NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1371 of 2014

1. Gopal Dhruv, S/o Chamru Ram, aged about 32 years, R/o Village Bar Nawapara, P.S. Kasdol, Distt. Baloda Bazar C.G. (Driver)
2. Pawan Kumar Sultania, aged about 59 years, S/o R.S. Sultania, R/o Village- Sheorinarayan, P.S. Sheorinarayan, District Janjgir-Champa (CG) (Owner)

---- Appellants

Versus

1. Lekhram Sinha, aged about 50 years, S/o Kartikram Sinha
2. Smt. Thanwarin Bai Sinha, aged 46 years, W/o Lekhram Sinha.
3. Smt. Jiteshwari Sinha, aged 28 years, W/o Late Dinesh Kumar Sinha.
4. Aman Kumar Sinha, aged 10 years, S/o Late Dinesh Kumar Sinha.
5. Tanya Sinha, aged 07 years, D/o Late Dinesh Kumar Sinha

   Respondent Nos.4 & 5 through their natural guaridan Mother Smt. Jiteshwari Sinha,

   All residents of Near Kankali Talab, P.S. Purani Basti, Raipur, Civil & Revenue District : Raipur (CG)
6. Bajaj Allianz Insurance Company Ltd., Through Branch Manager, Shiv Mohan Bhawan, Vidhan Sabha Road, Pandari, P.S. Pandari, Raipur, Civil & Revenue District Raipur (CG)

---- Respondents

For Appellants	:	Mr. Mukesh Sharma, Advocate
For Respondent Nos.1 to 5	:	Mr. Shivendu Pandya, Advocate
For Respondent No.6	:	Mr. Sachin Singh Rajput, Advocate

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

10/8/2020

1. Appellants-driver & owner of Tanker bearing registration No.CG04-DR-1790 (for short 'the offending tanker') has

preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 27.9.2014 passed by the learned Chief Motor Accident Claims Tribunal, Raipur (hereinafter referred to as ‘the Claims Tribunal’) in Claim Case No.64/11 whereby the Claims Tribunal allowed the application in part, awarded an amount of Rs.10,11,000/- as compensation along with interest @ 9% and fastened liability upon appellants herein to pay compensation.

2. Facts of the case, in nutshell, are that on 12.4.2011 at about 7.00 p.m. Dinesh Kumar Sinha was going towards Balodabazar from Kharora on his motorcycle bearing registration No.CG04-DR-1790 and when he reached near Kanki Bunglow, the offending tanker, driven by non-applicant No.1 / appellant No.1 herein in a rash and negligent manner, gave a dash to the motorcycle of said Dinesh Kumar Sinha, as a result he sustained grievous injuries on various parts of his body and died on spot itself. Report of accident was lodged in Police Station Kharora, District Raipur based on which crime bearing No.117/11 was registered against driver of offending vehicle for commission of offence punishable under Section 304A of the Indian Penal Code.

3. Claimants/respondents No.1 to 5, who are wife, age old parents & minor children of deceased respectively, filed an application under Sections 166 & 140 of the Act of 1988 before the Claims Tribunal seeking total compensation of Rs.24,40,000/- on account of death of said in a road accident.

It was pleaded in the claim application that on the date of accident, deceased was hale & hearty young man of 27 years and earning Rs.8,000/- per month. They were dependent on the earning of deceased and on account of untimely death of deceased in accident in question, they suffered loss of dependency.

4. Non-applicant No.1 & 2/appellants herein appeared before the Claims Tribunal and submitted their reply to claim application pleading therein that non-applicant No.1-driver of offending tanker, was not responsible for accident and it was outcome of rash and negligent driving of motorcycle by deceased himself. The amount of compensation sought in the application is highly exaggerated. Since, on the date of accident, the offending tanker was insured with non-applicant No.3-Insurance Company, the liability to pay amount of compensation, if awarded any, would be of non-applicant No.3.

