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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 720 of 2015****Reserved on 17.11.2020**
Pronounced on 23.11.2020

Branch Manager, Magma H. D. I. General Insurance Company Ltd.,
House No. 3 New Ground Floor Chiruldih Word In front of Rajkumar
College N.H. Road Raipur, district- Raipur, Chhattisgarh, (Insurer)

---- Appellant**Versus**

1. Smt. Lileshwari Sahis, W/o Late Dilip Kumar Sahis Aged About 25 Years R/o Gram- Rumekeel, Thana- Pteva, Tahsil- And District- Mahasamund, Chhattisgarh,
2. Digeshwar Sahis S/o Late Dilip Kumar Sahis Aged About 7 Years Minor Through Theyare Through Their Mother Smt. Lileshwari Sahis, R/o Gram- Rumekeel, Thana- Pateva, Tahsil- And District- Mahasamund, Chhattisgarh,
3. Ku. Reena Sahis D/o Late Dilip Kumar Sahis Aged About 5 Years Minor Through Theyare Through Their Mother Smt. Lileshwari Sahis, R/o Gram- Rumekeel, Thana- Pateva, Tahsil- And District- Mahasamund, Chhattisgarh,
4. Gulshan Sahis S/o Late Dilip Kumar Sahis Aged About 3 Years Minor Through Theyare Through Their Mother Smt. Lileshwari Sahis, R/o Gram- Rumekeel, Thana- Pateva, Tahsil- And District- Mahasamund, Chhattisgarh,
5. Smt. Parvati Sahis W/o Late Hridayram Sahis Aged About 60 Years R/o Gram- Rumekeel, Thana- Pateva, Tahsil- And District- Mahasamund, Chhattisgarh,
6. Ku. Shivkumari Sahis D/o Late Hridayram Sahis Aged About 25 Years R/o Gram- Rumekeel, Thana- Pateva, Tahsil- And District- Mahasamund, Chhattisgarh, District : Mahasamund, Chhattisgarh (Claimants)
7. Angad Kumar Sahu S/o Dashrath Sahu Aged About 32 Years R/o Village Ghoghra, P.S. Pithoura, District- Mahasamund, Chhattisgarh, (Driver)
8. Rameshwar Sahu S/o Narayan Sahu Aged About 27 Years R/o Village Singhanpur, P.S. Patewa, Tehsil And District- Mahasamund, Chhattisgarh, (Owner)

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate
For Respondents	:	None, though served.

Hon'ble Shri Justice Sanjay S. Agrawal

C.A.V.Award / Order

1. The Magma H. D. I. General Insurance Company Ltd. has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act, 1988) questioning the legality and propriety of the award dated 27.03.2015 passed in Claim Case No. H-185/2014, whereby the Tribunal, while fastening the liability upon it, has awarded total amount of compensation to the tune of Rs.16,35,880/- with 6% interest per annum from the date of filing of the claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description before the Tribunal.

2. Briefly stated the facts of the case are that on 26.07.2014, deceased Dilip Kumar Sahis, while driving a motorcycle, was going to village Pachri along with his friends, namely, Puranik Dhruv and Betal Thakur and as soon as he reached near the petrol pump of village Chhilpawar, an offending vehicle "Metador" bearing Registration No.CG-07-CA-3556, which was being driven in a rash and negligent manner by its driver Angad Kumar, dashed the motorcycle from its opposite side. As a result of the alleged accident, he (Dilip Kumar) died on the spot. A report was lodged before the Police Station Patewa, District Mahasamund against the driver of the alleged offending vehicle under Sections 279, 337 and 304-A IPC in connection with Crime No.134/2014 and a charge sheet was accordingly submitted upon completion of investigation before the Chief Judicial Magistrate, Mahasamund.

3. On account of the aforesaid accident, a claim enumerated under Section 166 of the Act, 1988 has been made by the claimants, who are the widow, minors, unmarried sister and widowed mother by submitting, inter alia, that the deceased, 30 years old, was a mason (Rajmistri) by profession and used to earn Rs.10,000/- per month and have claimed total amount of compensation to the tune of Rs.39,50,000/- under various heads.

