NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 655 of 2014

1. Smt. Rita Devi Singh, aged about 34 years, w/o late Ram Murti @ Ram Murat Singh
2. Ravi Kumar Singh, aged about 18 years s/o late Ram Murti Singh @ Ram Murat Singh
3. Kumari Anshu Singh, aged about 16 years d/o late Ram Murti @ Ram Murat Singh
4. Nitesh Kumar Singh, aged about 14 years s/o late Ram Murti @ Ram Murat Singh
5. Naga Singh, aged about 60 years s/o late Mathura Singh
6. Smt. Madhurani Devi, aged about 58 years w/o Naga Singh

   All R/o Village Kapurchak, post Gopalpur, P.S. Nayagaon, District Saran Chhapara Bihar

   No. 3 and 4 is minor through their natural guardian mother Smt. Rita Devi Singh

----Appellants/Claimants

VERSUS

1. Niranjan Singh S/o N. Singh aged About 47 Years R/o Village One Number, Shalimar Gate, Hawda, Distt. Hawda W.B., Through- Sant Kumar Yadav, S/o Ram Yatan Yadav, R/o Chhattisgarh Road Lines, Ringh Road No. 2, Bhanpuri, Raipur, Chhattisgarh

   ----------Driver

2. Sant Kumar Yadav s/o Ram Yatan Yadav R/o Chhattisgarh Road Lines, Ringh Road No. 2 Bhanpuri, Raipur, Tahsil and District Raipur C.G.

   –-------Owner

3. The New India Insurance Company Limited, Through- Divisional Manager, The New India Insurance Company Limited, Madina Manjil Kachhari Chowk, Raipur, Tahsil and District Raipur C.G.

   –-------Insurer

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

For Appellants	:	Ms. Pushplata Khalko on behalf of Mr. Raghvendra Pradhan, Advocate
For respondents	:	Mr. Raj Awasthi, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

26/11/2019

1. The appellants-claimants have challenged the impugned award dated

31-03-2014 passed by the learned 4th Additional Motor Accident Claims Tribunal, Raipur, C.G. in claim case No. 46/2014 wherein the claimants have been awarded a total sum of Rs. 8,31,000/- as compensation along with interest @ 6% p.a. from the date of filing of claim application.

2. Relevant facts necessary for disposing of this appeal are that, on 08-12-2019, Ram Murti Singh (deceased) had been dashed by a truck (hereinafter "offending vehicle") bearing registration No. CG04-J-8308 driven by non-applicant No. 1-driver of the offending vehicle. In the said accident, due to the injuries suffered by deceased, he succumbed to those injuries on the spot. The claimants who are widow, children and parents of the deceased filed a claim application before the competent claims tribunal and claimed Rs. 15,25,000/- as compensation on the ground that on the date of accident, deceased was aged about 34 years and was working as truck driver and thereby earning Rs. 7,000/- per month. But, due to untimely death of Ram Murti Singh, his family suffered loss of dependency.

3. Non-applicant No. 1 & 2 submitted their reply to the claim application and denied all the adverse allegations leveled against them. They have pleaded that as on the date of accident, offending vehicle was insured with non-applicant No. 3-Insurance Company and there was no violation of conditions of insurance policy as well, therefore, the non-applicant No. 3-Insurance Company is liable to satisfy the amount of award, if any.

4. Non-applicant No. 3-Insurance Company submitted its separate reply to the claim application and denied all the adverse pleadings made in the claim application and pleaded that non-applicant No. 1-Driver of the offending vehicle was not possessing valid and effecting driving license, there was no permit of vehicle, therefore, there is violation of conditions of insurance policy.