5. Non-applicant No.3/ respondent No.6 herein appeared before the Claims Tribunal and filed its written statement denying income and employment of the deceased as also relationship of claimants with the deceased. The fact that accident occurred on the alleged date, time and place has also been denied. It is further denied that accident occurred due to rash and negligent driving by the offending tanker. In the additional pleadings, it was pleaded by Insurance Company that it is a clear case of contributory negligence because the accident

occurred due to negligence on the part of the deceased as well as on the part of driver of offending tanker. The offending tanker is meant for carrying dangerous and inflammable nature of substance and on the date of accident, non-applicant No.1-driver was not holding valid & effective driving license to drive offending tanker, which amounts to breach of terms & conditions of insurance policy, hence, insurance company is not liable to indemnify the insured.

6. Upon appreciation of pleadings and evidence brought on record by respective parties, the Claims Tribunal arrived at a conclusion that deceased Dinesh Kumar Sinha died on 12.4.2011 due to injuries sustained by him in a motor vehicular accident occurred due to rash and negligent driving of offending tanker by its driver. There was no element of contributory negligence on the part of driver of motorcycle i.e. deceased. Non-applicant No.1-driver was not authorized to drive the offending tanker and as such, there was breach of essential condition of insurance policy. Consequently, the Claims Tribunal awarded a total sum of Rs.10,11,000/- as compensation; exonerated the insurance company from its liability and held appellants herein liable to pay amount of compensation to the claimants/respondent Nos.1 to 5. However, considering that driver had a valid license to drive 'heavy goods vehicles & motorcycle with gear' and that on the date of accident, the insurance policy was in force, the Claims Tribunal directed the Insurance Company to first pay the

amount of compensation to claimants and then recover it from the insured.

7. Mr. Sharma, learned counsel representing appellants submits that on the date of accident, license to drive 'heavy goods vehicle' was with appellant No.1-driver and since at the time of accident, the offending tanker was not loaded with any substance of dangerous or inflammable or hazardous nature, it would come within the category of 'heavy goods vehicle' and as such, the Claims Tribunal ought not to have held that on the date of accident, appellant No.1-driver was not authorized to drive offending tanker. He further submits that the Claims Tribunal has wrongly interpreted the provisions of Section 2 (10) & Section 10 of the Act of 1988 and recorded finding that appellant No.1-driver was not having valid and effective driving license to drive offending vehicle. It is further argued that misreading / improper appreciation of evidence of witnesses, by name, Hemanth Sahu (AW-3) & Santram (AW-4) has resulted into conclusion that accident occurred due to sole negligence of driver of offending tanker. Learned Counsel also submits that award of lump sum amount of compensation of Rs.5,00,000/- under the head 'loss of love & affection, loss of consortium, treatment expenses etc. and Rs.25,000/- towards funeral expenses are contrary to the law laid down by Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680.** It is further argued that the Claims Tribunal has not

appreciated the evidence available on record in its proper perspective.

8. Mr. Pandey, learned counsel representing claimants / respondents No.1 to 5 submits that the Claims Tribunal relying on decision of Hon'ble Supreme Court in the matter of **Rajesh & another Vs. Rajbir** reported in **2013 ACJ 1403** has awarded compensation under other conventional heads, which cannot be said to be erroneous. He further submits that since the amount of compensation awarded by the Claims Tribunal is on lower side, respondents No.1 to 5 have also filed **cross-objection** seeking enhancement in the compensation awarded by the Claims Tribunal. He submits that the Claims Tribunal assessed monthly income of deceased as Rs.3,000/- on notional basis, ignoring the pleadings and evidence placed on record with regard to income of the deceased to be Rs.8,000/- per month. He further submits that the Claims Tribunal has not awarded any amount towards future prospects, ignoring the decision of Hon'ble Supreme Court in the matter of Pranay Sethi's case (supra) wherein it was held that in case deceased, victim of motor accident, was below 40 years of age and in self-employment, an addition of 40% of established salary of deceased towards future prospects should be made.

9. Mr. Rajput, learned counsel representing respondent No.6-Insurance Company would argue that Section 14 of the Act of 1988 provides for currency of license to drive motor vehicle.

