HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 44 of 2014

1. Arjun Singh, S/o Late Mangal Singh Meshram, aged about 21 years,

2. Sanjeev Kumar Son of Late Mangal Singh Meshram, aged about 19 years,

3. Jitesh Kumar son of Late Mangal Singh Meshram, aged about 17 years, minor through legal guardian brother Arjun Singh son of Mangal Singh.

All are by caste Gond, resident of Village Khanta, Police Station Gourela, Distt. Bilaspur (CG)

---- Appellants Claimants

Versus

1. Ajay Shukla son of Diwaker Prasad Shukla, aged about 40 years (vehicle driver & owner) resident of village Latkoni, Police Station and Tahsil Pendra, Distt. Bilaspur (CG)

2. Shriram General Insurance Co. Ltd., E 8, IPIP, Rico Industrial Area, Sitapura, PS Sitapura, Distt. Jaypur (Rajasthan)

---- Respondents

For Appellants	:	Shri Yogendra Chaturvedi, Advocate.
For Respondent No.2	:	Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board

12/11/2018 :

The appellants/claimants by filing this appeal u/s 173 of the Motor Vehicles Act, 1988 are seeking enhancement of the amount of compensated awarded by Additional Motor Accident Claims Tribunal, Pendra Road, Distt. Bilaspur (in short “the Tribunal”) in Claim Case No.17/2012 vide award dated 31.10.2013.

02. Claimants' case in brief is that on 7.12.2011 when their father Mangal Singh, aged 44 years, earning Rs.10,000/- per month being

Manager of Dhanopaj Samiti, Dhanpur, was going on his motorcycle bearing registration NO. CG 10 EF 0498 through Penda-Shivni road to his home, at about 7.15 pm his vehicle was dashed by offending vehicle tractor bearing No. CG 10D 2826 which was being driven by respondent No.1 in a rash and negligent manner as a result of which Mangal Singh suffered grievous injuries and ultimately died during the course of treatment on 3.1.2012 in Medical College Hospital, Raipur. Thus, the claimants being dependents on the deceased, by filing application under Section 166 of the Motor Vehicles Act, 1988 claimed a total sum of Rs.21,68,600/- under various heads as compensation against the death of Mangal Singh.

03. Respondents No.1/driver & owner of the offending vehicle filed his written statement, denied all the adverse averments made in the claim petition and stated that the deceased was riding motorcycle in drunk condition, no accident occurred with the offending vehicle, he died due to his own negligence and even otherwise, as the offending vehicle was insured with respondent No.2, liability, if any, to pay compensation is of respondent No.2.

04. On the other hand, respondent No.2 in its written statement though admitted that the offending vehicle was insured with it during the relevant period but denied that any accident was caused by the said vehicle.

05. The Tribunal after hearing counsel for the respective parties and considering the material available on record by the impugned award granted a total compensation of Rs.6,56,640/-in favour of the claimants with interest @ 6% per annum from the date of award till realization,

fastening the liability to satisfy the award on respondent No.2/insurance company. No appeal has been filed by the insurance company challenging the above award and only the claimants have filed appeal seeking enhancement of the compensation awarded by the Tribunal.

06. Learned counsel for the appellants submits that the Tribunal has erred in assessing the monthly income of the deceased at Rs.3000/- whereas the deceased being a Manager was earning Rs.10000/- per month. Further, the Tribunal has committed an error by not granting any amount towards future prospects whereas considering the age of the deceased, which was held by the Tribunal to be 42 years, 25% of his monthly income was to be added thereto towards future prospects in view of judgment of the Hon'ble Apex Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***. He submits that the Tribunal has also awarded a meager amount under the conventional heads and the same is liable to be enhanced to Rs.70,000/- in light of law laid down by the Hon'ble Apex Court in *Pranay Sethi* (supra). Lastly he submits that the Tribunal has also erred in awarding interest on the amount of compensation from the date of award whereas it should have been from the date of claim petition till realization.

07. Per contra, learned counsel appearing for the insurance company has vehemently opposed the contentions raised by the appellants and submitted that the impugned award has been passed by the Tribunal keeping in view all the relevant aspects of the matter including the income of the deceased because there is no certificate or

document with respect to earning of the deceased. Being so, there is no need to interfere with the award impugned.

08. Heard learned counsel for the respective parties and perused the material available on record.

09. So far as determination of age of the deceased to be 42 years is concerned, the same appears to be just and proper. Further, the Tribunal was justified in making 1/3rd deduction from the income of the deceased towards his personal and living expenses as the number of dependents in this case are three as also in applying multiplier of 14. However, it appears to have fallen in error in assessing the income of the deceased at Rs.3000/- per month. From the pleadings of the claimants, the nature of job of the deceased, as also the minimum wages at the relevant time, the monthly income of the deceased can safely be taken at Rs.4,500/- i.e. Rs.54,000/- per annum. Considering the age of the deceased i.e. 42 years and the nature of his job i.e. self-employment, in view of judgment in ***Pranay Sethi*** (supra), 25% of his annual income is to be added thereto towards future prospects. As regards the medical expenses, the Tribunal has awarded Rs.2,83,639/- under this head, which appears to be just and proper and based on proper appreciation of the oral and documentary evidence adduced and proved by the claimants. Therefore, the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation**
01.	Income of the deceased @ Rs.4500/- per month.	Rs.4,500 x 12 = Rs.54,000/- per annum

02.	25% of (i) above to be added towards future prospects	(54,000 + 13,500) = Rs.67,500/-
03.	1/3rd deduction towards personal and living expenses of the deceased	(67,500-22,500) = Rs.45,000/-
04.	Multiplier of 14 to be applied	Rs.45,000 x 14 = Rs.6,30,000/-
05.	Medical expenses	Rs.2,83,639/- (as assessed by the Tribunal)
06.	Towards loss of estate and for funeral expenses	Rs.30,000/-
	Total compensation	**Rs.9,43,639/-**

Since the Tribunal has already awarded Rs.6,56,640/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.2,86,999/- with interest @ 6% per annum from the date of application till realization. The claimants are also held entitled for interest @ 6% per annum on the amount of Rs.6,56,640/- from the date of application till its payment.

10. In the result, the appeal is allowed in part with modification in the award impugned to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

Khan