NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 149 of 2015

Order reserved on 10.08.2021

Order pronounced on 20.10.2021

- ICICI Lombard General Insurance Co. Ltd. Thru- Its Legal Manager ICICI General Insu.Co.Ltd., Ground Floor, Vanijya Bhawan, Devendra Nagar Road, Raipur C.G.,

---- Appellant

Versus

1. Santulal S/o Ratilal Paradhi Aged About 46 Years,
2. Smt. Leela Bai W/o Santulal Paradhi Aged About 42 Years,

   Both are R/o Village- Bahera, Tah. And District : Bemetara, Chhattisgarh
3. Sugandhdas S/o Awadhram Banjare Aged About 24 Years R/o Village- Dhara, Tah. And Distt. Bemetara C.G., District : Bemetara, Chhattisgarh **---- Respondents**

For Appellant : Shri T. Abraham, Advocate

For Respondent : Shri Rajkumar Pali, Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

By the award impugned dated 28.10.2014 passed in Claim Case No.52/2013 learned Tribunal has worked out the compensation at Rs.6,01,000/-. However, taking into consideration the fact that the riders of both the motorcycles who eventually succumbed to the injuries sustained by them in the accident, has held it to be a case of contributory negligence of the two and thus awarded the actual compensation payable to the claimants at Rs.3,00,500/- along with interest @ 6% per annum from the date of application till realization. It is this award which is under challenge in this appeal on behalf of the appellant/Insurance company.

2. The case in brief is that on 27.03.2013 deceased Gulab Pardhi was riding the motorcycle bearing registration No. CG 04 - 0704 whereas the other deceased namely Jitendra Sahu was riding the motorcycle bearing registration No. CG 07 AG -3545. It is said that as the riders of both the motorcycles were negligent, the accident involving on–the–spot death of the duo had occurred.

3. The claimants in this case happened to be the parents of the young deceased boy aged about 20 years at the relevant time. The claim petition so preferred reflects that the deceased boy was earning Rs.200/- per day by engaging himself in the labour work and then in the evening hours he used to earn Rs.300/- per day by selling eggs. According to the claimants, the deceased used to provide them substantial financial assistance for their comfortable living out of his overall earning.

4. While refuting the claim, it was averred on behalf of the Insurance company that the riders of both the bikes were negligent and therefore, the sole liability to compensate cannot be fastened on it. As regards the deceased in this case, the Insurance company has taken a defence that while riding the motorcycle, the deceased had consumed liquor and one of the causative factors for accident was his intoxication as well. Another defence taken by it is that the deceased of the present case was making tripling while riding the motorcycle and had substantially contributed to the accident and therefore also the liability to compensate the claimants imposed on it is unjustifiable.

5. Having seen the documents produced by the rival parties learned Tribunal arrived at the total compensation payable to the claimants at Rs.6,01,000/- but as the element of contributory negligence was present in this case, the actual compensation was made to be paid to claimants to Rs.3,00,500/-. The same has been challenged in this appeal by the Insurance company being wholly unjustified.

6. Heard counsel for the parties and perused the documents on record including the award impugned.

7. It is not in dispute in this case that at the relevant time the age of the deceased was 20 years and at the time of accident he was a bachelor. While determining the multiple questions such as the income of the deceased; the point of dependency, the multiplier to be adopted; loss of expectancy and also the amount payable on conventional heads, this Court referred to the judicial pronouncements in the matters of **Laxmi Devi and Ors. Vs. Mohammad Tabbar and anr**. reported in (2008) 12 SCC 165; **Sarla Verma and Ors. Vs. Delhi Transport Corporation and anr.** reported in (2009) 6 SCC 121 : 2009 (2) ACCD 924 (SC); **Reshma Kumari and Ors. Vs. Madan Mohan and anr.** reported in (2013) 9 SCC 65 : 2013 (2) ACCD 977 (SC); and **National Insurance Co. Ltd. Vs. Pranay Sethi and Ors** reported in (2017) 16 SCC 680 : 2017 (4) ACCD 2106 (SC). Though in this case, the income of the deceased pleaded by the claimants who happened to be his parents is as Rs.200/- per day in the day time by dint of labour work and Rs.300/- per day in the evening time by selling eggs yet no conclusive proof as regards the same has been brought-forth by them. In these circumstances, the monthly income of the deceased at Rs.3000/-

(Rs.100/- per day) has been taken by learned Tribunal, which this Court also thinks to be just and proper. As admittedly the deceased was unmarried at the time of accident, it can be assumed that he might have been spending the 50% of his income for his own personal expenses and taking the same into account the amount which he could be spending on the claimants comes to Rs.1500/- per month. The annual income of the deceased could thus be worked out at Rs.18000/-. The record however shows that at the relevant time the deceased was aged about 20 years, and therefore, the proper multiplier to be adopted by the Tribunal in view of the latest judicial pronouncement of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Pranay Sethi (Supra) should have been 18 whereas the learned Tribunal has wrongly applied the same to be of 16. Thus correcting the same this Court thinks it proper to apply the multiplier of 18 on the income of the deceased and if that is done, the loss of income in this case comes to Rs.3,24,000/-. Furthermore, taking 40% thereof towards future prospects which comes to Rs.1,29,600/-, the total loss of income comes to Rs.3,24,000+1,29,600 = Rs.4,53,600/-. In addition to this, in view of the aforesaid judicial pronouncement in the matter of National Insurance Co. Ltd. Vs. Pranay Sethi (Supra), the amount awarded by learned Claims Tribunal on conventional head also needs to be modified. In place of Rs.5000/- towards funeral expenses, the claimants are entitled to Rs.15000/-. Rs.40,000/- is awarded towards love & affection and Rs.15000/- towards loss of estate by making certain modifications in the amount awarded by learned Tribunal on the conventional head. Now the amount on conventional heads thus comes to Rs.70,000/- and if the same is added to the amount of compensation worked out as above, the total amount of compensation comes to Rs.5,23,600/-. Since it is a case of contributory negligence, the claimants are indeed entitled to the compensation of **Rs.2,61,800/-.**

8. With the aforesaid modification in the award impugned, the appeal of the Insurance Company succeeds in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Yasmin