Proviso to sub-section (2) of Section 14 specifically provides that license to drive a transport vehicle carrying goods of dangerous or hazardous nature shall be effective only for a period of one year. He further submits that as per Rule 9 (3) of the Central Motor Vehicles Rules, 1989 (for short 'the Rules of 1989'), a special endorsement / authorization is required to drive a vehicle which carries dangerous & hazardous nature of goods and for the purpose of getting such authorization, a driver is required to undergo a training programme from a recognized training institute, obtain a certificate from Explosive Department and then only endorsement to that effect can be made on driving license of driver. In the present case, the offending tanker was engaged in transportation of petroleum products, which is evident from Ex.D-3. Validity of driving license (Ex.D-1) of appellant No.1-driver authorizing him to drive transport vehicles was for a period of **three years**, whereas validity of license to drive goods carriage carrying goods of dangerous & hazardous nature is only of '**one yea**r'. Furthermore, there is nothing on record showing that appellant No.1 had undertaken training from any recognized institution to get an endorsement to drive a vehicle containing goods of dangerous or hazardous nature. In these circumstances, finding of the Claims Tribunal that on the date of accident, driver of offending tanker was not having valid & effective driving license to drive offending tanker, is absolutely correct in view of specific provisions under the Act of 1988.

10. We have heard learned counsel for the parties and perused the record.

11. In order to appreciate the contention raised by learned counsel for appellants with respect to license of appellant No.1-driver, it would be beneficial to have a look at the provisions contained in the Act of 1988 & the Rules of 1989 pertaining to licensing of drivers of motor vehicles.

12. Section 3 of the Act of 1988 deals with necessity for driving license, which reads as under:-

> "**3.Necessity for driving licence**.—(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 1[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.—(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 1[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.
>
> (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government."

13. Section 9 of the Act of 1988 deals with grant of license. Section 10 prescribes the form and contents of license to drive. Sub-section (2) of the Act of 1988 envisages as under:-

> "(2) A learner's license or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of

the following classes, namely:-
(a) motorcycle without gear;
(b) motorcycle with gear;
(c) invalid carriage;
(d) light motor vehicle;
(e) transport vehicle;
(i) road-roller;
(j) motor vehicle of a specified description."

14. Section 14 of the Act of 1988 is with regard to the currency of licenses to drive motor vehicles. Sub-section (2) prescribes different periods of validity with respect to different class of vehicles. Sub-section (2) (a) is relevant for disposal of present case, therefore, the same is reproduced below for ready reference:-

"**14.Currency of licences to drive motor vehicles**:-
(1) xxxxxx.
(2) A driving licence issued or renewed under this Act shall,-
(a) In the case of a licence to drive a transport vehicle, be effective for a period of three years:
Provided that in the case of licence to drive a transport vehicle, carrying goods of dangerous or hazardous nature, be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus."

15. Rule 9 of the Central Motor Vehicle Rules, 1989 (for short 'the Rules of 1989') provides as follows:-

"**9.Educational qualifications for drivers of goods carriages carrying dangerous or hazardous goods**: (1) One year from the date of commencement of Central Motor Vehicle (Amendment) Rules, 1993, any person driving a goods carriage carrying goods of dangerous or hazardous nature to human life shall, in addition to being the holder of a driving licence to drive a transport vehicle, also has the ability to read and write at least one Indian language out of those specified in the VII Schedule of the Constitution and English and also possess a certificate of having successful passed a course consisting of following syllabus and periodicity connected with the transport of such goods:.......”

16. From reading of the above quoted provisions of the Act of 1988 and the Rules of 1989, it is clear that no person shall drive a motor vehicle in any public place unless he holds an effective driving license, which shall be issued by competent authority specifically entitling him to do so; a license to drive a transport vehicle shall be effective for a period of three years, whereas, license to drive a transport vehicle carrying goods of dangerous or hazardous nature shall be effective for a period of one year; a person driving transport vehicle, carrying goods of dangerous & hazardous nature, is required to have an endorsement on his license for the same and the licence can be effective for a period of one year only and that such driver should have the ability to read and write at least one language specified in 7th Schedule of the Constitution and English and also possess a certificate, having successfully passed the course, consisting of syllabus as described under the rules. Likewise, Rule 9 of the Rules of 1989 talks about the required qualification with driver of transport vehicle for becoming entitle to get the license endorsed authorising him to drive heavy goods vehicle carrying dangerous and hazardous goods. Rule 132 of the Rules of 1989 deals with responsibility of the transporter or owner of goods carriage and sub-section (5) cast a duty upon the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving license as per provisions of rule 9 of the Rules of

1989.

