**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 731 of 2014**

1. Reliance General Insurance Company Limited, Jaistambh Chowk, Ravibhawan, Shop No. 412 & 413, Raipur. At present- 5th Floor, National Corporate Park, G.E. Road P.S. Sarswati Nagar, Civil and Revenue Dist.-Raipur (C.G.).

**---- Appellant/Claimant**

**Versus**

1. Indirabai aged 35 years W/o Narayan.

2. Mayank age 06 years S/o Narayan,

3. Saurabh age 05 years S/o Narayan,

4. Kulal age 03 years S/o Narayan

   (Name of Master Mayank is mentioned twice in cause title by the tribunal)

   Respondent No. 2 to 4 is minor hence through their mother Indirabai Respondent No. 1.

   All R/o of Ward No. 18, Radhakrishna, Mahasamund, PS Mahasamund. Civil and Revenue Dist.- Mahasamund, (C.G.) (Claimants)

5. Diwan Singh S/o Sardar Singh R/o Gandhinagar, Jagdalpur, Ward No. 22, Gangamunda Ward, PS Jagdalpur, Civil and Revenue Dist.- Jagdalpur C.G.

6. Mangauram Nag S/o Murharam, R/o Main Road, Jagdalpur, Profession- driver- R/o Village.- Sidawan, PS Keskal, Civil and Revenue Dist.- Bastar (C.G.).

**---- Respondents**

---

| | | |
|---|---|---|
| For Appellant | : | Shri Rohitashav Singh, Advocate |
| For Respondent No. 1 | : | Shri Abhishekh Pandey, Advocate |
| For Respondent No.5 | : | Shri D. Kushwaha, Advocate |

---

**Hon'ble Shri Gautam Chourdiya, J**

**Judgment On Board**

**06.12. 2018**

(1) This is insurer's appeal against the award dated 14.08.2013, passed by Motor Accident Claims Tribunal, Mahasamund, (C.G.) (for short 'the Tribunal') in Claim case No. 77/2010.

(2) As against the compensation of Rs. 8,60,000/- claimed by unfortunate wife and children of deceased - Narayan, aged about 42 years, by filing claim petition under Section 163-A of the Motor Vehicles Act, for his death in the motor accident on 23.10.2009, the Tribunal awarded a total sum of Rs. 8,02,500/- as compensation along with interest @ 6% from the date of filing of claim petition till its reliazation.

(3) The Tribunal, on a close scrutiny of the evidence led, held: the accident had occurred due to rash and negligent driving of offending vehicle truck bearing registration No. CG17-H/1811 by its driver i.e. respondent No. 6- Manguram Nag; deceased- Narayan died on account of the injuries sustained by him in the said accident; appellant/Insurance Company liable for payment of compensation to the claimants as it could not establish violation of policy conditions; assessed and awarded aforesaid sum as compensation in favour of the claimants.

(4) Learned counsel for the appellant /Insurance Company would submit that in the claim petition filed by the respondents No. 1 to 4/claimants deduction ought to have made in accordance with second schedule appended to Section 163-A of the Motor Vehicles Act,1988 but the Claims Tribunal has deducted 1/5$^{th}$ towards personal expenses

of the deceased whereas it should be 1/4th in view of the dependency. He further submits that the multiplier is correctly applied but the income has wrongly assessed as Rs. 48,000/- per annum whereas it should never exceed to Rs. 40,000/- as per provisions contained in Section 163-A of the Motor Vehicle Act. He further submits that as per para 16 of the impugned award the Tribunal assessed the income of the deceased as Rs. 36,000/- which is just and proper. He also submits that the amount awarded under the head of consortium, love and affection appears to be on higher side in view of Section 163-A of the Motor Vehicle Act. Therefore, it needs to be recalculated and awarded amount be reduced suitably.

(5) Learned counsel for the respondents No. 1 to 4/claimants while supporting the award impugned submits that looking to the price index at the relevant time and considering the dependent persons of the deceased i.e. wife and minor children, the learned Tribunal has rightly assessed the income of the deceased as Rs.48,000/- per annum for the purpose of computation of compensation and, therefore, there is no need to be interfered with it. He further submits that the Tribunal not awarded any amount towards future prospect and therefore, the same may be considered in view of Pranay Sethi.

(6) Learned counsel for the respondent No. 5 supported the contention made by learned counsel for the appellant.

(7) I have heard learned counsel appearing for the parties and perused the impugned award.

(8) It is not in dispute that the learned Tribunal has rightly fastened the liability for payment of compensation to the claimants upon the

Insurance Company. The insurance Company is challenging only on the quantum part of the award.

(9) As per second schedule appended to Section 163-A of the Motor Vehicles Act, 1988, the Tribunal has rightly applied the multiplier of 15 but so far as income of the deceased is concerned, the Tribunal has wrongly assessed the income of the deceased as Rs. 48,000/- whereas it should have been considered as Rs. 36,000/- as pleaded by the claimants. Looking to the age of the deceased i.e. 42 years, in view of the decision rendered by the Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,*** 25% additional income should be added as future prospect. Further, Claims Tribunal has wrongly deducted $1/5^{th}$ of the income of the deceased towards his personal expenses in place of $1/4^{th}$. So far as the amount awarded by the Tribunal for conventional heads is concerned keeping in view of the decision of Pranany Sethi (supra), the claimants are entitled for Rs. 70,000/- under this head. Therefore, I propose to recompute the award in the following manner.

| **Sl. No.** | **Heads** | **Calculation (in rupees)** |
|---|---|---|
| 01. | Income of the deceased | Rs.36,000/- per annum |
| 02. | 25% of (i) above to be added towards future prospects. | Rs.36,000/- +Rs.9,000/- = Rs.45,000/- |
| 03. | $1/4^{th}$ deduction towards personal and living expenses of the deceased | Rs.45,000-Rs.11,250/- =Rs.33,750/- |
| 04. | Multiplier of 15 to be applied (loss of dependency) (as applied by the Tribunal) | Rs.33,750 x 15 =Rs.5,06,250/- |

| | | |
|---|---|---|
| 05. | Towards conventional head (in view of Pranay Sethi) | Rs. 70,000/- |
| 06. | **Total compensation** | **Rs.5,76,250/-** |

10. For the reasons mentioned hereinabove, the appeal is allowed in part. The amount of compensation awarded by the Tribunal i.e. Rs. 8,02,500/- is reduced to Rs. 5,76,250/-. The aforesaid amount shall carry interest @ 6 percent per annum from the date of application till its actual payment. Rest of all the conditions mentioned in the award shall remain intact. The award stands modified to the above extent.

11. Needless to say that the amount already deposited by the Insurance Company with the Tribunal shall be adjusted in the aforesaid amount of compensation assessed by this Court.

Sd/-

**(Gautam Chourdiya)**

**Judge**

amita