

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1881 of 2018**

- Future Generali India Insurance Company Limited, Through: its Legal Manager, Shop No. 3, II Floor, Maruti Business Park, G.E. Road, Raipur, Tahsil & District- Raipur (C.G.).

---- Appellant

Versus

1. Smt. Amarjeet Kaur, W/o Gurumukh Singh, aged 45 years,
2. Gurumukh Singh S/o Jogender Singh, aged 48 years,
3. Ravindra Singh S/o Gurumukh Singh, aged about 21 years,
4. Rakhi D/o Gurumukh Singh, aged about 18 years,
5. Kishan Singh S/o Gurumukh Singh, aged about 17 years,

Respondent No. 5 being minor through mother Smt. Amarjeet Kaur,

All are R/o Shahid Veer Narayan Singh Nager, Ward No. 28, Qr. NO. 141, 142, Street No. 4, HSCL Colony, Bhilai, P.S. Khursipar, Tahsil & District- Durg (C.G.).

6. Gendram Gond, S/o Faguram Gond, aged 45 years, R/o Village Andikachhar, P.S. Pali, District- Korba (C.G.) Presently R/o K.P.C.L. Dhatura, Korbi, P.S. Hardibazar, District- Korba (C.G.)
7. J. K. L. Coal India Private Limited, Dhatura, Korbi, P.S. Hardibazar, District- Korba (C.G.) R/o Ozon Tower 50th Floor Fafadih Chowk, Raipur (C.G.).

---- Respondents

For Appellant	: Shri Saurabh Sharma, Advocate
For Respondent Nos. 1 to 5	: Shri P. Chetan Kumar, Advocate.
For Respondent Nos. 6 & 7	: None

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

30.04.2019

1. Heard on IA No. 2, application for condonation of delay of 74 days

in filing the cross-objection.

2. For the reason mentioned in the application, which is duly supported by the affidavit, the same is allowed and delay in filing the Cross-objection is condoned.

3. With the consent of the parties, the appeal heard finally alongwith cross-objection.

3. This is insurer's appeal filed under section 173 of the Motor Vehicles Act, 1988 (henceforth "MV Act, 1988") against the award dated 28.04.2018, passed by 6th Additional Motor Accident Claims Tribunal, Durg (for short 'the Claims Tribunal') C.G. in claim case No. 38/2014 awarding total compensation of Rs. 12,39,600/- alongwith interest @ 9% pa from the date of application till realisation, fastening liability on the Non-applicants jointly and severally.

4. As per claim petition, on 29.09.2013 at around 15.30 pm, Surendra Singh aged about 23 years earning Rs. 15,000/-per month as driver was going to Sarangarh by slowly driving of his vehicle (Tata Tarbo 709 Mazda) bearing registration No. CG04 JC/5265. On the way, non-applicant No. 1 Gendram Gond by rash & negligent driving of the offending vehicle (Hyva) bearing registration No. CG04JC/9509 dashed the vehicle of the Surendra Singh due to which Surendra Singh sustained grievous injuries and during course of the treatment died on 04.10.2013.

5. On claim petition being filed by the claimants/parents & brothers & sister of the deceased- Surendra Singh under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above. The vehicle is owned by

Non-applicant No. 2 and insured with Non-applicant No. 3.

6. Being aggrieved & dissatisfied with the aforesaid award, the instant appeal has been preferred by the appellant/Insurance Company.

7. Learned counsel for the appellant/Insurance Company submits that in the memo of appeal he has raised many grounds but confining his argument on the grounds that the Tribunal has committed gross error in deducting 1/3rd towards personal expenses of the deceased though the deceased was a bachelor, therefore, 1/2 ought to have been deducted from the income towards personal expenses in place of 1/3. Further the Tribunal has awarded interest @ 9% pa which is higher side and deserves to be reduced suitably. Lastly he submits that the Tribunal has fallen an error by not considering contributory negligence on the part of the deceased whereas the evidence on records goes to show that the accident occurred due to head on collusion and negligence on the part of the deceased was also there.

8. On the other hand, learned counsel for the claimants/respondents submits that the Tribunal has not awarded sufficient amount as compensation to the claimant and therefore, the claimants have filed cross-objection under Order 41 Rule 22 of the Code of Civil of Procedure seeking enhancement of the same on the following ground:

(i) that the Tribunal has wrongly assessed the monthly income of the deceased as Rs.6,000/- whereas he was earning Rs. 15,000/-pm as a driver.

(ii) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

In support of the above contention he placed reliance upon the Apex Court judgment in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

9. Learned counsel for the appellant/insurance Company submits that there is no need to enhance the award as per the cross-objection filed by the claimants.

10. Heard both the parties on appeal as well as on cross-objection and perused the impugned award alongwith the records of the Tribunal.

11. So far as the contributory negligence is concerned, applicant witness No.-1 Amarjeet Kaur stated that the accident occurred due to head on collision but she could not prove that at the time of accident she was remained present at the spot. It is quite clear that, it is the Non-applicant No. 1, who is driving the offending vehicle in a rash and negligent manner, dashed the motorcycle of deceased as a result of which, deceased suffered grievous injuries and while he was treating at hospital, he died. No counter report was lodged by the driver of the offending vehicle against the deceased. Even the driver/non-applicant No. 1 did not enter into the witness box before the Tribunal. No evidence whatsoever has been adduced by the appellant/Insurance Company or non-applicant Nos. 1 & 2 driver & owner of the offending vehicle to establish contributory negligence on the part of the deceased. Looking to the Final report (Ex. P/1), FIR (Ex. P/2), spot map (Ex. P/3), seizure memo (Ex. P/4) and Postmortem report (Ex. P/17), considering the facts & circumstances of the case, oral and documentary evidence adduced by the parties and the manner in which the accident occurred, this Court is of the opinion that there was no contributory negligence on the part of the deceased and the accident occurred solely on the ground of rash & negligent driving of the driver of the offending vehicle.

12. As regards the income of the deceased, though, the claimant has pleaded that the deceased were earning Rs.15,000/- per month as a driver, however, no evidence in support thereof has been adduced by him. In these circumstances, the monthly income of the deceased as Rs. 6,000/- per month as skilled labour at the relevant time considered by the Tribunal is just & proper. In the instant case, multiplier is rightly considered by the learned Tribunal. Regarding deduction part towards personal expenses is concerned, in this case, number of claimants are five including the claimants Nos. 3, 4 & 5 who are the younger siblings of the deceased, they can safely be taken as dependent upon the deceased, therefore, in view of the Apex Court Judgment in the matter of **Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121**, the learned Tribunal rightly deducted 1/3rd towards living & personal expenses. Further, considering the age of the deceased i.e. 23 years, keeping in view the amount 40% towards future prospect and Rs. 30,000/- towards conventional heads are just & proper. The said assessment of the Tribunal being based on proper appreciation of the evidence available on record and in consonance with the Judgment of the Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**, deserves to be upheld. Further interest awarded by the Tribunal @ 9% pa on the compensation can not be said to be on the higher side in the facts & circumstances of the case, age of the deceased and the dependency upon him and therefore, the same also not required to be reduced.

13. In the result the appeal filed by Insurance Company as well as the cross-objection filed by the claimants/respondent No. 1 to 5 are dismissed.

Sd/-

(Gautam Chourdiya)
Judge