17. Coming back to the facts of present case. Perusal of copy of driving license (Ex.D-1) of appellant No.1-driver would show that driving license was initially issued to appellant No.1 on 7.2.2001 authorizing him to drive 'motorcycle with gear & light motor vehicles', which was valid upto 14.05.2011. An endorsement on the license of appellant No.1 authorizing him to drive 'transport vehicles' has been made on 16.9.2009. License of appellant No.1 to drive 'MCWG & LMV' was renewed on 15.05.2011 for a period upto 14.5.2031, whereas license to drive transport vehicles was renewed for a period of three years i.e. from 15.5.2011 to 14.05.2014.

18. Respondent No.5-Insurance Company examined Rajesh Bhargava, License Clerk, Regional Transport Office, Raipur as NAW3-1 and he has stated in his statement that on 16.9.2009 appellant No.1-driver got an endorsement on his license that he is authorized to drive transport vehicles, which was valid upto 14.5.2014. This witness has further stated that license to drive transport vehicle can be issued for a period of three years only, not for five years, and it can be renewed for a further period of three years. This witness has further stated that validity of license should have been mentioned as 15.9.2012', but there is no such mention on license. He has further stated that to drive a vehicle carrying dangerous and hazardous nature of substance, a driver is required to obtain '**special endorsement**' on his license, which will be valid for a

period of one year, and for getting such authorization, driver is also required to undergo a special training and obtain a certificate in this regard from the Explosive Department. He has further stated that appellant No.1 is not authorized to drive the vehicles like offending tanker. This witness has identified his signature at 'A to A' part of the Extract of Driving Licence (Ex.D-1). This witness also recognizes signature of the Transport Inspector, Regional Transport Office, Raipur on the license being his superior officer.

19. Ex.D-1 is a copy of license to transport petroleum Class-A & Class-B in bulk on land by mechanically propelled vehicles issued in Form-XI of the Petroleum Rules, 1976 by the Department of Explosives in favour of appellant No.2 in respect of offending tanker. This license was issued on 24.9.2010 and was valid upto 31.12.2012. In this license under the head 'Description of the Vehicle', the class of petroleum to be carried in the vehicle is mentioned as 'Class A/B'. Thus, there is no doubt that the offending tanker was being used for carrying petroleum products only and not for any other goods or articles.

20. Perusal of insurance policy, which is placed on record as Ex.D-2, reveals that in the said policy, under the heading '**Driver**' it is mentioned that any person including the insured, provided he holds an effective driving license at the time of accident and is not disqualified from holding or obtaining such a license. In the said policy, there is a specific mention under

the caption "**Important Notice**" that the insured is not indemnified if the vehicle is used or driven otherwise than in accordance with this schedule.

21. From the above discussions, it is clear that appellant No.1-was holding driving license to drive 'transport vehicles', which was lacking special endorsement thereon to drive vehicles carrying highly inflammable and hazardous nature of substance;. the offending tanker is a goods carriage carrying dangerous and inflammable goods like petroleum products; and there is nothing to show that appellant No.1-driver has undergone special training and obtained certificate from the Explosive Department, as per requirement prescribed under the Rules of 1989, for getting an authorization to drive a good carriage carrying dangerous & hazardous goods like petroleum products. This being the position, we have no hesitation in saying that on the date of accident, appellant No.1-driver was not authorized to drive offending tanker as his license lacked endorsement authorizing him to drive goods carriage carrying dangerous and inflammable nature of substance. Finding recorded by the Claims Tribunal exonerating the Insurance Company from its liability under the insurance policy on the ground of absence of endorsement on driving license to drive a goods carriage carrying dangerous and inflammable goods is just and proper and it does not call for any interference.

