AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 268 of 2013

Judgment Reserved on 04/09/2018

Judgment Delivered on 26/11/2018

1. Smt. Manideepa Nath Aged About 48 Years

2. Rajeersh Nath S/o Late N.K. Nath Aged About 24 Years

3. Devirshi Nath S/o Late N.K. Nath Aged About 16 Years Thru- Smt. Manideepa Nath W/o Late N.K. Nath Mother,

4. Durgarani Nath W/o Late K.K. Nath Aged About 72 Years

All are R/o L.I.G. 233, Neelkuti Pandit Deendayal Nagar, Devarikhurd, Tah. And Distt. Bilaspur C.G.

---- Appellants

Versus

1. Vinod Sidara S/o Puran Lal Sidar Aged About 24 Years R/o Main Road, Torwa, Tah. And Distt. Bilaspur C.G., Chhattisgarh

2. The Divisional Manager The Oriental Insu. Co. Ltd., Near Bus Stand Bilaspur, Tah. And Distt. Bilaspur C.G.

---- Respondents

For Appellants	Shri P.K. Tulsyan, Advocate.
For Respondent No.2	Shri H.P. Agrawal, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

C A V Judgment

1. The appellants/claimants filed this appeal under Section 173(2) of the motor Vehicle Act, 1988 aggrieved by the award passed by learned 6th Additional Motor Accident Claims Tribunal, Bilaspur, C.G. in claim case No. 41/2012 passed on 28 February, 2013, along with 7.5% passed in favour of the appellants.

2. As per claim petition on the date of accident i.e. 22.03.2008, N.K. Nath

(deceased) was going on his bicycle, when respondent No.1 by riding motorcycle in a rash and negligent manner dashed the bicycle of the deceased, as a result of which he suffered grievous injuries and died. The claimants filed a claim petition for compensation of Rs.46,50,968/- on the ground that the deceased was 54 years of age, was working as Office Superintendent in CNPDI Bilaspur, was earning Rs.22,579 per month and his death occurred due to rash and negligent driving of respondent No.1. It is not in dispute that the offending vehicle was insured with respondent No.2 at the relevant time. Respondent No.1 in his written statement denied the averments made in the claim petition and stated that since the vehicle was insured with respondent No.2, liability, if any, is on respondent No.2.

3. Respondent No.2 Insurance Company in its written statement stated that the death of the deceased occurred due to negligence of the deceased and therefore, the insurance company is not liable for paying compensation. It further stated that the claimants have wrongly pleaded the age and income of the deceased.

4. Learned Tribunal considering the pleadings of the respective parties and the evidence adduced by them by impugned award granted a total compensation of Rs.11,27,320/- with interest at the rate of 7.5% per annum from the date of application till its realization, fastening the liability on respondent Nos. 1 & 2 jointly and severely to satisfy the award.

5. Learned counsel for the appellant submits that Tribunal has committed error in assessing the income of the deceased at Rs.16,082/- whereas, the said assessment was made on the basis of pay slip of Ex.A-7 which was for December, 2007. However, the accident occurred on 22.03.2008 and as per Ex.A-8 i.e. the pay certificate for the March, 2008, the gross

salary of the deceased was Rs.25,132/-, which comes to Rs.23,000/- after income tax deduction. Further, the Tribunal has erred by not granting any amount towards future prospect, whereas in view of decision of Hon'ble Supreme Court in **National Insurance Co. Ltd Versus Pranay Sethi** reported in **(2017) 16 SCC 680,** considering the age of the deceased and the nature of his job, 15% increase in the annual income should have been considered by the Tribunal towards future prospect. He further submits that the Tribunal has also committed illegality in applying multiplier of 8 whereas considering the age of the deceased it should have been 11. Lastly, he submits that the Tribunal has awarded a meager amount under the conventional heads and the same may be suitably enhanced.

6. On the other hand, learned counsel appearing for the respondent/Insurance Company submits that the amount of compensation awarded by the Tribunal is just and proper compensation in the facts and circumstances of the case and needs no interference.

7. Heard both the parties and perused the material available on record including the impugned award.

8. So far as the income of the deceased is concerned, taking into consideration the salary certificate produced by the claimants Ex.A-8 for the month of March, 2008, the income of the deceased is assessed as lumpsum at Rs.23,000/- per month after income tax deduction i.e. 2,76,000/- per annum. As such the Tribunal was not justified in assessing the income of the deceased on the basis of Ex.A-7 that was for December, 2007. Further, the Tribunal has committed an error in applying multiplier of 8. However, looking to the age of the deceased i.e. 55 years multiplier of 11 should have been applied. The Tribunal has also

committed an error in not granting any amount towards future prospect. Therefore, keeping in view the law laid down in the matters of **Sarla Verma & Ors Versus Delhi Transport Corporation** reported in **2009 (6) SCC 121** & *Pranay Sethi (supra)*, the amount of compensation is recalculated as under:-

Head	Calculation
Income of the deceased @ Rs.23,000/- per month	Rs.2,76,000/- per annum.
15% towards future prospect	Rs.41,400/- Rs.2,76,000 + 41,400/- = 3,17,400/-
¼ deduction towards personal and living expenses of the deceased, for assessing loss of annual dependency	Rs.79,350/- 3,17,400/- - 79,350/- = 2,38,050/-
Multiplier of 11 applied (for calculating total loss of dependency)	Rs.2,38,050 x 11 = Rs.26,18,550/-
For other conventional heads	Rs.70,000/-
Total	Rs.26,88,550/-

9. For the reasons mentioned herein above, the appeal is allowed in part. The compensation of Rs.11,27,320/- as awarded by the Tribunal is enhanced to Rs.26,88,550/-. The appellants are further entitled to receive enhanced amount of compensation of Rs.15,61,230/-, over and above the amount awarded by the Tribunal. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of claim application till its actual payment. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

10. The respondent No.2/The Oriental Insurance Company Limited is granted one month time to deposit the enhanced amount of

compensation with interest before the concerned Claims Tribunal.

11. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh