NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No.564 of 2018

1. Sanjog Kumar S/o Bhagirathi Mahilange Aged About 27 Years R/o Dargaon Thana And District Dhamdha Masturi District Durg, Chhattisgarh,
2. Kumari Priti D/o Sanjog Kumar Mahilange Aged About 4 Years Minor Through His Legal Guardian Father Sanjog Kumar S/o Bhagirathi Mahilange (Appellant No.1) R/o Dargaon Thana And District Dhamdha Masturi District Durg, Chhattisgarh,
3. Aayush S/o Sanjog Kumar Mahilange Aged About 2 Years Minor Through His Legal Guardian Father Sanjog Kumar S/o Bhagirathi Mahilange (Appellant No.1) R/o Dargaon Thana And District Dhamdha Masturi District Durg, Chhattisgarh (Claimants),

---- Appellants

Versus

1. Dukhan Ram Mahto S/o Late Chamu Mahto Aged About 54 Years R/o Gendanvadih Thana Topchachi District Dhanbad (Jharkhand) (Driver Of The Offending Vehicle Haiwa No. C.G.10/Z./4775),
2. Becom Infra Project Privet Limited Shiv Petrol Pump Jaiyram Nager Thana Masturi District Bilaspur, Chhattisgarh (Owner Of The Offending Vehicle Haiwa No. C.G.10/Z./4775),
3. Branch Manager, The Reliance General Insurance Company Limited Branch Office Cooperate National Park, 5th Floor In Front Of Maruti Bijanece G.E.Road Raipur District Raipur, Chhattisgarh (Insurer Of The Offending Vehicle Haiwa No. C.G.10/Z/4775),

---- Respondents

For Appellants:	Shri Arjun Lal Singroul, Advocate.
For Respondent No.3:	Shri Sachin Sinch Rajput, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

28.08.2018

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') questioning the award dated 05.12.2017 passed by the Additional Motor Accidents Claims Tribunal, Bilaspur (for short 'the Claims Tribunal') in Claim Case No.142/2017 by which, the learned Claims Tribunal, while allowing the Claim Petition in part, has awarded total compensation to the tune of Rs.7,50,144/- with 8.5%

interest per annum from the date of filing of the Claim Petition till its realization.

2. Shri Singroul, learned Counsel for the Appellants submits that while passing the award impugned, learned Claims Tribunal has committed an illegality in not awarding 40% towards future prospects as well as proper compensation towards conventional heads, in view of the principles laid down in the matter of ***National Insurance Company Limited v s. Pranay Sethi and*** **Others** reported in **AIR 2017 SC 5157.**

3. On the other hand, Shri Rajput, learned Counsel for Respondent No.3 submits that the award impugned as passed by the learned Claims Tribunal is just and proper and does not require to be interfered. According to him, the principles laid down in the said matter are not applicable in the instant case as the deceased herein was not employed or getting any fixed salary.

4. I have heard learned Counsel for the parties and perused the entire record carefully.

5. A claim was made under Section 166 of the Act on account of the accident occurred on 28.01.2017 when deceased Hemlata Mahilange was going with her husband on his motorcycle and while returning home and when they reached the village Ved Parsada, they were dashed vehemently by the offending vehicle i.e. Haiwa-Truck bearing registration No.CG.10/Z/4775 coming from the opposite side. It is pleaded in the Claim Petition that at the relevant time, the said offending vehicle was being driven in a rash and negligent manner by its driver namely Dukhan Ram Mahto, Respondent No.1, which was owned by Respondent No.2-Becom Infra Project Private Limited and insured with Respondent No.3/The Reliance General Insurance Company Limited. It is pleaded in the Claim Petition that the deceased was involved in the embroidery business and used to earn Rs.500/- per day and has thus,

claimed total compensation to the tune of Rs.40 lacs on various heads.

6. The aforesaid claim was contested by Respondents No.1 & 2 by submitting *inter alia,* that the alleged accident had not occurred with the said offending vehicle. It is pleaded further that since the vehicle in question was insured with Respondent No.3, therefore, in case of any liability being fastened, the same would be indemnified by the said Insurance Company.

7. Respondent No.3/Insurance Company has contested the claim on the ground that at the relevant time, the driver was not possessing effective and valid driving license and the vehicle was being used without any permit. Therefore, the Insurance Company cannot be held liable as the offending vehicle was being run in violation of the Insurance policy.

8. After considering the evidence led by the parties, learned Claims Tribunal has come to the conclusion that the alleged accident has occurred due to rash and negligent driving of its driver namely Dukhan Ram Mahto and held further that the vehicle in question was not being driven in violation of the Insurance policy as alleged by Respondent No.3. It held further that the deceased used to earn Rs.5,000/- per month from her embroidery business and has thus, awarded total compensation to the tune of Rs.7,50,144/- along with the interest at the rate of 8.5% per annum.

9. Perusal of the record would, however, show that while awarding the compensation as such, the learned Claims Tribunal has not considered the future prospects in view of the principles laid down in **National Insurance Company Limited v s. Pranay Sethi** (supra) wherein at paragraph 61(iv) has been held as under:-

> "(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between

> the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

10. In view of the aforesaid principles, the learned Claims Tribunal ought to have considered the future prospects of the income of the deceased to the extent of 40% while awarding just and fair compensation payable to the Claimants, as she was below the age of 40 years. Having failed so, the learned Claims Tribunal has certainly committed an illegality in not considering the same. Consequently, the Claimants are entitled to 40% more of the income of the deceased towards future prospects. Since the income of the deceased was assessed by the learned Claims Tribunal at Rs.5,000/- per month, therefore, the future prospects of 40% of her income would come to Rs.2,000/- per month, yearly Rs.24,000/- and since the age of the deceased was 23 years, and therefore, by applying the multiplier of 18, the said future prospects would come to the tune of Rs.4,32,000/-. After deducting 1/3 rd of it, i.e., Rs.1,44,000/- towards her personal expenses, the actual further dependency would come to Rs.2,88,000/- (Rs.4,32,000 – Rs.1,44,000).

11. It revealed further from perusal of the record that the conventional heads as awarded by the Claims Tribunal was only Rs.30,000/-. However, it ought to have been Rs.70,000/- in the light of the said decision of **National Insurance Company Limited v s. Pranay Sethi**_(supra) where it has been held at paragraph 54 as under:-

> "**54.** …......... The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in

> determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. …...”

12. By applying the aforesaid principles in this regard, the Claimants are entitled to a further sum of Rs.40,000/- also and as a consequence of it, they are entitled to further sum of Rs.3,28,000/- (Rs.2,88,000 + Rs.40,000) and, the same shall carry interest at the rate of 6% per annum from the date of filing of the Claim Petition till its realization.

13. In view of the foregoing discussions, the Appeal is allowed in part to the above extent. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge

Priya