5. The Claims Tribunal, on appreciation of pleadings and evidence placed on record by respective parties, awarded a sum of Rs. 8,31,000/- as total compensation by holding the income of the deceased as Rs. 5,000/- per month i.e. Rs. 60,000/- per annum

6. The learned counsel appearing for the appellants-claimants submits that the learned claims tribunal committed error in assessing the income of the deceased on lower side as on the date of accident, deceased was working as driver and thereby earning Rs. 7,000/- per month. She also submits that the learned Claims Tribunal committed error in not awarding any amount towards future prospects ignoring the age of the deceased i.e. 34 years. She also submitted that learned Claims Tribunal committed error in awarding very meagre amount towards other conventional heads and she also prayed that the amount of compensation may be enhanced suitably.

7. Per contra, learned counsel appearing for the respondent No. 3-Insurance company submits that learned Claims Tribunal considering overall aspects of the case as well as the fact that the appellants-claimants failed to prove the income of the deceased by producing any cogent and reliable piece of evidence rightly determine the income of the deceased and awarded reasonable amount of compensation. The learned Claims Tribunal has already applied the multiplier on higher side, therefore, impugned award does not call for any interference.

8. I have heard learned counsel for the parties and perused the records.

9. In so far as, the income as pleaded by the appellants-claimants in the claim application i.e. Rs. 7,000/- per month, no specific evidence of employer has

been brought on record by the appellants-claimants except their oral statement and pleadings made in the claim application to prove the income of the deceased as pleaded by the appellants-claimants in the claim application. The appellants-claimants ought to have produced the employer as witness under whom the deceased was engaged as driver and earning Rs. 7,000/- per month, but they failed to produce the said witness. They have also not produced any document or salary certificate before the Claims Tribunal. In view of the material available on record, I do not find any error in the finding recorded by the learned Claims Tribunal in assessing the income of the deceased as Rs. 5,000/- per month i.e. Rs. 60,000 per annum. Sofar as, other arguments raised by the learned counsel for the appellants/ claimants that the Claims Tribunal committed error in not awarding any amount towards future prospects; the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680** laid down a law regarding awarding of additional amount of compensation towards future prospects. Relevant para of the said judgment is reproduced below for easy reference :

> "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."

10. As on the date of accident, age of the deceased pleaded in the claim application by the appellants/ claimants is 34 years, whereas in the post-mortem report (Annexure P-3), age of the deceased has been shown as 30 years. The learned claims Tribunal has rightly taken into consideration the age of the deceased in between 31-35 years and in view of the subject under challenge and age taken by the Claims Tribunal, as per the law laid down by the

Supreme Court, the appellants/ claimants are entitled for an additional sum @ 40% of established income towards future prospects.

11. The Motor Vehicle Act is a beneficial piece of legislation and the reasonable amount of compensation is required to be awarded. At the same time, it is to be looked into that the award passed by the Tribunals or Courts cannot be a bonanza for the claimants. In view of the above, looking to the age pleaded in the claim application, the age of the deceased has been rightly taken into consideration by the learned Claims Tribunal between 31-35 years but erroneously applied the multiplier of 17 instead of 16.

12. In view of the above, the amount of compensation awarded by learned Claims Tribunal requires reconsideration and re-calculation which this Court proposes as under.

13. By taking income of the deceased as Rs. 5,000/- per month and adding 40% of the established income towards future prospects, total monthly income of the deceased will come to Rs. 7,000/- [Rs. 5000+ Rs. 2000 (40% of Rs. 5000)] and annual income will come to Rs. 84,000/-. As there are six claimants i.e. deceased's wife, children and his parents, therefore, there will be deduction of 1/5th towards personal and living expenses. After deducting 1/5th from the amount towards personal and living expenses, yearly loss of dependency would come to Rs. 67,200/- (Rs. 84,000 –-1/5th of Rs. 84,000). By applying multiplier of 16, total loss of dependency will come to Rs. 10,75,200/- (Rs. 67,200X16). Apart from the aforementioned amount, the claimants will also be entitled for total amount of Rs. 70,000/- towards other conventional heads. Now, the appellants/ claimants will be entitled for total amount of compensation of Rs. 11,45,200/- (Rs. 10,75,200+Rs. 70,000) instead of Rs. 8,31,000/-. The aforementioned total amount of compensation 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.

14. 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