NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 16 of 2015

1. Sundarlal Netam S/o. Late Rajman aged about 45 years,
2. Smt. Mahangi W/o. Sundar Lal Netam, aged about 43 years,
3. Miss Usha D/o Sundar Lal Netam aged about 18 years,
4. Miss Lalita D/o Sundar Lal Netam aged about 15 years,
5. Teshawar S/o. Sundar Lal Netam aged about 12 years,

Appellants No. 4 and 5 are minor, through appellant No. 1 and 2 natural guardian as parents.

All are Residence of village Lanjoda Tahsil Farasgaon District Kondagaon (C.G.).

---- Appellants

Versus

1. Vijay Kumar Netam S/o Bharat Netam aged about 27 years R/o. Village Makari Indira Awas Plot Tahsil District Kanker (C.G.) (Driver).
2. Shabbir Parekh S/o S.B. Parekh R/o. Anupam Nagar Raipur Presently R/o. Main Road Keshkal District- Kondagaon (C.G.) (Owner of the Vehicle).
3. The New India Assurance Co. Ltd. Office at Life Insurance Commercial premises Pandari, Raipur (C.G.) (insurer).

---- Respondents

For Appellant : Shri P. K. Tulsyan, Advocate
For Respondent : Shri Samir Singh, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

08.10.2018

This is claimants' appeal seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Kondagaon (for short 'the Tribunal') in claim case No. 06/2014 vide award dated 23.12.2014.

2. Facts of the case leading to filing of claim petition are that when on 13.12.2013, at about 7.30 pm Gagendra Kumar Netam was going by the motorcycle from Lanjoda to Kondagaon, national highway 30, near bridge on Narangi river, respondent No. 1-Vijay Kumar Netam by driving an offending vehicle Tata 407 bearing registration No. CG04JC-3608 rashly & negligently, dashed Gagendra Kumar Netam, as a result of which Gagendra Kumar Netam sustained multiple injuries and died on spot, at the time of incident the deceased- Gagendra Kumar Netam was about 24 years of age and was working as constable in Central Reserve Police Force and his earning was Rs. 23,875/- per month. In the instant case, appellants No. 1 & 2 are the parents of the deceased whereas appellants No. 3, 4 & 5 are the sisters and brother of the deceased, respectively.

3. As against compensation of Rs. 69,75,280/- claimed by unfortunate parents and siblings of deceased- Gagendra Kumar Netam, aged about 24 years, by filing application under Section 166 & 140 of the Motor Vehicles Act, 1988 (for short 'MV Act') for the death of deceased in the motor accident on 13.12.2013, the Tribunal awarded a total sum of Rs. 2,75,000/- as compensation along with simple interest @ 7.5 percent per annum from the date of application till its actual payment to the appellants/claimants.

4. The Tribunal, on a close scrutiny of the evidence led by both the

parties, held : the accident had occurred due to rash and negligent driving of Tata 407 bearing registration No. CG 04 J.C.-3608 by its driver Vijay Kumar Netam respondent No. 1; Gajendra Kumar Netam, aged about 24 years, died on account of injuries sustained by him in the said accident. Learned Tribunal, after considering the material available on record fastened the liability to pay compensation upon the respondent No. 1 to 3 /Insurance Company jointly and severally as it could not establish the violation of policy conditions and awarded aforesaid sum as compensation to the appellants /claimants.

5. By filing joint written statement, the respondents No. 1 & 2 /owner & driver of the offending vehicle stated that deceased Gajendra Kumar Netam was driving the motor cycle rashly and negligently, as a result of which the accident had occurred and, therefore, the respondent No. 1 and 2 are not liable for payment of compensation to the claimants and as the vehicle was insured with the respondent No. 3- Insurance Company at the time of accident, the liability be fixed upon the respondent No. 3/Insurance Company to pay compensation, if any, to the claimants.

6. Respondent No. 3/Insurance Company has denied the claim made by the appellants/claimants stating that deceased did not have valid and effective driving licence to drive the motorcycle at the time of accident and as the deceased was driving the vehicle rashly & negligently at the time of occurrence, the deceased was also responsible for the accident. Further the Insurance Company has stated that the driver of the offending vehicle non-applicant No 1 was also not having valid and effective driving licence and the vehicle was being driven without fitness certifi-

cate. In these circumstances the Insurance Company prayed for exoneration of its liability to pay any compensation to the claimants.

7. The Tribunal, after appreciating the oral and documentary evidence, available on record and without applying the multiplier; awarded an amount of Rs. 1,50,000/- towards mental agony; Rs. 25,000/- towards funeral expenses; Rs.75,000/- towards love & affection to parents of deceased whereas Rs.25,000/- towards love & affection to the brother & sister of the deceases and thus awarded a total sum of Rs.2,75,000/- to the claimants along with interest @ 7.5% from the date of filing of claim petition till its actual payment.

8. Learned counsel for the appellants/claimants would submit that the Tribunal has erred in assessing the income of the deceased as the deceased was a Govt. servant in Reserve Police Force and earning Rs. 23,575/- per month and at the time of accident his age was 24 years. The learned Tribunal has further erred in not applying the multiplier method while calculating the compensation payable to the claimants.

9. Learned counsel for the respondent opposes the arguments made by learned counsel for the appellants/claimants and submits that learned Tribunal is justified in awarding lumpsum amount of Rs. 2,75,000/- to the claimants as they are not the dependent upon the deceased as they have specifically stated in their evidence that they are not dependent upon the deceased and, therefore, there is no need to interfere with the award passed by the Claims Tribunal.

10. I have heard learned counsel appearing for the parties and perused the impugned order including the record of Claims Tribunal.

11. There is no dispute about the age of the deceased at the time of accident and it is also considered by the Tribunal while assessing the income of the deceased; it is also not disputed that appellants No. 1 & 2 are the father & mother of the deceased whereas respondents No. 3 to 5 are the siblings of the deceased. It is also not disputed by both the parties that the deceased was working in the Central Reserve Force and earning Rs. 23,875/- per month vide Ex. P/10. In the mater of **Amrit Bhanu Shali and Ors. Vs. National Insurance Co. Ltd and Ors.** Reported in **2012 AIR SCW 3901** and **Sarla Verma (Smt.) & others V. Delhi Transport Corporation and another**[1.]**,** Hon'ble Apex Court while considering the issue of compensation where the dependents were the mother and father and the deceased was unmarried held that in such cases deduction towards personal living should be 50% and age of the deceased is to be considered and not the age of the dependents. However, in the present case since the father of the deceased is having independent source of income, only mother is to be taken as dependent of the deceased.

12. In the matter of **Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram & Ors. In civil appeal No. 9581 of 2018 arising out of SLP[Civil] No. 3192 of 2018** the Hon'ble Supreme Court has granted amount for loss of filial, apart from awarding towards other conventional heads. Admittedly the deceased was in Government job and was aged about 24 years, therefore, in view of the decision of Hon'ble Supreme Court Judgment **National Insurance Co. Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680,** 50% of the annual income should be added thereto towards future prospect. Thus keeping in view the decision rendered by the Supreme Court in the matter of **Pranay Sethi** (Supra), I propose to re-compute the amount of compensation as under :- -

1 2009 (6) SCC 121

Sl. No.	Heads	Calculation
01.	Income of the deceased	Rs.23,875x12=Rs.2,86,500/-
02.	50% of above to be added towards future prospects	Rs.2,86,500+143,250=Rs. 429750
03.	1/2th deduction towards personal and living expenses of the deceased	Rs. 4,29,750/2= Rs. 214875/-
04.	Multiplier of 18 to be applied	Rs.2,14,875x18 = Rs. 38,67,750/-
05	Towards loss of estate, and for funeral expenses	Rs.15,000+15,000 = Rs. 30,000/-
	Toward Filial loss Total compensation	Rs. 40,000/- Rs.39,37,750/-

13. Since, the Tribunal has already awarded a sum of Rs. 2,75,000/- after deducting the same from the amount as calculated above, the claimant is held for an additional compensation of Rs. 36,62,750/-. This additional amount shall carry interest at the rate of 7.5% per annum from the date of claim application till its realization. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

14. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

Amita