22. Coming to next submission made by learned counsel for

appellants that finding given by the Claims Tribunal holding sole negligence of appellant No.1, driver of offending tanker, is erroneous and contrary to materials available on record.

23. In the above regard, we have perused the evidence of witnesses namely Hemant Sahu & Sant Ram Verma examined on behalf of the claimants.

24. Hemant Kumar Sahu (AW-3) has stated that hearing loud sound, he came out of his hut and saw that there was an accident. A tanker vehicle was standing there and a motorcycle in damaged condition was also lying there. He has further stated that he does not know as to how accident occurred. According to this witness, the offending tanker proceeded ahead after dashing the motorcycle and it was standing on its side. In the cross-examination, this witness has admitted that he had not seen the accident occurring, therefore, he cannot say as to on whose fault the accident took place.

25. Santram Verma (AW-4) has stated that on the date of accident at about 6-7 p.m., he along with his friend was returning to his village Bhainsa on bicycle. When they reached near Kanki Bungla, they saw an accident occurred in between a motorcycle and a tanker. He has further stated that after the accident, they noticed that injured had died. In the cross-examination, this witness has stated that he, deceased and offending tanker all were proceeding in the same direction i.e.

towards village Kanki from village Bhainsa, and that the offending vehicle dashed the motorcycle from behind. This witness has denied the suggestion that he had not witnessed the accident.

26. It is well settled that burden to prove 'contributory negligence' is on the party who alleges the same. In the instant case, the plea of contributory negligence was raised by appellants, therefore, burden of proving the said fact was on them. The driver of offending tanker (appellant No.1) could be the best witness to depose about the said fact, but, for the reason best known to owner of offending tanker (appellant No.2), he has not examined him as a witness before the Claims Tribunal. Most importantly, appellant No.2, who examined himself before the Claims Tribunal as NAW-3, has also not deposed in his statement in clear and categorical term that accident occurred due to rash and negligent driving of motorcycle by the deceased, except an utterance that the deceased was in drunken state. In other words, there is not an iota of evidence led by appellants establishing the contributory negligence on the part of the deceased. Appellants have failed to produce best evidence and there is nothing on record to believe their defence regarding contributory negligence on the part of the deceased. On the contrary, the above evidence of AW-4 clearly reflects that the offending tanker and motorcycle on which deceased was travelling were moving in the same direction; the offending tanker dashed against the motorcycle

from backside; and that the accident took place due to rash and negligent driving by driver of offending tanker.

27. In view of above, we do not find any force in the submission of learned counsel for appellants that deceased was also contributory negligent and it is hereby repelled.

28. So far as the submission of learned counsel for appellants that excessive amount of compensation has been awarded towards other conventional heads is concerned, in the matter of Pranay Sethi (supra), Hon'ble Supreme Court has taken only three categories i.e. loss of consortium, loss of estate and funeral expenses, under conventional heads and prescribes the maximum limit of compensation payable under the aforementioned categories i.e. Rs.40,000/-, Rs.15,000/- & Rs.15,000/- respectively. Hence, the award of lump sum amount of Rs.5,00,000/- as compensation by the Claims Tribunal under the other conventional head is not sustainable being not in consonance with decision of Hon'ble Supreme Court in Pranay Sethi's case (supra) and it is accordingly set aside.

29. Now we shall deal with the cross-objection filed by claimants / respondents No.1 to 5 for enhancement of compensation.

30. So far as submission of learned counsel for claimants/ respondent No.1 that the Claims Tribunal erred in determining monthly income of deceased as Rs.3,000/- on notional basis, we have gone through the record and found that the claimants

/ respondent Nos.1 to 5 have submitted income certificate (Ex.P-24) said to have been issued by the employer of the deceased i.e. Proprietor of 'Khushi Appliances, Raipur' certifying that deceased was working in the said shop for the last 12 years and getting salary of Rs.8,000/- per month. However, the claimants/respondent Nos.1 to 5 failed to prove this income certificate by examining its author i.e. Proprietor of Khushi Appliances, and therefore, this document (Ex.P-24) cannot be treated as admissible piece of evidence to determine income of the deceased. However, looking to the facts of case at hand, nature of work as pleaded and stated by claimants before the Claims Tribunal and also considering wage rate prevailing in State of Chhattisgarh at the relevant point of time, income of deceased cannot be said to be less than Rs.4,000/- per month. Thus, we are of the view that income of deceased can be fixed at Rs..4,000/- per month instead of Rs.3,000/- per month as assessed by the Claims Tribunal.

31. From the pleadings in claim application and evidence of claimants / respondent Nos.1 to 5, it is evident that on the date of accident, deceased was 27 years old and working in a shop. However, perusal of the impugned award reveals that the Claims Tribunal has not awarded any amount towards future prospects. With regard to future prospects, the Apex Court in the case of Pranay Sethi (supra) has held as under:

> "59.4. In case the deceased was self-employed or

> on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

Thus, as per above judgment of the Apex Court, claimants / respondents No.1 to 5 are entitled to be awarded 40% of the actual salary of deceased, towards 'future prospects'.

32. We have also noticed that the Claims Tribunal while computing compensation has wrongly applied multiplier of '18' instead of '17'. It has been held by Hon'ble Supreme Court in the matter of **Sarla Verma & ors Vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 121** that for the age group of persons between 25 & 30, multiplier of '17' is to be taken for the purpose of computation of loss of dependency. In case at hand, on the date of accident the deceased was 27 years of age, as pleaded in claim application and as mentioned in post-mortem report Ex.P-13. Therefore, the proper multiplier to be applied for assessing the loss of dependency would be '17' and not '18' as applied by the Claims Tribunal.

33. So far as standard deduction made by the Claims Tribunal towards personal & living expenses of deceased is concerned, the same being in consonance with the guidelines laid down by Hon'ble Supreme in Sarla Verma's case (supra), is hereby affirmed.

34. For the foregoing reasons, this Court proposes to recalculate amount of compensation payable to respondents No.1 to 5.

35. Accordingly, income of deceased is taken as Rs.4,000/- per month, as determined above, and since at the time of accident the deceased was below the age of 40 years and was working on a fixed salary, in view of law laid down in the matter of **Pranay Sethi** (supra), the income of deceased is required to be increased by 40% towards future prospects, which comes to Rs.5,600/- (4000+1600). Accordingly, annual income of deceased for the purpose of calculating compensation comes to Rs.67,200/- (5600x12). Out of this amount, one-fourth is to be deducted towards personal & living expenses of the deceased and after deducting one-fourth, annual loss of dependency would come to Rs.50,400/- (67200-16800). By applying multiplier of 17, as held above, to annual loss of dependency, total loss of dependency would come to Rs.8,56,800/- (50400x17). Besides this, respondent No.1&,2, parents of deceased, are entitled for a sum of Rs.40,000/- for parental consortium; respondent No.3-wife of deceased, is entitled for Rs.40,000/- for spousal consortium; and respondent Nos.4 & 5, minor children of deceased, are entitled for a sum of Rs.40,000/- for parental consortium, as held by Hon'ble Supreme Court in the matters of Pranay Sethi (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130**. In addition to aforesaid amount, they are also

entitled to get a sum of Rs.15,000/- for funeral expenses; Rs.15,000/- for loss of estate and Rs.10,000/- for pains & sufferings though the death was instantaneous. Thus, claimants/respondent No. 1 to 5 are entitled for a total sum of Rs.10,16,800/-, instead of Rs.10,11,000/- as awarded by the Claims Tribunal. This amount of compensation shall carry simple interest @ 7% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants/respondents No.1 to 5 as compensation shall be adjusted from the total amount of compensation as calculated above.

36. As directed by the Claims Tribunal, respondent No.6-Insurance Company shall first deposit the entire amount of compensation before the Claims Tribunal and thereafter recover the same from appellants, driver & owner of offending tanker. For recovery of amount of compensation, respondent No.6 will not be required to file a separate recovery suit. Respondent No.6 can file an application for recovery of amount so deposited by it in the very same proceeding.

37. In the result, appeal and cross-objection both are allowed in part. The award impugned stands modified to the extent indicated above.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-