NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 968 of 2014

1. Smt. Satrupa W/o Late Pawan Patel Aged About 35 Years
2. Devendra S/o Late Pawan Patel, aged about 16 years
3. Khoman S/o Late Pawan Patel, aged about 13 years (minor through his natural guardina mother Smt. Satrupa W/o late Pawan Patel)

All appellants are R/o Potiyadih, Tah. and P.S. Dhamtari, Distt. Dhamtari C.G.

----Appellants/Claimants

VERSUS

1. Nom Sing S/o Sarju Ram Sahu Aged About 38 Years R/o Gram- Bhanpuri, P.S. Arjuni, Tah. and Distt. Dhamtari C.G., Chhattisgarh

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2. Divisional Manager, The Oriental Insurance Company Ltd., Behind Amar Talkies, Dhamtari, Tah. And Distt. Dhamtari C.G.

–------Insurer

-------**Respondents/Non-applicants**

For Appellants	:	Mr. Kunal Das, Advocate
For respondents	:	Mr. Raj Awasthi, Advocate and Ms. Kirtee Jain, Advocate on behalf of Ms. Sunita Jain, Advocate

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Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

18/09/2019

1. The appellants-claimants have filed this appeal questioning the legality and validity of the award dated 02-09-2014 passed by Chief Motor Accident Claim Tribunal, Dhamtari in claim case No. 116/2013, whereby, claim application filed by the appellants-claimants was allowed in part and learned Claims Tribunal awarded a total sum of Rs. 3,85,000/- as compensation along with interest @ 6% p.a. from the date of filing of its application till its realization.

2. Brief facts for disposal of this appeal are that, on 05-01-2013 Pawan Patel (deceased) went out from his house in the early morning for morning walk. When he reached near the bridge of village Potiyadih, at that relevant time, one truck bearing No. CG04/D/9884 (hereinafter “offending truck”) coming from

opposite direction which was driven by Non-applicant No. 1/respondent No. 1-driver dashed him, due to which deceased Pawan Patel suffered grievous injuries over his person, he was taken to Christen hospital, Dhamtari from where he has been referred to Narayan Hridyalaya hospital at Raipur. On 11-01-2013 (wrongly mentioned in the award as 11/01/2011), during the course of treatment, he succumbed to injuries. The said accident was reported to the concerned police station and based on which, crime bearing No. 05/2013 was registered against Non-applicant No. 1/respondent No. 1 for offences punishable under Section 279, 304A of the I.P.C.

3. The appellants-claimants who are the widow and children of the deceased filed claim application before competent Claims Tribunal claiming for Rs. 33,25,000/- as compensation against untimely death of Pawan Patel.

4. Non-applicant No. 1 submitted his reply to the claim application and denied the entire pleadings made in the claim application. He pleaded that accident took place on account of negligence on the part of the deceased himself and there was no negligence or fault on the part of non-applicant No. 1/respondent No. 1 and further, a false and fabricated complaint made against him. It was also pleaded that on the date of accident, non-applicant No. 1/respondent No. 1 was having valid and effective driving license and offending truck was insured with Non-applicant No. 2-Insurance Company and the conditions of insurance policy was not violated by non-applicant No.1/respondent No. 1, therefore, liability, if any, for the payment of any amount of compensation would be on non-applicant No. 2-Insurance Company.

5. Non-applicant No. 2-Insurance Company also submitted its reply and denied all the pleadings and facts mentioned in the claim application. It was also pleaded that on the date of accident, non-applicant No. 1/respondent No. 1 was not having valid and effective driving license, therefore, there is violation of conditions of insurance policy. Insurance Company further pleaded that the

appellants-claimants have not produced any certificate or document with regard to showing the age and income of the deceased.

6. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that death of Pawan Patel was an accidental death caused by the rash and negligent driving of non-applicant No. 1/respondent No. 1-driver of offending truck. Learned Claims Tribunal also held that there was no violation of conditions of insurance policy and awarded a total sum of Rs. 3,85,000/- as compensation.

7. Learned counsel for the appellants-claimants submits that learned Claims Tribunal has assessed the income of the deceased as only Rs. 3,000/- per month ignoring the pleadings, evidence and certificate issued by the employer where the deceased was working as Clerk in Gola Bidi Factory until the date of death and thereby earning Rs. 7,500/- per month. Learned counsel further contended that even if the Court arrives at a conclusion that the income of the deceased could not have been proved by claimants then also the notional income is to be assessed on the basis of minimum wages, considering the price index prevailing at that relevant time. Further argument of the learned counsel is that the learned Claims Tribunal has not awarded any amount towards loss of future prospects and the amount towards other conventional heads is on lower side.

8. Per contra, learned counsel for respondent No. 2-Insurance Company submits that the appellants-claimants failed to prove the income of the deceased in accordance with law by producing cogent and liable piece of evidence, therefore, learned Claims Tribunal was very well justified in assessing the monthly income of the deceased on notional basis. He further submits that learned Claims Tribunal, after considering all the facts and circumstances as well as the evidence placed on record, has rightly calculated the amount of compensation which do not call for any interference.

9. Learned counsel for respondent No. 1/non-applicant No. 1 supports the award and submits that learned Claims Tribunal has rightly fasten the liability for payment of amount of compensation on Insurance Company and the award passed is just and proper, therefore, it does not call for any interference.

10. I have heard learned counsel for the parties, perused the material available on record.

11. The facts of accident, fastening the liability are not in dispute. The claimants, in support of income of the deceased, pleaded in the claim application, had submitted a certificate dated 12-03-2014 on a letter-head of Manilal Dayal Ji and Company Gola Bidi works (Factory) mentioning that deceased was a permanent employee of the said factory and he was being paid salary of Rs. 3,883/- per month. The pleadings made by the claimants in the claim application with respect to the monthly salary as Rs. 7,500/- is contrary to the certificate (Ex. P/10) placed on record by them, even the author of the salary certificate (Ex. P/10) had not been examined by the appellants-claimants before the concerned Claims Tribunal.

12. In view of the above contradictory amount of salary mentioned in pleadings and the certificate placed on record by them, in the opinion of this Court, the learned Claims Tribunal has rightly arrived at a conclusion that the appellants-claimants failed to prove with regard to the salary of the deceased. Therefore, only mode to assess the income of the deceased is by applying notional income. Notional income is to be assessed on the basis of considering the number of factors like age of the deceased, nature of work, minimum wages prevailing as also the price index of that relevant time.

13. Indisputably, the date of accident is 05-01-2013 which is also evident from the F.I.R. (Ex. P/2), wherein, the date of accident has been mentioned as 05-01-2013 and the intimation has been received by the police authorities on the same date and crime has been registered as 03/2013 (wrongly mentioned

in the impugned award as 05/2013). From the aforementioned documents i.e. Ex. P/1 & P/2, it is not in dispute that the date of accident was 05-01-2013, thereafter, Pawan Patel died during the course of treatment on 11-01-2013, as also mentioned in the post-mortem report. Even if it is presumed that the deceased was being paid Rs. 3,883/- per month which do not appears to be an exaggerated one then also to maintain his family, the deceased might be doing some agricultural work as pleaded and stated in evidence, which cannot be ignored. Looking to the price index, minimum wages prevailing in the state of Chhattisgarh on the date of accident i.e. 05-01-2013, it will be appropriate to assess the income of the deceased as Rs. 4,500/- per month as per notional income basis. The appellants-claimants have not been awarded any amount towards future prospects. The Supreme Court in the matter of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680** has settled the issue with respect to the award of amount towards future prospects in case of permanent employee of a company or the self-employed person in categorical terms and held as under:

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

14. As on the date of accident, age of the deceased has been shown as 40 years as per the post-mortem report, therefore, there will be an addition of 25% of the established income of the deceased towards future prospects.

15. In view of the aforementioned facts and circumstances of the case, the impugned award requires re-consideration and re-calculation which this Court proposes as under.

16. The income of the deceased is now taken as Rs. 4,500/- per month i.e. Rs. 54,000/- per annum and an addition of 25% of the established income towards future prospects, the total annual income of the deceased would be Rs. 67,500/- [Rs. 54,000 + Rs. 13,500 (25% of Rs. 54,000/-)], after deducting 1/3rd from the annual income towards personal and living expenses of the deceased, annual loss of dependency would be Rs. 45,000/- (Rs. 67,500 – 1/3rd of Rs. 67,500/-). As on the date of accident, deceased was aged 40 years, therefore, appropriate multiplier of 15 would be applicable; by applying multiplier of 15, total loss of dependency will come to Rs. 6,75,000/- (Rs. 45,000X15). Apart from the aforementioned amount of compensation towards loss of dependency, the appellants-claimants are also entitled for a total sum of Rs. 70,000/- towards other conventional heads. Now, the appellants-claimants would be entitled for total compensation amount of Rs. 7,45,000/- (Rs. 6,75,000+Rs. 70,000) instead of Rs. 3,85,000/- as awarded by learned Claims Tribunal. The aforementioned total amount will carry interest @ 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal will remain intact.

17. Consequently, the appeal is allowed in part and the award impugned stands modified to the extent indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Pawan