NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 798 of 2015

- ICICI Lombard General Insurance Co. Ltd. Ground Floor, Vanijya Bhawan, Devendra Nagar Road, Raipur, Chhattisgarh **---- Appellant**

Versus

1. Smt. Ishwari Verma, W/o Late Balaram Verma Aged About 27 Years
2. Gajendra Kumar S/o Late Balaram Verma Aged About 26 Years
3. Jitendri Bai D/o Late Balaram Verma Aged About 23 Years
   All R/o Village Saklor, Thana Suhela, District- Raipur, Chhattisgarh
4. Smt. Khemin Bai W/o Late Balaram Verma Aged About 43 Years
5. Nandkishore Verma S/o Late Balaram Verma Aged About 25 Years
6. Khileshwar Verma, S/o Late Balaram Verma Aged About 21 Years
   All R/o Village Goda, Post- Sasha, Thana Palari, Baloda Bazar, Chhattisgarh
7. Lalanrai S/o Taskeet Rai Through Babi Hora, S/o Shri Ninder Hora, R/o Anupam Nagar, Pandri Thana Pandri, District- Raipur, Chhattisgarh (Driver)
8. Bobi Hora S/o Ninder Hora R/o Anupam Nagar, Pandri, Thana Pandri, District- Raipur, Chhattisgarh (Owner) **---- Respondents**

For Appellant	:	Shri P Acharya, Advocate
For Respondents- 1 to 3	:	Shri Anumeh Shrivastava, Advocate
For Respondents- 4 to 6	:	Shri JK Gupta, Advocate
For Respondents- 7 and 8	:	Shri Shivendu Pandya, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

28.10.2020

1. Non-applicant No.3/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988, challenging the impugned award dated 24.01.2015, passed by the Chief Motor Accident Claims Tribunal, Raipur (for short, 'Claims Tribunal') in Claim Case- 21 of 2012, whereby learned Claims Tribunal allowed application under Section 166 of the Act of 1988 in part, and awarded Rs.9,52,000/- in a fatal accident.

2. Facts relevant for disposal of this appeal are that on 19.12.2011 at about 4.30 pm Dinesh Verma and Balaram Verma were standing on the

road side after parking their Motorcycle near Kolha Nala, Police Station Dharsiva, District Raipur. At that relevant time, Truck bearing No,CG 04 J 9461 (for short, “offending vehicle”) driven by NA1 rashly and negligently, dashed Dinesh Verma and Balaram Verma. In the aforementioned accident, Balaram Verma suffered grievous injuries over his person and died on the spot. The accident was reported to concerned Police Station based upon which crime was registered against NA1, driver of the offending vehicle.

3. Claimants/respondents-1 to 6 herein have filed claim application under Section 166 of the Act of 1988 seeking compensation of Rs.16,60,000/-, pleading therein that on the date of accident, deceased-Balaram Verma was aged about 42 years, working in a Company and earning Rs.7,000/- per month.

4. NA1, driver of the offending vehicle even after service of notice, did not appear before the learned Claims Tribunal, he was proceeded *ex-parte*.

5. NA2, owner of offending vehicle submitted reply to claim application, denying the pleadings made therein. It was further pleaded that on the date of accident, NA1, driver of offending vehicle was possessed with valid and effective driving license, on the date of accident offending vehicle was insured with NA3, Insurance Company. Hence, liability, if any, to satisfy the amount of compensation, would be upon NA3, Insurance Company.

6. NA3/Insurance Company of the offending vehicle submitted reply to claim application while denying the pleadings made therein, pleaded that

on the date of accident, NA1 was not possessed with valid and effective driving license. There was non-joinder of necessary parties and the vehicle was being plied without valid permit and fitness. There was breach of Policy conditions, hence the Insurance Company is not liable for any amount of compensation.

7. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that the deceased died on account of accidental injuries suffered by him due to rash and negligent driving of offending vehicle by NA1. Plea of contributory negligence was not found to be proved; plea of not having valid and effective driving license with NA1 and breach of Policy conditions was also not found to be proved. Awarded Rs.9,52,000/- as compensation.

8. Shri P Acharya, learned counsel for the appellant submits that learned Claims Tribunal erred in assessing income of deceased on higher side without there being any cogent and acceptable piece of evidence with regard to his income, to be Rs.7,000/- per month. He further submits that except oral pleading and evidence of claimant-1, widow of deceased, neither any documentary evidence was placed on record by the claimants to show the income of deceased nor they examined any person as witness to prove the same. He further contended that in absence of any admissible piece of evidence, income of the deceased can be assessed only on notional basis. It is further contended that learned Claims Tribunal applied deduction and multiplier considering number of claimants, whereas, respondents-2, 3, 5 and 6 being majors, they cannot be said to be dependants upon the deceased. He submits that amount of

compensation be accordingly scaled down. Learned counsel places his reliance in case of **Hafizun Begum (Mrs) Vs Mohd Ikram Heque and others reported in (2007) 10 SCC 715.**

9. Shri Anumeh Shrivastava, learned counsel for respondents- 1 to 3 and Shri JK Gupta, learned counsel for respondents- 4 to 6 jointly submit that learned Claims Tribunal taking into consideration the date of accident as well as the pleading and evidence of claimant-1, widow of late Balaram, who was working in a Company at Raipur, has rightly assessed income of the deceased as Rs.7,000/- per month, which does not call for any interference. They further submitted that the deduction is to be based on the number of claimants/Legal representatives of the deceased. Though the age of respondents-2, 3, 5 and 6 is shown to be more than 18 years of age, only on that ground it cannot be said that on the date of accident, they were not dependants on the income of the deceased. Hence, the deduction applied considering the number of claimants of the deceased is correct.

