

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 907 of 2014**

Tata AIG General Insurance Company Limited, Second Floor, Lal Ganga Shopping Mall G.E. Road, Raipur, Tehsil + District Raipur C.G. Through its Authorized office Tata AIG General Insurance Company Limited Kastantiya office Complex second floor 11 Dr. U.N. Bramchari Street, Kolkata (W.B.).

---- Appellant**Versus**

1. Smt. Jaibunisha W/o Late Noor Mohammad, Aged 46 years
2. Shahnaj Begam D/o Late Noor Mohammad, aged 24 years
Both are R/o Subhash Nagar, word No. 16, Mahasamund, P.S. and District Mahasamund (C.G.).
3. Smt. Maimuna Begam W/o Late Noor Mohammad, Aged 42 years
4. Sahina Begam D/o Late Noor Mohammad, aged 21 years,
5. Shahnawaj Khan S/o Late Noor Mohammad, Aged 16 years,
6. Shohel Khan S/o Late Noor Mohammad, Aged 14 years,
7. Shaklain Rja S/o Late Noor Mohammad, aged 08 years.
Respondent No. 5 to 7 are minor they are through their Natural guardian Mother Smt. Maimuna Begam.
Respondent No. 3 to 7 are R/o Village Bhukel, P.S. Basna, Tahsil Basna District Mahasamund (C.G.).
8. Premlal S/o Thepa Urano Aged about 43 years R/o Village Katangtra, P.S. Pathalgaon, District Jashpur (C.G.).
9. Aman Pritam Singh Bhatia S/o Sikandar Singh Bhatia, Aged about 25 years, R/o Ambikapur Road Pathalgaon (Raja Road Lines, P.S. Pathalgaon, District Jashpur (C.G.).

---- Respondents

For Appellant	: Mr. Abhishek Sinha and Mr. D. L. Dewangan, Advocates
For Respondents	: None

Hon'ble Shri Justice Parth Prateem Sahu**Judgment On Board****19/08/2019**

1. This appeal has been filed by appellant/Insurance Company under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 18/07/2014 passed by Motor Accident Claims Tribunal, Mahasamund (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.76/2013, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.10,45,000/- as compensation in a death case.
2. Brief facts relevant for disposal of this appeal are that on 21/04/2012 one Noor Mohammad was travelling on a motorcycle and going to Basna from village Bhukel. On the way, one Swift Car bearing registration No.JH-07-C-9911 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1/respondent No.8 and owned by non-applicant No.2/respondent No.9 dashed the motorcycle of Noor Mohammad, due to which, he suffered severe injuries over his person. He was immediately taken to Government Hospital, Basna from where, he was referred to Mittal Hospital, Raipur. During the course of treatment at Mittal Hospital, Raipur, Noor Mohammad succumbed to his injuries on 21/05/2012.

3. Claimants who are wives and children of deceased Noor Mohammad have filed claim application before the Claims Tribunal claiming Rs.17,50,000/- as compensation on the ground that on the date of accident, deceased was working as Mason and thereby earning Rs.6,000/- per month and all of them were dependent on the deceased.
4. Non-applicants No.1 and 2/respondents No.8 and 9 submitted reply to the claim application and denied the fact of accident. It was pleaded that non-applicant No.1-driver of offending vehicle was not liable for accident in any manner. It was further pleaded that on the date of accident, non-applicant No.1 was having valid and effective driving licence, therefore, they are not liable to pay any amount of compensation.
5. Appellant/Non-applicant No.3-Insurance Company submitted reply to the claim application and pleaded that deceased himself was contributory negligent in the accident and further that non-applicant No.1/respondent No. 8-driver of offending vehicle was not possessing valid and effective driving licence, therefore, Insurance Company is not having any liability for satisfying the amount of compensation, if any.
6. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal allowed the claim application in part by holding that the accident took place due to rash and negligent driving of offending vehicle by non-applicant

No.1/respondent No.8. Learned Claims Tribunal also held that Insurance Company failed to prove the fact of contributory negligence and awarded a total sum of Rs.10,45,000/- as compensation.

