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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1946 of 2018

- Branch Manager, The New India Assurance Company Limited, Branch Office- Rama Trade Centre, infront of Razeev Plaza, lod bus stand Road, bilaspur, tahsil and District- Bilaspur (C.G.). (Insurer of Hvya Truck bearing No. C.G.-04-JB/8302).

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Versus

1. Sukhbai Jangde Wd./o Late Kashiram Bhagwat Prasad Jangde, aged about 25 years.

2. Khushi Jangde D/o Late Kashiram Bhagwat Prasad Jangde, aged about 05 years.

3. Arushi Jangde D/o Late Kashiram Bhagwat Prasad Jangde, aged about 02 years.

4. Jai Kishan Jangde S/o Bhagwat Prasad Jangde, aged about 22 years.

5. Neera Bai Jangde W/o Bhagwat Prasad Jangde, aged about 48 years.

   No. 2 & 3 are minor, through natural guardian mother Sukhbai Jangde Wd/o Late Kashiram Bhagwat Prasad Jangde, aged about 25 years, All R/o Village Sendri, Police Station Koni, District- Bilaspur (C.G.).

6. Dilharan Sahu S/o Nandram Sahu, aged about 26 years, R/o Village Damrum Police Station- City Kotwali, Baloda Bazar, District- Baloda Bazar- Bhatapara (C.G.) (Driver of Hvya Truck bearing No. C.G.-04-JB-8302)

7. Shyam Sundar Sahu S/o Firanta Sahu, aged about 42 years, R/o House No. 208, Damru baloda Bazar, Police Station City Kotwali, Baloda Bazar, District- Baloda Bazar- Bhatapara (C.G.). (Registered owner of Hvya truck bearing No. C.G.-04-JB-8302).

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate
For Respondent/claimants	:	Shri A. L. Singroul, Advocate.

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Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

28.02.2019

1. This is insurer's appeal filed under section 173 of the Motor Vehicles Act, 1988 (henceforth “MV Act, 1988”) against the award dated 20.07.2018, passed by 7th Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Claims Tribunal') in claim case No. 76/2017 awarding total compensation of Rs. 14,30,800/- alongwith interest @ 8% pa from the date of application till realisation, fastening liability on the appellant/Non-applicant No. 3.

2. As per claim petition, on 17.01.2017, Kashiram Jangde aged about 28 years earning Rs. 10,000 to 12,000/-per month through private job was coming to his village Sarkipar on motorcycle bearing registration No. CG04KD/6101. On the way non-applicant No. 1 Dilharan Sahu by rash & negligent driving of the offending vehicle (Truck) bearing registration No. CG04JB/8302 dashed the motorcycle of the Kashiram due to which accident occurred and Kashiram sustained grievous injuries and while being taken to the hospital on the way he died.

3. On claim petition being filed by the claimants/wife, Children & parnets of the deceased- Kashiram 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.

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

5. Learned counsel for the appellant/Insurance Company submits that in the memo of appeal he has also raised a ground regarding breach

of policy conditions, he is not pressing the said ground. He submits that the Tribunal has wrongly assessed the income of the deceased as Rs. 6,000/-pm without there being any evidence on record to this effect. Further the Tribunal has awarded interest @ 8% pa which is higher side and deserves to be reduced to 6%. 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 deceased was coming from the wrong side and due to his negligence the accident occurred.

6. On the other hand, learned counsel for the claimant/respondent Nos. 1 to 5 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. 10,000 to 12,000/-pm from private job.

(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.***

7. 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.

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

09. So far as the contributory negligence is concerned, as per evidence adduced by the claimants and the documents produced by them, in particular Dehati Nalisi (Ex.P/2) and FIR (Ex.P/1) it has specifically mentioned therein, it is the Non-applicant No. 1, driver of the offending vehicle who was driven the vehicle in rash and negligent manner dashed the motorcycle of deceased as a result of which, deceased suffered grievous injuries while being taken to the hospital for treatment 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 the witness box before the Tribunal. No evidence whastsoever has been adduced by the respondent/Insurance Company or non-applicant Nos. 1 & 2 driver & owner of the offending vehicle to establish contributory negligence on the part of the deceased. Therefore, 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 the 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.

10. As regards the income of the deceased is concerned, though, the claimant has pleaded that the deceased were earning Rs.10,000 to 12,000/- per month by working of private job, 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 notional basis prevalent at the relevant time by the Tribunal is just & proper. Further, considering the age of the deceased i.e. 28 years, keeping in view the amount 40% towards future prospect and Rs. 70,000/- towards conventional heads are just & proper. The said assessment of the Tribunal being based on proper appreciation of the evidence available on record and inconsonance with the Judgment of the Supreme Court in the matter of

Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121, ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, deserves to be upheld.

11. 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

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