10. I have heard learned counsel for the parties and also perused the record of claim case.

11. To appreciate the submission with regard to income of the deceased raised by the learned counsel for the appellant/Insurance Company, upon perusal of record would show that the claimants have pleaded income of deceased as Rs.7,000/- per month from his working in a Company at Raipur. There is no specific mention of name of the Company or details of the Company in the claim application. In evidence, claimant-1 stated that

her husband was working in Nico Company at Siltara as Supervisor and earning Rs.7,000/- per month, but in support of her evidence, she has not placed on record either salary certificate issued by the Company or examined any witness or employee of that Company to prove the employment or income of the deceased.

12. In view of above, there is no admissible piece of evidence available on record to hold the income of the deceased as Rs.7,000/- per month as assessed by the learned Claims Tribunal. There appears some force in the submission made by learned counsel for the appellant/Insurance Company that income of the deceased is assessed by Tribunal is on higher side.

13. In absence of any proof of income of the deceased as pleaded, income is to be assessed on notional basis, keeping in mind the date of accident, price index, wage structure, nature of work and place of work. Taking into consideration the pleading and statement of claimant-1 in her evidence, I find it appropriate to assess the income of the deceased as Rs.4,500/- per month instead of Rs.7,000/- as assessed by the Tribunal.

14. So far as the second submission of learned counsel for the appellant that major children will not be treated as dependants upon the deceased is concerned, the same has to be considered based on the facts of each case. Here, it has not been brought in evidence that all the major children are married.

15. The age of elder son is shown as 23 years of age, merely on the ground that the children of deceased have become major by crossing the

age of 18 years will not *ipso facto* lead to presumption that they were not dependants on their late father. It is not brought on record any of the sons were married. Even if the children of the deceased are married, and the deceased is residing with them the married son cannot be excluded from the dependent children.

16. Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Birender and others** reported in AIR 2020 SC 434 held thus:

> "15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs. 1,00,000/- and Rs. 1.50,000/- per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years."

17. It is not proved by the appellant that the eldest of whom is aged about 23 years is working or having any separate source of earning.

18. The purpose of deduction towards personal and living expenses is the expenditure made bydeceased from his earning upon himself, which certainly be reduced if he has to maintain a family of 5 members. Considering this aspect, Hon'ble Supreme Court in case of **Sarla Verma and others Vs Delhi Transport Corporation and another** reported in

(2009) 6 SCC 121 held that the deduction towards personal and living expenses to be based on the number of dependants. The submission of learned counsel for the appellant/Insurance Company cannot be accepted, as major sons were not dependants upon the deceased.

19. As I have considered the submission made by learned counsel for the appellant that the income of the deceased has been assessed on higher side and have assessed the income on notional basis as Rs.4,500/- per month, compensation to the claimants requires re-computation on all heads, because object of the Act of 1988 is to award just compensation.

20. It is the duty of this Court to see that the compensation to be awarded to the claimants to be just and proper for which the claimants are entitled for in accordance with law.

21. In the case at hand, while computing the amount of compensation, learned Claims Tribunal has not added the amount of compensation towards future prospects for which they are entitled as per law laid down by Hon'ble Supreme Court in the matter of **National Insurance Company Limited Vs Pranay Sethi and others reported in** (2017) 16 SCC 680. Hence, I propose to re-calculate the compensation as under:

(a) Income of the deceased is taken Rs.4,500/- per month and Rs.54,000/- per annum.

(b) Deceased has been shown to be 43 years of age, hence there will be addition of 25% of his established income towards future prospects as per ruling of Hon'ble Supreme Court in case of **Pranay Sethi** (supra). By adding 25% to the established income of the deceased, total yearly income of the deceased will come to Rs.67,500/- {54000 + (54000 x 25/100)}.

(c) After deducting 1/4 towards his personal and living expenses from the yearly income of the deceased, yearly loss of dependency of the claimants comes to Rs.50625/- {67500 – (67500x1/4)}.

(d) As the deceased on the date of accident was between 41-45 years of age, therefore, appropriate multiplier will be 14. By multiplying yearly loss of dependency with multiplier of 14, total loss of dependency comes to Rs.7,08,750/- (50625 x 14).

(e) Apart from the above total loss of dependency, claimants are entitled for Rs.40,000/- towards spousal consortium and Rs.40,000/- towards parental consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

22. Now, claimants are entitled for a sum of **Rs.8,18,750/-** (708750 + 40000 + 40000 + 15000 + 15000) instead of Rs.9,52,000/- as awarded by the learned Claims Tribunal. This amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realisation. Other conditions imposed by the Claims Tribunal will remain intact.

23. Appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma