NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 506 of 2015

1. Smt. Kumkum Das, W/o Late Swapan Das Aged About 41 Years
2. Sumit Das S/o Late Swapan Das Aged About 23 Years
3. Radheshayam Das S/o Akshay Das Aged About 67 Years
4. Smt. Jivani Das W/o Radheshayam Das Aged About 62 Years

   All R/o Village P.V. 7, Chotekapsi, Thana And Tahsil Pakhanjore, Distt. Uttar Bastar Kanker Chhattisgarh

---- Appellants

Versus

1. Smt. Komal Nagesh W/o Narendra Nagesh Aged About 41 Years R/o Chavela Thana And Tahsil Bhanupratappur, Distt. U.B. Kanker Chhattisgarh (Owner)
2. Sanjay Kumar S/o Shivlal Aged About 25 Years R/o Village Chavela Thana And Tahsil Bhanupratappur, Distt. U.B. Kanker Chhattisgarh
3. National Insurance Company Ltd. S/o Near Centralbank, R.S.S. Officer, Jagdalpur, District : Bastar(Jagdalpur), Chhattisgarh

---- Respondents

For Appellants	:	Shri Parag Kotecha, Advocate
For Respondents- 1 and 2	:	None appears
For Respondent- 3	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

02.11.2018

1. Appellants/claimants have assailed the impugned award dated 21.11.2014 passed by learned Additional Motor Accident Claim Tribunal (for short, 'the Tribunal'), Bhanupratappur, district UB-Kanker in Claim Case No.18 of 2013, whereby learned Tribunal partly allowed the claim of compensation made by the appellants.

2. Brief facts relevant for disposal of this appeal are that on 17.08.2012 at about 9 pm Sapan Das @ Swapn Das was standing by the side of road

at Bhanbeda waiting for the conveyance to go to Bhanupratappur. At that relevant time, one Scarpio (Jeep) bearing No.CG-19-D-0306 being driven by respondent- 2 rashly and negligently, dashed Sapan Das due to which he sustained grievous injuries over his backbone and other parts of the body. Injured Sapan Das was immediately taken to Hospital at Bhanupratappur, from where he had been referred to BSR Hospital, Bhilai, where he took treatment from 18.08.2012 to 09.09.2012 but thereafter, looking to the expensive treatment and shortage of money, injured Sapan Das was shifted to Dr BR Ambedkar Hospital, Raipur. He succumbed to injuries on 10.09.2012 at Dr BR Ambedkar Hospital, Raipur.

3. Due to the aforementioned reasons, appellants/claimants filed claim application mentioning therein that the deceased on the date of accident was aged about 44 years and doing the work of a driver and was earning Rs.5,000/- per month towards salary and Rs.100/- per day towards daily allowance, thereby earning about Rs.8,000/- per month. Appellants were dependants on deceased Sapan Das therefore, they filed claim application before competent claims Tribunal claiming Rs.17,72,377/- as compensation (including Rs.3,17,377/- as medical expenses).

4. Respondent- 1 and 2 have submitted reply to the claim application and have opposed the claim of the appellants and pleaded that on the date of accident the offending vehicle was insured with National Insurance Company Limited ie Respondent- 3. It was further pleaded that driver of the offending vehicle (Respondent- 2) was possessing a valid and effective licence on the date of accident, therefore, liability of payment of compensation if any, would be on the Insurance Company, Respondent-

3. Insurance Company in its separate reply denied the claim application and further pleaded that on the date of accident, driver was not possessing valid and effective driving licence, therefore, there is violation of conditions of Insurance Policy. It was further pleaded that as the offending vehicle was seized with little delay and the driver of that vehicle was arrested after delay of sometime, creates suspicion on the claim of the appellants.

5. Learned claims Tribunal after considering the entire pleadings and evidences placed on record by the respective parties, arrived at a conclusion that the offending vehicle was involved in the accident and in the said accident, deceased Sapan Das died. Learned Claims Tribunal further held that there was no violation of conditions of Insurance Policy as the driver of offending vehicle on the date of accident was possessing a valid and effective driving licence. Licence was produced and exhibited as Ex.D-2 before the learned Claims Tribunal. The Tribunal, after considering the material available on record, dis-believed the income pleaded in claim application of the deceased and by assessing his monthly income as Rs.3,000/- per month, awarded Rs.6,88,377/- as compensation, including medical expenses of Rs.3,12,377/-.

6. Learned counsel for the appellants contended that the learned Claims Tribunal awarded less amount of compensation by wrongly assessing the monthly income of the deceased. He further submitted that learned Claims Tribunal not awarded any amount towards future prospects of the deceased and that the amount awarded on other conventional heads are meagre.

7. Learned counsel appearing for respondent-3 vehemently argued and supported the impugned award. He submitted that the appellants failed to prove the income pleaded in their claim application by producing cogent evidence and material before the Claims Tribunal and therefore, the Claims Tribunal rightly assessed the income of the deceased as Rs.3,000/- per month in the facts and circumstances of the case.

8. Heard learned counsel for the parties. Perused the records and considered the evidence of Sumit Das (AW-1), son of deceased, who in his evidence specifically mentioned that his father was employed as driver for driving Bolero (Jeep) of Prabhas Mahaldas of village Badekapsi, from which he was earning Rs.5,000/- as wages and Rs.100/- per day as daily allowance. Kumkum Das (AW-2), widow of deceased in her statement proved the driving licence of Sapan Das as Ex.P/13, as well as the handwritten certificate issued under the signature, said to be of Prabhas Mahaldas with respect to salary drawn by the deceased. Looking to document Ex.P/13, driving licence of the deceased, especially the particulars of deceased, it is evident that deceased Sapan Das was having a valid and effective driving licence for driving light motor vehicle and motorcycle. Therefore, there is material evidence available on record to show that the deceased was having licence to drive vehicle as pleaded and stated in evidence that late Sapan Das was driving Bolero (Jeep) under the employment of Prabhas Mahaldas. Though Prabhas Mahaldas was not examined as witness before Claims Tribunal, but looking to the particulars of licence issued by the competent authority i.e., Regional Transport Officer, Raipur, the date of accident ie 17.08.2012 and the

wages prevailing in the State of Chhattisgarh at that time, learned Claims Tribunal definitely assessed monthly income of the deceased on lower side.

9. In view of aforementioned discussion, after considering the entire material and evidence available on record I have no hesitation in holding that the deceased was skilled labour on the date of accident. Keeping in mind that the deceased was a skilled labour and date of accident i.e., 17.08.2012, the income of the deceased is reassessed as Rs.5,000/- per month.

10. Apart from the above monthly income, future prospects is to be added @ 25% of the income as held by the Hon'ble Supreme Court in the matter of **National Insurance Company Vs Pranay Sethi** reported in **2 AIR 2017 SC 5157**, wherein the deceased persons aged between 40-50 years are held to be entitled for additional sum of 25% of the income towards future prospects. In case in hand, deceased was aged about 44 years, therefore, an amount of Rs.1,250/- (5,000 x 25/100 = 1,250) i.e., 25% of income towards future prospects is to be added to the monthly income of Rs.5,000/-, which comes to Rs.6,250/- per month and Rs.75,000/- per annum. The number of claimants are 4 therefore, there will be one fourth deduction of the earning, towards personal expenses, which comes to Rs.18,750/-. After deduction of Rs.18,750/- from the yearly income, dependency of the claimants comes to Rs.56,250/-. Deceased was aged about 44 years at the time of accident, therefore, multiplier of 14 is to be applied, that brings the total dependency to Rs.7,87,500/-.

11. In the aforementioned amount of dependency, a sum of Rs.70,000/- towards other conventional heads is required to be added, which makes the total compensation as Rs.8,57,500/-. Apart from this amount, the appellants are also entitled for Rs.3,12,377/- towards medical expenses incurred by the appellants and Rs.5,000/- towards Ambulance charges for carrying body of the deceased, as already assessed and awarded by learned Claims Tribunal. Now, total award amount comes to Rs.11,74,877/- (Rupees eleven lakhs seventy four thousand and eight seventy seven only).

12. The appellants are now entitled for a total sum of Rs.11,74,877/- instead of Rs.6,88,377/-, along with interest @ 6% per annum from the date of filing of the claim petition till its realisation. Other conditions imposed by learned Claims Tribunal will remain intact.

13. Appeal is partly allowed and the impugned award is modified as mentioned in afore paras.

14. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma