NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 34 of 2013

1. Reshma Dulani, W/o Pawan Dulani Aged About 28 Years
2. Motiram Dulani S/o Tejumal Dulani Aged About 61 Years
3. Smt. Rekha Dulani W/o Motiram Dulani Aged About 59 Years

All R/o New Shanti Nagar, Raipur, Distt. Raipur C.G.

---- Appellants

Versus

1. Paramjeet Singh Bhatiya @ Pappu, S/o Late Rajendra Singh Bhatiya Aged About 42 Years, R/o Ward No. 13, Dongargarh, Distt. Rajnandgaon C.G., At Present R/o Purani Basti Kohka, Bhilai, Distt. Durg C.G.

   (Non-applicant No.1-Driver)
2. Radhe Lal Yadaw S/o Ramesh Yadaw Aged About 47 Years, R/o Railway Patri Ke Pass, Aadarsh Nagar, Durg, Tah. & Distt. Durg C.G.

   (Non-applicant No.2-Owner)
3. The Oriental Insurance Company Ltd., Supela, Bhilai, Distt. Durg C.G., Through- Branch Office-1, Jail Road, Kachhari Chowk, Raipur, Tah. & Distt. Raipur C.G.

   (Non-applicant No.3)

---- Respondents

For Appellants	:	Shri Akhand Pratap Singh, Advocate on behalf of Shri Sanjay Agrawal, Advocate.
For Respondent No.3	:	Smt. Iturani Mukherjee, Advocate on behalf of Shri Pankaj Agrawal, Advocate.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

08/03/2019

1. The appellants have preferred this appeal seeking enhancement of the compensation awarded by the learned 4th Additional Motor Accident Claims Tribunal, Raipur (for short 'the Claims Tribunal') vide award dated 12.10.2012 passed in Claim Case No.112/12 whereby the Claims Tribunal has awarded compensation of Rs.11,83,388/- to the claimants/appellants

herein on account of accidental death of Pawan Dulani.

2. Facts of the case, in brief, are that on 22.5.2011 at about 2.30 p.m. Pawan Dulani (since deceased) was going on his motorcycle to village Baktara from Raipur and when he reached near Hora Transport, NH-6, Mandirhasaud, one vehicle Bolero bearing registration number CG07-M-5456, which was coming from the opposite direction on the wrong side of road, dashed against motorcycle of said Pawan Dulani as a result of which he sustained grievous injuries on various parts of the body including head and died instantaneously. Report of this accident was lodged in the Police Station Mandirhasaud based on which offence under Sections 279, 337 & 304A of the Indian Penal Code was registered vide Crime No.168/2011. Claimants/ appellants herein, who are widow & parents of the deceased respectively, have filed claim application claiming compensation to the tune of Rs.34,00,000/- under various heads on the ground that all of them were dependent on the earning of the deceased and due to his untimely death, they have been deprived of the dependency. In the claim application, they have pleaded that on the date of accident, the deceased was 30 years old, he was hale & hearty and was not only working as free lance “Interior Designer” but also doing the work of aluminium fabrication and thereby earning Rs.20,000/- per month. He was an income tax payee. Therefore, they are entitled to get compensation, as claimed by them, from the non-applicants, jointly and severally.

3. Respondent No.1 & 2, owner & driver of offending vehicle, filed their reply to the claim application stating that the driver of offending vehicle has not driven the vehicle rashly and negligently. The vehicle in question has unnecessarily been involved by the police in the present case by

registering a false case. Lastly, it has been stated that on the date of accident, the offending vehicle was fully insured and therefore respondent No.3-insurance company is liable to pay compensation, if any awarded by the Claims Tribunal.

4. Respondent No.3 Insurance Company filed its separate reply and denied the averments made in the claim application except that on the date of accident the offending motorcycle was insured with it. It has been contended that the accident in question occurred due to negligence on the part of the driver of motorcycle himself i.e. deceased. On the date of accident the offending vehicle was being used for commercial purpose, whereas its was registered as 'private vehicle' and that the driver of offending vehicle was not having valid and effective license to drive the said vehicle. Thus, it is clear that the offending vehicle was being plied in violation of the conditions of insurance policy and therefore the insurance company is not liable for making payment of compensation, if any, to the claimants.

5. The Claims Tribunal after considering the pleadings and evidence placed on record (oral and documentary both) by the respective parties has partly allowed the claim of claimants/appellants, awarded compensation of Rs.11,83,388/- along with interest @ 6% p.a. by taking monthly income of the deceased as Rs.8,620/-, deducting 1/3rd towards personal expenditure of the deceased and applying multiplier of 17. The Claims Tribunal saddled the liability upon the insurance company to pay compensation by holding that there was no violation of any of the conditions of the insurance policy.

6. Learned counsel for the claimants/appellants submits that the Claims

Tribunal has wrongly calculated dependency by making deduction of 40% of the established yearly income of the deceased i.e. Rs.1,70,423/-, as shown in the income tax returns/acknowledgements of the assessment year 2007-08, 2008-09 & 2009-10 placed on record and proved by the claimants, on the ground that there was no fixed source of income of the deceased. He further submits that the amounts awarded by the Claims Tribunal under other conventional heads are also on lower side and need to be enhanced suitably.

7. Learned counsel appearing for respondent No.3 has supported the impugned award and submitted that the Claims Tribunal has rightly assessed the yearly income of the deceased and the same does not call for any interference.

8. I have heard learned counsel for the claimants/appellants and perused the record.

9. In order to prove the income of the deceased, the claimants/appellant No.1 Reshma Dulani has examined herself as AW-1 and tendered income tax returns filed by the deceased. Appellant Reshma Dulani (AW-1) has stated that her deceased husband was doing the work of Interior Designer & Aluminium Fabrication and thereby earning Rs.20,000/- per month. She has further stated that they have placed on record the income tax returns / acknowledgements dated 29.2.2008 for the assessment year 2007-08 (Ex.P-1); dated 30.3.2009 for the assessment year 2008-09 (Ex.P-5); and dated 26.3.2010 for the assessment year 2009-10 (Ex.P-7) to show that the deceased had acknowledgement of income tax department showing income of Rs.1,09,500/-, Rs.1,30,00/- & 1,72,423/- respectively. A computation of income (Ex.P-2) was also filed showing tax payable for the

assessment year 2009-10. Challan counterfoils dated 25.3.2010 & 2.3.2009 (Ex.P-4 & Ex.P-5) of Union Bank of India, Shankar Nagar, Raipur, have also been filed showing payment of income tax of Rs.2,163/ & Rs.2,493/- for the assessment year 2008-09 & 2009-10 respectively.

10. To prove the above documents, the claimants have examined one Shri Pawan Singh Thakur, Income Tax Inspector, Raipur as AW-2 and this witness has proved the filing of income tax returns for the assessment year 2007-08, 2009-09 & 2009-10.

11. The above documents relate prior to the date of accident in which the income of the deceased was gradually increasing year to year basis. The last return was filed by the deceased on 26.3.2010, whereas the accident had taken place on 22.5.2011. In the assessment year 2007-08, the deceased returned the income of Rs. 1,09,500/-. In the assessment year 2008-09, he returned the income of Rs.1,30,00/- and for the assessment year 2009-10 he returned the income of Rs.1,72,423/-. These documents have been duly proved by the claimants by examining AW-2 Pawan Singh Thakur, Income Tax Inspector, Ward No.1 & 2, Civil Lines, Raipur, who has admitted the fact of filing of income tax returns for the assessment year 2007-08, 2009-09 & 2009-10. Since the income tax returns have been proved by an official from the Income Tax Department in which the annual income of the deceased was gradually increasing from the assessment year 2007-08, I do not find any reason to suspect or doubt the income tax returns. Hence, I am of the considered opinion that the Claims Tribunal has committed serious error in not taking the income of the deceased, as mentioned in the last income tax return which was filed on 30.3.2019 i.e. much prior to the accident dated 22.5.2011, for the purpose of calculating

the compensation and for the aforesaid view I am fortified by the observation of the Hon'ble Supreme Court in the matter of **Kalpanaraj v. Tamil Nadu State Transport Corporation** reported in **(2015) 2 SCC 764** which reads as under:-

> “7.It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return...........”

12. For the foregoing discussions, this Court propose to recalculate compensation amount payable to the claimants/appellants.

13. Since, the deceased's income was increasing gradually; I would adopt his income for the assessment year 2009-10 to compute the loss of dependency. However, the challan counterfoil (Ex.P-4) shows payment of income tax of Rs.2,493/- in the assessment year 2009-10, therefore, this amount is to be deducted from the annual income of the deceased. After deducting income tax of Rs.2,493/-, actual annual income of the deceased comes to Rs.1,69,930/- (1,72,423-2,493). Since, in this case the income of the deceased was gradually increasing and at the time of accident he was aged 30 years and self-employed, therefore, in view of the law laid down in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, the income of the deceased is required to be enhanced by 40% towards future prospects, which comes to Rs.67,970/- (40% of 169930). Thus the annual income of the deceased for the purpose of calculating compensation comes to Rs.2,37,900/-

(1,69,930+67,970). Out of this amount, 1/3rd is to be deducted towards personal expenses of the deceased and after deducting 1/3rd, the annual loss of dependency would come to Rs.1,58,600 (237900-79300). As on the date of accident the deceased was about 30 years of age, the multiplier of 17 would be applicable. By applying the multiplier of 17 to the annual loss of dependency, the total loss of dependency would come to Rs.26,96,200/- (1,58,600x17). Besides this, the claimants/appellants are also entitled for a lump sum amount of Rs.70,000/- under other conventional heads. Thus, the claimants/appellants are now entitled to a total compensation of Rs.27,66,200/- (26,96,200+70,000). This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact.

14. Any amount already paid to the claimants/appellants as compensation shall be adjusted from the total amount of compensation as calculated above.

15. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-