

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 718 of 2013

1. State Of Chhattisgarh Thru- Divisional Forest Officer (General) Middle Bastar Division, Near Sanjay Bazar, Jagdalpur, Bastar, Chhattisgarh
2. State Of Chhattisgarh Thru- Collector, Bastar, Distt. Office Jagdalpur, Bastar C.G.

---- Appellants

Versus

1. Smt.Rambha Devi, W/o Late Padamram Sahu Aged About 47 Years
2. Ku. Manju Lata D/o Late Padamram Sahu Aged About 27 Years
3. Ku. Chandrakala D/o Late Padamram Sahu Aged About 25 Years
4. Sandeep Sahu S/o Late Padamram Sahu Aged About 21 Years
All are R/o Ambedkar Ward, Nayamunda, District : Bastar(Jagdalpur), Chhattisgarh
5. Kashinath Jena S/o Gopinath Jena Aged About 50 Years R/o Dhaniram Gali, Pathraguda, Jagdalpur, P.S. City Kotwali., District : Bastar(Jagdalpur), Chhattisgarh

---- Respondents

For Appellants	: Shri Gagan Tiwari, Dy Government Advocate
For Respondents-1 to 4	: Shri Keshav Dewangan, Advocate
For Respondent- 5	: None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

24.01.2019

1. By this appeal, the appellants have assailed the impugned award dated 03.05.2013 passed by the learned Motor Accident Claims Tribunal, Bastar at Jagdalpur (for short, 'the Claims Tribunal') in Claim Case No.25 of 2013 wherein the Tribunal has partly allowed the claim application filed by the claimants and awarded a total sum of Rs.14,15,138/- in a death case.

2. Brief facts for disposal of this appeal are that on 07.11.2004 when Padumram Sahu, husband of respondent- 1 was travelling on his Hero

Honda motorcycle bearing No.MP-AA-9394 towards his office. At that relevant time, one Jeep bearing No.CG-02-1811 (hereafter, referred to as 'offending vehicle') driven by respondent- 5 dashed Hero Honda motorcycle due to which Padumram Sahu sustained grievous injuries over his person and was taken to Maharani Hospital at Jagdalpur where he was declared dead. The matter was reported to concerned Police Station and Crime No.672 of 2004 was registered under Section 304-A Indian Penal Code against respondent- 5, driver of the offending vehicle- Jeep.

3. On account of death of deceased Padumram Sahu, the claimants/respondents- 1 to 4 herein, who were dependants on him filed a claim application claiming Rs.7,75,000/- against appellants/non-applicants. The claimants in their claim application pleaded that on the date of accident deceased- Padumram Sahu was a permanent employee of Police Department and earning Rs.9,304/- per month. They have also pleaded that as they were dependants on the income of the deceased, they suffered loss of dependency and also mental agony.

4. Respondent- 5/non-applicant-1, driver of the offending vehicle submitted his reply to the claim application and pleaded that he was a Government servant and employed with appellant- 1 herein and was authorised to drive the offending vehicle as driver. He further pleaded that as the offending vehicle was owned and it was under control of appellant- 1 wherein he was working as driver and on the date of accident he was also possessing valid and effective driving licence to drive the vehicle.

5. The appellants submitted reply to the claim application and pleaded that the vehicle in question was not involved in the said accident as on the date of accident it was kept in garage. Appellants also pleaded that the accident occurred by a unknown vehicle and a false and fabricated case was framed against respondent- 5, driver.

6. Learned Claims Tribunal on appreciating the pleadings, evidence and material available on record held that the offending vehicle driven by respondent- 5 was involved in the accident and the accident took place due to his rash and negligent driving of the offending vehicle. Learned Claims Tribunal looking to the number of claimants and considering the income as pleaded in the claim application, awarded a total sum of Rs.14,15,138/- as compensation.

7. Learned counsel for the appellants submitted that learned Claims Tribunal did not consider their specific pleading in their reply, wherein it was specifically pleaded that the offending vehicle- Jeep was not involved in the said accident and on the date of accident it was kept in garage. He further argued that the compensation awarded by learned Claims Tribunal was on higher side as the Tribunal added 30% of the proved income towards future prospects which in fact would be 25% of the proved income.

8. Learned counsel for respondents- 1 to 4 (claimants) supported the award and stated that learned Claims Tribunal looking to the documentary evidence available on record with regard to salary of a government servant and also considering proposition laid down by Hon'ble Supreme

Court in the matter of **National Insurance Company Limited Vs Pranay Sethi and others** reported in **2017 16 SCC 680** with respect to granting of additional sum towards future prospects, rightly applied the ratio of 30% for future prospects which do not require any interference.

9. Heard learned counsel for the parties and perused the records. So far as first point raised by learned counsel for the appellants that the appellants as well as driver of the offending vehicle denied the fact of accident by the offending vehicle in their reply to the claim application but did not produce any reliable piece of evidence before the Claims Tribunal, like evidence of garage owner, where the offending vehicle said to have been kept according to their plea. Further, NAW- 1, Divisional Forest Officer, Bastar in his evidence before learned Claims Tribunal fairly stated that the accident which took place on 07.11.2004 was with offending vehicle-Jeep bearing No.CG-02-1811 and it is a government vehicle. Para-3 of evidence of NAW- 1 is reproduced here below:

“3. दिनांक 07.11.04 को जिस वाहन से दुर्घटनाग्रस्त हुई थी उक्त वाहन क्र.0 सी0जी0 02/1811 शासकीय जीप थी जो वन विभाग के शासकीय कार्यों के लिए वनपरिक्षेत्र अधिकारी जगदलपुर सामान्य वन मंडल को आबंटित की गई थी।”

10. I have also perused documents Ex.P/2, P/3 and P/6 which are documents of Police investigation and part of the criminal records. From perusal of aforementioned documents it reveals that within few hours of accident FIR was lodged by Assistant Sub-Inspector, Vinod Kumar Singh in which the involvement of offending vehicle has been specifically

mentioned. Involvement of offending vehicle was gathered from the local persons present on the spot. Vinod Kumar (AW-2) stated in his evidence that he was an eyewitness to the accident. It is further categorically stated by him that the offending vehicle involved in the accident was a jeep bearing No.CG-02-1811.

11. From the evidence available on record it is amply clear that the offending vehicle- Jeep bearing No.CG-02-1811 was involved in the accident in which deceased died.

12. So far as other contentions raised by learned counsel for the appellants with respect to the application of 30% of the proved salary towards future prospects, have perused the documents placed on record. Hon'ble Supreme Court in the matter of **Pranay Sethi** (*supra*) categorically framed guidelines for awarding future prospects where the deceased or injured is in permanent job and for the persons who are self employed or working on the fixed salary. Undisputedly deceased was working as Constable in Police department and thereby he comes within the category of permanent employee therefore, as per law laid down by the Hon'ble Apex Court therefore, learned Claims Tribunal correctly added 30% of the proved salary towards future prospects. Learned Claims Tribunal had taken into consideration the document which is part of the records ie the exgratia relief and arrived at a conclusion that on the date of accident, deceased was earning Rs.9,304/- per month which cannot be said that the learned Claims Tribunal had committed any error in assessing the monthly income of deceased. Even otherwise, respondent- 5 being an employee of State Government and and the deceased also, an employee of State

Government, but appellants failed to bring any material to prove the salary of deceased otherwise.

13. In view of above, the appellants' argument that learned Claims Tribunal has committed an error in holding liable for payment of compensation and further that the impugned award by learned Claims Tribunal is on higher side is not sustainable under the law.

14. Accordingly, the appeal being devoid of substance, is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
JUDGE