B-5839).

---- Appellant

Versus

1. Ku. Susmita Rajurkar D/o Late Shri Sukhram Rajurkar, Aged About 30 Years Occupation- Nothing (Non-Collegiate Student)
2. Ku. Neetu Rajurkar D/o Late Shri Sukhram Rajurkar, Aged About 25 Years Occupation- Nothing Student,

   Both are R/o M.I.G.- 1/651, H.U.D.C.O., Bhilai, Tah. And Distt. Durg, Chhattisgarh.
3. Suraj Chhabra S/o Narendra Chhabra, Aged About 20 Years R/o L.I.G.- 177, C.G. Housing Board, Kohka, P.S.- Supela, Bhilai, Tah. And Distt.- Durg, Chhattisgarh (**Driver** Of Motorcycle No. C.G.-17-B-5839).
4. Jitendra Nath Dewangan S/o Late Shri Ramprasad Dewangan, Aged About 48 Years R/o Civil Line Ward, Jagdalpur, Distt.- Bastar, Chhattisgarh (**Owner** Of Hero Honda Motorcycle No. C.G.-17-B-5839).

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
Respondent No. 1 & 2	:	Shri P.R. Patankar, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

27/03/2019

1) This appeal is by the Insurance Company/Non applicant No. 3 under Section 173 of the Motor Vehicles Act, 1988 against the award 21/09/2015 passed by VIth Additional Motor Accident Claims Tribunal, Durg (C.G.) in Claim Case No. 149/2013 awarding total compensation of Rs. 29,20,590/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

2) As per claim petition, on 16/08/2011 deceased Prakash Rajurkar, 24 years of age, earning Rs. 15,000/- per month i.e. Rs. 1,80,000/- per annum, was riding his motorcycle Bajaj Discover bearing No. CG07 LS 5587 and going towards Hudko Bhilai from Raipur, near Sai College road, Garage Road, Sector-06, Bhilai with a moderate speed. However, on the way non-applicant No. 1 Suraj Chabra by driving vehicle Hero Honda bearing No. CG17 B 5839 (Offending Vehicle) in a rash and negligent manner dashed the motorcycle of the deceased. As a result of this accident Prakash Rajurkar sustained grievous injury and he was taken to Hospital Sector-9, where he died on 20/08/2011 during the treatment. At the time of accident the offending vehicle was owned by non-applicant No. 2 and insured with non-applicant No. 3.

3) On claim petition being filed by the claimants, sisters of the deceased under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4) Learned counsel for the Insurance Company/appellant submits as under:-

i. that there was head on collision between two vehicles and therefore, the Tribunal should have held the deceased contributory negligent to the extent of 50%.

ii. that respondents No. 1 and 2, have wrongly been considered dependent upon the deceased.

iii. that 50% towards future prospect has wrongly been granted by the Tribunal ; whereas considering the age and nature of job of the deceased it should have been 40%.

iv. that even assessment of compensation by taking the yearly income as Rs. 1,49,755/- with 50% future prospect, 50% deduction towards personal and living expenses and application of multiplier of 18, is erroneous and if the compensation is assessed on the aforesaid basis, it comes to Rs. 20,21,692; whereas the Tribunal has assessed the same as Rs. 26,95,590/-.

v. that the amount awarded under the conventional head is very much on the higher side and needs to be reduced suitably.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680*** *and* ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***,

5) Learned Counsel for the respondents/claimants supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation in favour of the claimants and therefore the same needs no interference by this Court.

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

7) As regards the dependency, as per pleadings and evidence adduced by the claimants, claimants No. 2 & 3 are unmarried sisters of the deceased and were dependent upon the deceased. As per deposition of Ku. Susmita Rajurkar (AW-2) in para 4, both the sisters are dependent upon deceased and there is no other member in the family to take care of them. The above statement has not been challenged in the cross-examination. Therefore, the dependency has duly been proved by the claimants through their pleadings and evidence adduced in support thereof.

8) So far as contributory negligence is concerned, no evidence whatsoever has been adduced by the respondent/Insurance Company in this regard. No any counter F.I.R. is lodged against the deceased and driver of the offending vehicle/non-applicant

No. 1 has also not been examined before the Tribunal. As per eye witness Hirendra Patel (AW-3) the accident occurred due to rash and negligent driving of non-applicant No. 1 only. From the record it is seen that F.I.R. (Ex. P-2) was registered against non-applicant No. 1 driver and he was charged for offence under sections 279, 337, 304A of I.P.C. Thus considering the overall facts and circumstances of the case, the eye witness account (AW-3) and the fact that no evidence has been adduced by the Insurance Company with regard to the contributory negligence on the part of the deceased, this Court is of the opinion that the Tribunal was fully justified in not holding the deceased negligent in any manner.

9) This Court finds substance in the argument of counsel for the Insurance Company that the learned Tribunal has mis-calculated the compensation. The Tribunal has assessed the loss of dependency by taking the annual income as Rs. 1,49,755/- with 50% future prospect, taking 50% towards personal and living expense of the deceased by applying the multiplier of 18. If the compensation is assessed in this manner, the loss of dependency comes to Rs. 20,21,692; whereas the tribunal has assessed the same Rs. 26,95,590/-. Thus, after adding Rs. 2,25,000/- as awarded by the Tribunal towards conventional heads the compensation comes to Rs. 22,46,692; whereas the Tribunal has assessed as Rs. 29,20,590/-.

10) So far as quantum of compensation is concerned considering the age of the deceased i.e. 24 years his annual income i.e. Rs. 1,49,755/- as per Ex. P-19, which has not been disputed by the Insurance Company, the dependency, the nature of job, keeping in view the decision of the Hon'ble Supreme Court in Sarla Verma and Pranay Sethi (Supra) and ***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,*** claimants are held entitled for compensation in the following manner:-

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased (as per ITR)	Rs. 1,49,755 per annum
02.	40% of (i) above to be added towards future prospects. (Rs. 149755 x40%)	Rs. 149755 + Rs. 59902 = Rs. 2,09,657/-
03.	50% deduction towards personal and living expenses of the deceased (Bachelor) (Rs. 209657 x50%=Rs. 104828)	Rs. 1,04,828/-
04.	Multiplier of 18 to be applied (Rs. 104828 x18 = Rs. 1886904)	Rs. 18,86,904/-
05.	Towards loss of love & affection, loss of estate and funeral expenses	Rs. 2,25,000 (as awarded by Tribunal)
	Total compensation	**Rs. 21,11,904/-**

Since this Court has calculated the compensation payable to claimants as Rs. 21,11,904/-, the Insurance Company is liable to pay the aforesaid amount to the claimants with interest as awarded by the Tribunal. If any amount has already been paid to the claimants by Insurance Company, the same shall be adjusted accordingly. However, rest of the conditions of the impugned award shall remain intact.

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

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakantt