NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No.85 of 2015

1. Fakeere Lal Sonkar, S/o Late Nandlal Sonkar Aged About 55 Years R/o Santnagar, Lalkhadan, Thana- Torva, Distt. Bilaspur C.G., Chhattisgarh
2. Smt. Gomti Devi W/o Fakeerelal Sonkar Aged About 53 Years R/o Santnagar, Lalkhadan, Thana- Torva, Distt. Bilaspur C.G.

---- Appellants

Versus

1. Sufal Ram, S/o Meghnath Aged About 24 Years R/o Kolhen Jhariya, At Present R/o Chandmari Mohalla, House Of Patnayak, Thana- City Kotwali, Distt. Raigarh C.G., Chhattisgarh
2. Vikas Agrawal S/o Late Shankarlal Agrawal R/o Satgudhi Chauk, City Kotwali, Distt. Raigarh C.G., District : Raigarh, Chhattisgarh
3. Branch Manager S/o I.C.I.C.I. Lombard General Insu.Co.Ltd., Regional Office- Lalganga Shopping Complex, Shop No. 145-147, G.E. Road, Distt. Raipur C.G., District : Raipur, Chhattisgarh

---- Respondents

For Appellants:	Shri Samir Singh Advocate.
For Respondents No.1 & 2:	None.
For Respondent No.3:	Shri Amrito Das along with Ms. Pratibha Das, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J

Award On Board

13.11.2019

1. This Miscellaneous Appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') by the Claimants questioning the legality and propriety of the award dated 28.04.2014 passed by the Additional Motor Accident Claims Tribunal (FTC), Bilaspur (CG) (for short 'the Claims Tribunal') in Claim Case No.53/2013 by which, the Claims Tribunal, while allowing the claim in part, awarded a total amount of compensation to the tune of Rs.2,13,000/- with 6% interest per annum from the date of filing of the Claim Petition till its realization, while

fastening the liability upon the Insurance Company. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 15.08.2011, deceased Mahendra Pratap Sonkar was going by his motorcycle along with his friend Bahoran Sahu and as soon as they reached near Sant Nagar *sharab bhatti a*t Bilaspur-Masturi Main Road, it was dashed vehemently from its opposite side by the offending vehicle "Wagon-R" bearing its Registration No.CG 13 C 6499, owned by Non-Applicant No.2-Vikas Agrawal, insured with Non-Applicant No.3-ICICI Lombard General Insurance Company Limited. At the relevant time, the alleged offending vehicle was being driven in a rash and negligent manner by its driver Suphalram, Non-Applicant No.1, as a result of which, both got injured and Mahendra Pratap Sonkar expired on 18.08.2011 during the course of his treatment at hospital.

3. On account of the aforesaid accident, the Claimants being the parents of the deceased, instituted a Claim Petition enumerated under Section 166 of the Act of 1988 claiming total amount of compensation of Rs.16,20,000/- under various heads by submitting *inter alia* that the deceased, a 23 years, was a mobile shop keeper apart from running a Grocery shop and from where, he used to earn Rs.500/--700/- per day.

4. Non-Applicant No.1 was proceeded *ex parte,* while the owner and the insurance Company have contested the aforesaid claim. Non-Applicant No.2, the owner of the vehicle in question contested the claim by saying that the deceased himself was responsible for the alleged accident, while Non-Applicant No.3, the insurance Company contested the claim mainly on the ground that the driver of the offending vehicle was not possessing a valid and effective driving license and therefore, no liability could be fastened upon it.

5. After going through the evidence led by the parties, it has been held by the Tribunal that the alleged accident occurred on 15.08.2011 at 9.00 a.m due to rash and negligent driving by the driver of the offending vehicle, resulting into the sad demise of Mahendra Pratap Sonkar. It held further that the driver of it was holding a valid driving license and thus, it was not being used in violation of the insurance policy and that by considering the notional income of the deceased at Rs.3,000 per month, awarded total amount of compensation to the tune of Rs.2,13,000/- with 6% interest per annum from the date of filing of the Claim Petition till its realization.

6. Being aggrieved, the Claimants have preferred this Appeal. Shri Samir Singh, learned Counsel for the Applicants/Claimants submits that the award impugned as passed by the Claims Tribunal is apparently on the lower side. According to him, the Claims Tribunal has erred in assessing the monthly income of the deceased only to the extent of Rs.3,000/- per month., however, it ought to have been at least Rs.4,500/-. He submits further that without considering the future prospects of the income of the deceased and without applying the proper multiplier, the Claims Tribunal has erred in not providing just and fair compensation payable to the Claimants.

7. On the other hand, learned Counsel for Non-Applicant No.3/Insurance Company has supported the award impugned.

8. From perusal of the record, it appears that the amount of compensation as awarded by the Claims Tribunal while assessing the monthly income of the deceased to the tune of Rs.3,000/- per month and by applying the multiplier of 11 even without considering the future prospects of the income of the deceased appears to be unjustified and therefore, deserves to be modified. As the alleged accident occurred on 15.08.2011, therefore, looking to the

wages of daily wagers under the Minimum Wages Act, prevailing at the relevant time, it would be just and proper to consider the notional income of the deceased at Rs.4,000/- per month. While determining the income of the deceased, who was found to be 23 years old, an addition of 40% of it towards future prospects of his income should be made in order to provide just and proper compensation payable to the Claimants in the light of the decision rendered in the matter of *National Insurance Company Limited vs. Pranay Sethi And Others* reported in **(2017) 16 Supreme Court Cases 680.** As the age of the deceased at the time of the accident was 23, the multiplier applicable would be 18 instead of 11, as applied by the Claims Tribunal.

9. Considering the aforesaid facts and circumstances and in view of the principles laid down in the aforesaid decision, I deem it proper to assess the monthly income of the deceased as Rs.4,000/-, yearly 48,000/- and that by adding 40% of it, i.e. Rs.19,200/- (48,000 x 40/100) towards future prospects of his income, it would then be worked out to Rs.67,200/- (Rs.48000+Rs.19,200). Since the deceased was unmarried, therefore, after deducting half of it, the yearly dependency would be worked out at Rs.33,600/- (Rs.67,200x1/2). By applying the multiplier of 18, the total dependency would thus arrive at Rs.6,04,800/- (Rs.33,600x18). In addition to this, the Claimants would be entitled to a sum of Rs.1,10,000/- towards conventional heads as under:-

I.	Filial Consortium to parents at the rate of Rs.40,000/- each.	Rs. 80,000/-
II	Funeral Expenses,	Rs. 15,000/-
III	Loss of estate,	Rs. 15,000/-
IV	Total	Rs.1,10,000/-

10. The Claimants would thus be entitled to a total sum of Rs.7,14,800/-

instead of Rs.2,13,000/- as awarded by the Claims Tribunal, along with 6% interest per annum from the date of filing of the Claim Petition till its realization.

11. The Appeal is accordingly allowed to the extent indicated herein above. As far as other conditions as observed by the Claims Tribunal are concerned, they shall remain intact. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Priya