7. Learned counsel appearing for appellant/Insurance Company submitted that learned Claims Tribunal committed an error in holding the income of deceased as Rs.5,000/- per month and by awarding a total sum of Rs.4,75,000/- towards other conventional heads, which is on higher side. He further submitted that the learned Claims Tribunal allowed the application under Section 170 of M. V. Act, therefore, quantum of award passed by learned Claims Tribunal may be reduced suitably. He placed reliance on the judgment passed by Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**¹ in support of his argument with regard to award of compensation towards other conventional heads.
8. I have heard learned counsel appearing for appellant and perused the record carefully.
9. So far as the argument raised by learned counsel appearing for appellant that learned Claims Tribunal committed an error in assessing the income of deceased as Rs.5,000/- per month instead of Rs.4,500/- per month without any evidence is concerned, the Claims Tribunal held that on the date of accident, deceased was

1 AIR 2017 SC 5157

aged between 50 to 55 years and earning Rs.5,000/- per month and considering the overall facts, has not awarded any amount towards loss of future prospects as held by Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra), in which, the deceased who is aged between 50-55 years and self-employed, is entitled for an addition of 10% of established income.

10. Considering overall facts and circumstances of the case, particularly, age of deceased on the date of accident, nature of work which has been pleaded and stated in the evidence as well as non-grant of amount towards future prospect, in the considered opinion of this Court, the income assessed by learned Claims Tribunal as Rs.5,000/- per month need not call for any interference. The argument raised by learned counsel for the appellant is rejected.
11. So far as other ground raised by learned counsel for the appellant that the learned Claims Tribunal committed error in awarding a total sum of Rs.4,75,000/- on other conventional heads is concerned, the amount towards other conventional heads has been dealt with by the Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra) and the Hon'ble Supreme Court after considering the previous judgments held that claimants would be entitled for total sum of Rs.70,000/- towards other conventional heads.
12. In the light of law laid down by Hon'ble Supreme Court, if the facts of the case is considered, the learned Claims Tribunal committed an error in awarding Rs.4,75,000/- towards other conventional heads, in

the considered opinion of this Court, the claimants will be entitled for Rs.70,000/- towards other conventional heads instead of Rs.4,75,000/-.

13. The M.V. Act is a beneficial piece of legislation. The object of the M.V. Act is to provide appropriate compensation to the legal representatives of deceased on account of loosing of the bread earner, therefore, in the opinion of this Court, the appropriate compensation is to be awarded to the claimants.
14. For the foregoing reasons, the amount of compensation to be awarded to the claimants requires recalculation, which this Court proposed the same in the following terms :-

The learned Claims Tribunal taken the monthly income of the deceased as Rs.5,000/- i.e. Rs.60,000/- per annum. The number of dependents are 7, therefore, in view of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**², the deduction towards personal and living expenses would be 1/5th instead of 1/4th deducted by learned Claims Tribunal. After deducting 1/5th towards personal and living expenses from the income of deceased i.e. Rs.12,000/- (60,000 / 5), annual dependency of claimants comes to Rs.48,000/- (60,000 – 12,000). At the time of accident, deceased was aged between 50 to 55 years, therefore, in view of ratio laid down in the matter of **Sarla Verma (Smt.)** (supra), multiplier of 11 would be applicable in the present case. After applying multiplier of 11, total

² (2009) 6 SCC 121

loss of dependency of claimants comes to Rs.5,28,000/- (48,000 x 11). The claimants are entitled for Rs.75,000/- towards medical expenses as awarded by learned Claims Tribunal. The claimants are also entitled for Rs.70,000/- towards other conventional heads. Now, the claimants are held entitled for a total compensation of Rs.6,73,000/- (5,28,000 + 75,000 + 70,000).

15. In the result, appeal is allowed in part and impugned award of learned Claims Tribunal is modified accordingly. The claimants are entitled for total compensation of Rs.6,73,000/- instead of Rs.10,45,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 9% per annum from the date of filing of claim application till its realization. The other conditions imposed by learned Claims Tribunal shall remain intact.

Sd/-
(Parth Prateem Sahu)
Judge