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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1325 of 2015

Order reserved on 18.06.2021

Order pronounced on 11 .11.2021

- The Oriental Insurance Co. Ltd., Through Its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand Bilaspur, Civil And Revenue District Bilaspur Chhattisgarh Pin 495001. ....**Appellant.**

Versus

1. Smt. Suhaga Bai Wd/o Saniram Aged About 37 Years,
2. Ku. Manisha D/o Late Saniram, Aged About 13 Years Minor,
3. Ku. Garima D/o Late Saniram, Aged About 7 Years Minor,
4. Samaru Ram Didko S/o Late Birjhu Ram, Aged About 63 Years
5. Smt. Sagni Bai W/o Samaru Ram, Aged About 61 Years

   Respondents No.2 & 3 are minor and represented through their mother and natural guardian Smt. Suhaga Bai, Wd/o Late Saniram. All R/o Dorba, Kukrelpara, P. O. Khadgaon, Tahsil Manpur, District Rajnandgaon Chhattisgarh. ..*Claimants*
6. Komal Singh S/o Amar Singh Rajput, R/o Durga Chowk, Shankar Nagar, Durg, District Durg Chhattisgarh. *Driver*
7. Manager Raipur Bus Service, Ganjpara, Durg, District Durg Chhattisgarh. *Owner*

---- Respondents.

Mr. R. N. Pusty and Mr. Praveen Dhurandhar, Counsel for the respective parties.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

The Insurance Company has filed this appeal on the ground that the awarded sum of Rs.27,34,940/- is excessive and not based on the proper appreciation of the material available on record including the salary slip of the deceased, and the same is not inconsonance with the judicial pronouncement holding the filed as on date.

2. At the relevant time, deceased Saniram Hidko accompanied by his companion Banshilal was going on his motorcycle, and as soon as they reached near the Jyoti Hospital, the offending vehicle i.e. bus belonging to Raipur Bus Service came there being driven in a rash and negligent manner and hit the motorcycle which eventually resulted in grievous injuries to the deceased who succumbed to the same while being taken to the hospital.

3. Learned Tribunal while awarding the compensation has based the calculation of compensation payable to the claimants, on the monthly income of the deceased at Rs.10,000/- which according to the Insurance Company is wrong as the deductions shown in the salary slip have not been taken into consideration by learned Tribunal while doing so. On the other hand, counsel for the claimants holds the compensation awarded by learned Tribunal as fully justified.

4. Having heard counsel for the parties at greater length and perused the evidence of the witnesses with full caution, the stand of the Insurance Company, according to the considered opinion of this Court, does not appear to be of any substance. The deductions being sought for by the Insurance Company are under the head of HRA, Conveyance Allowance, Medical Allowance, Special Allowance, Child Education Allowance etc., however, as held by Hon'ble the Apex Court in number of decisions, excluding the income tax and professional tax, all other allowances have to be taken to form part of the monthly salary. Had there been any major discrepancy in calculating the compensation, this Court would have certainly taken notice thereof. By taking the salary of the deceased

employee at Rs.10,000/- per month, learned Tribunal does not appear to have, in any way, gone wrong. As regards the occurrence from the offending vehicle referred to above which was duly ensured with the Insurance Company – the appellant herein, there is no dispute from either side. Thus such trivial technicality in working out the compensation according to the benevolent provision should not come in the way while considering the claim cases, particularly when the poor claimants happened to be the hapless wife, dependent children and infirm parents of the deceased are miserably involved in fighting the litigation.

5. As regards future prospects, if the judicial precedents time to time expressed by Hon'ble the Apex Court in bunch of decisions, are taken into consideration, the conclusion arrived at by learned Tribunal taking the future prospects to be 100% does not appear to be the right decision. Keeping in mind the decisions in the matter of **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in (2009) 6 SCC 121 : 2009 (2) ACCD 924 (SC) and **National Insurance Company Limited Vs. Pranay Sethi and others** reported in (2017) 16 SCC 680 : 2017 (4) ACCD 2106 (SC), and further taking into consideration the fact that at the relevant time the deceased was aged about 36 years and was working on a fix wage, the future prospects can be calculated at 40%. Thus if the monthly income of the deceased as has been taken by learned Claims Tribunal at Rs.10,000/- is not dislodged, the annual income can be determined at Rs.1,20,000/-. Furthermore, adding 40% thereof towards future prospects it comes to Rs.1,68,000/- (120,000 + 48,000). As there were 5 dependents on the deceased, according to the law holding the field as of now, it can be assumed that he

must have been spending 1/4th thereof towards his personal and living expenses which comes to Rs.42,000/-. In other words, the contribution towards the dependents was Rs.1,26,000/- per annum. As the deceased at the relevant time was 36 years of age, multiplier of 15 already applied by learned Tribunal is fully justified and if the total loss of dependency is calculated applying the said multiplier, the same comes to Rs.18,90,000/-. The amount awarded under the conventional heads by learned Tribunal appears to be justified and does not need any modification by this Court. The total compensation for which the claimants are entitled comes to Rs.18,90,000/- (the loss of dependency) + Rs.3,35,000/- (the amount on conventional heads) = **Rs. 22,25,000/-.** The mode, manner and method of apportionment of the compensation among the claimants shall be as per the calculation made by learned Tribunal. Rest of the observations would be the same as made by learned Tribunal.

6. Appeal thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge

Jyotishi/Ajay