4. The Non-applicants have contested the aforesaid claim. According to the driver and owner of the vehicle in question, the deceased himself was responsible for the alleged accident as he lost his control over the motorcycle while driving the same along with two of his friends and pleaded further that since it was insured with the Magma H.D.I. General Insurance Company Limited, therefore, in case of any liability being fastened, they would be entitled to be indemnified by the said company. While, the insurer of it took a defence that the alleged offending vehicle was being used at the relevant point of time without having its valid permit and fitness certificate and the driver of it was not possessing the effective and valid driving licence, as such, owing to the violation of the terms and conditions of the policy, no liability could be fastened upon it.

5. The claimants have examined Smt. Lileshwari (A.W.1), Vikram Bhoi (A.W.2), an eye-witness of the alleged accident and one Ashok Kumar (A.W.3) in support of their claim, while the owner Rameshwar Sahu alone has entered into the witness box in order to disprove the claim.

6. After considering the evidence led by the parties, it has been held by the Tribunal that the alleged accident occurred on 26.07.2014 due to rash and negligent driving by the driver of the alleged offending vehicle, resulting into, the sad demise of Dilip Kumar, who was 30 years old at the relevant point of

time. It held further that the vehicle in question was not being used in violation of the policy, as alleged by the insurer and that by considering the monthly income of the deceased to the tune of Rs.4,500/-, awarded the total amount of compensation along with its interest, as mentioned herein above while fastening the liability upon the insurance company.

7. According to Shri Ghanshyam Patel, learned counsel appearing for the appellant/insurance company, the finding of the Tribunal fastening the liability upon the insurance company is apparently contrary to law. It is contended by him that the vehicle in question was a transport vehicle and was being used without any valid permit and fitness certificate and was being driven by a driver, who was not holding the effective and valid driving licence, and therefore, no liability ought to have been fastened upon the insurance company. It is contended further that the monthly income of the deceased as assessed by the Tribunal to the extent of Rs.4,500/- even in absence of its proof is unjustified. Further contention of him is that the amount of compensation as awarded towards conventional heads by placing its reliance upon the decision rendered in the matter of *Rajesh and others vs. Rajbir Singh and others* reported in (2013) 9 SCC 54 is extremely on higher side and deserves to be reduced to the extent as indicated in the light of the principles laid down by the Constitutional Bench of the Supreme Court in the matter of *National Insurance Company Limited -v- Pranay Sethi* reported in (2017) 16 SCC 680. He also placed his reliance upon the decision rendered in the matter of *Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and another* reported in (2009) 6 SCC 121 as the deduction towards personal and living expenses of the deceased to the extent of 1/5th as well as the multiplier of 18 has wrongly been made by the Tribunal.

8. Despite service of notice, no one appeared on behalf of the respondents.

9. I have heard learned counsel for the appellant/insurance company and perused the entire record carefully.

10. From perusal of the record, it appears that the vehicle in question, i.e., "Metador" was a "Light Goods Vehicle" (L.G.V.) and from perusal of its permit (Ex.D.2-C), fitness certificate (Ex.D.3-C) and the driving licence (Ex.D.4-C) of the driver of the alleged offending vehicle, it cannot be said that it was being used in violation of the policy, as contended by the learned counsel for the appellant and the Tribunal has, therefore, rightly fastened the liability upon the appellant/insurance company.

11. It appears further, as reflected from the unrebutted statements of the claimants, that the deceased was a mason (Rajmistri) by profession, and therefore, while considering the nature of his job, the Tribunal has rightly assessed his monthly income as Rs.4,500/- and by considering future prospects of his income, it was rightly assessed to the tune of Rs.5,850/- per month and I do not find any infirmity in the same as well. It, however, appears that the determination of the amount of compensation by applying the multiplier of 18, despite holding the age of the deceased as 30 and likewise, deduction of 1/5th towards personal and living expenses of him as made, is not in consonance with the dictum laid down by the Supreme Court in the said matter of **Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and another** (supra). Besides, the amount of compensation as awarded under the conventional heads while placing its reliance upon the decision rendered in the matter of **Rajesh and others** (supra) appears to be on higher side as during the pendency of this appeal, the principles laid down

in the said matter have been held to be not a binding precedent in the said matter of **Pranay Sethi** (supra).

12. Considering the facts and circumstances of the case in the light of the principles laid down by the Supreme Court in the above referred matters, the amount of compensation, as determined by the Tribunal, deserves to be reduced.

13. Since the monthly income of the deceased, as observed herein above, was Rs.5,850/-, yearly Rs.70,200/- and that looking to the number of dependents, who are 6, deduction of 1/4th of it, i.e., Rs.17,550/- towards his personal and living expenses, would be appropriate in the light of the said decision of **Sarla Verma** (supra). The yearly dependency would thus come to Rs.52,650/- (Rs.70,200/- - Rs.17,550/-). As the age of the deceased at the time of the accident was 30, the multiplier applicable would be 17 instead of 18, as applied by the Tribunal, Therefore, the total dependency would come to Rs.8,95,050/- (Rs.52,650/- x 17).

14. Besides, the widow and minor children are entitled to be awarded loss of consortium under the head of spousal and parental consortium, as held by the Supreme Court in the matter of **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others** reported in (2018) 18 SCC 130, at the rate as held in the matter of **Pranay Sethi** (supra).

15. The claimants are, thus, entitled to the following amounts towards conventional heads:

Sl. No.	Mode of Compensation	Amount in Rs.
1.	For loss of spousal consortium to wife	40,000/-
2.	For loss of parental consortium to minor children	40,000/-
3.	For Funeral expenses	15,000/-
4.	For loss of estate	15,000/-
Total:		Rs.1,10,000/- =====

and, it is to be increased by 10% in the light of the dictum of the Constitution Bench of the Supreme Court as laid down in para 59.8 of the said matter of **Pranay Sethi** (supra). Consequently, the claimants would be entitled to a sum of Rs.1,21,000/- (Rs.1,10,000/- + 10% of it) under the conventional heads instead of Rs.6,25,000/-, as awarded by the Tribunal and the amount of compensation as determined by the Tribunal, thus, deserves to be and is hereby reduced accordingly.

16. In view of above, the claimants would be entitled to a total amount of compensation to the tune of Rs.10,16,050/- (Rs.8,95,050/- + Rs.1,21,000/-) with 6% interest per annum from the date of filing of the claim petition till the date of actual payment, instead of Rs.16,35,880/- as awarded by the Tribunal.

16 (i) Out of the said awarded sum, a sum of Rs.2,66,050 shall be given to wife Smt. Lileshwari Sahis (claimant No.1), out of it, a sum of Rs.1,66,050/- shall be given to her through Account Payee cheque, while rest, i.e., Rs.1,00,000/- shall be deposited in her name in any of the Nationalised Bank for a period of 3 years, which shall be disbursed to her after its maturity, as per the direction of the Executing Court.

16 (ii) Likewise, Rs.2,00,000/- and Rs.1,00,000/- shall be deposited in the name of deceased mother, namely, Smt. Parvati Sahis (claimant No.5) and Ku. Shivkumari Sahis (claimant No.6, deceased's unmarried sister) respectively in any of the Nationalised Bank for a period of 3 years,

which shall be disbursed to them after its maturity, as per the direction of the Executing Court.

- 16 (iii) Rest of the amount of Rs.4,50,000/- shall be deposited in the name of minor children, namely, Digeshwar Sahis (claimant No.2), Ku. Reena Sahis (claimant No.3) and Gulshan Sahis (claimant No.4) in equal parts of Rs.1,50,000/- each through their guardian/mother Smt. Lileshwari Sahis in any of the Nationalised Bank for a period of 3 years, renewable from time to time, till the date of attaining their majorities and shall be disbursed to them through cheque, as per the direction of the Execution Court.
- 16 (iv) In so far as the interest part is concerned, the same shall be calculated at the rate of 6% per annum from the date of filing of the claim petition till the date of actual payment and be disbursed to the claimants through cheque, as per the direction of the Executing Court.
- 16 (v) It is observed further that if the widow (Smt. Lileshwari Sahis), deceased's mother (Smt. Parvati Sahis) and unmarried sister (Ku. Shivkumari Sahis) want to withdraw a portion of it or the entire deposited amount of their respective share/interest during the said period of 3 years, then they are at liberty to move an application for the said purpose before the concerned Executing Court, which may be considered by it and an appropriate order may be passed in this regard.

17. In view of above, the appeal is allowed in part to the extent indicated herein above, with the aforesaid observations. Rest of the observations as made by the Tribunal shall remain intact. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
Judge