

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 152 of 2015

1. Lachhan Bai W/o Late Narottam Kashyap, aged about 45 years,
2. Ramcharan S/o Late Narottam Kashyap, aged about 25 years,
3. Devcharan S/o Late Narottam Kashyap, aged about 22 years,
4. Chhote lal S/o Late Bhukhlu Kashyap, aged about 90 years,

All are resident of Village Pacheda, Police Station & Tahsil Janjgir,
 District Janjgir-Champa (C.G.).

---- Appellants

Versus

1. Satya Prakash S/o Ram Prakash Ogre, aged about 31 years, R/o
 Village Arjuni, Police Station Akaltara, District Janjgir-Champa (C.G.).

(DRIVER OF THE OFFENDING VEHICLE)

2. Shashi Kapoor Upadhyay S/o Ram Subhag Upadhyaya, aged about
 42 years, R/o Station Road Naila, Police Station & Tahsil Janjgir,
 District Janjgir-Champa (C.G.).

(OWNER OF THE OFFENDING VEHICLE).

3. Bajaj Allayance General Insurance Company Limited, through Branch
 Manager, Branch office Vyapar Vihar Bilaspur, Tahsil & District
 Bilaspur (C.G.).

(INSURER OF THE OFFENDING VEHICLE).

---- Respondents

For Appellants	: Ms. Laxmeen Kashyap, Advocate on behalf of Mr. Pushpendra Kumar Patel, Advocate
For Respondent No. 1	: None
For Respondent No. 2	: Mr. Shalvik Tiwari, Advocate on behalf of Mr. Parag Kotecha, Advocate
For Respondent No.3	: Mr. Rohitashva Singh, Advocate on behalf of Mr. Bhaskar Payashi, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

28/06/2019

1. This appeal has been filed by appellants/claimants 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 25/09/2014 passed by Third Additional Motor Accident Claims Tribunal, Janjgir, District Janjgir-Champa (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.16/2014 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.3,28,000/- as compensation to the claimants in a death case.
2. Brief facts relevant for disposal of this appeal are that on 27/04/2013 Narottam Kashyap was travelling on his bicycle from Janjgir to his village Pacheda, at that relevant time, when he reached near Government Middle School, Pendri, one Truck bearing registration No. CG-11/A/4727 (hereinafter referred to as 'offending vehicle') dashed the bicycle of Narottam Kashyap. In the aforementioned accident, Narottam Kashyap sustained grievous injuries over his person including his head and chest and succumbed to those injuries on spot. Matter was reported to concerned Police Station based on which crime bearing No. 291/2013 for offence punishable under Section 304-A of IPC was registered against non-applicant No.1.

3. On account of death of Narottam Kashyap, appellants/claimants who are wife, children and father of deceased filed claim application under Section 166 of M.V. Act before concerned Claims Tribunal claiming Rs.25,00,000/- as compensation against the non-applicants/respondents.
4. Non-applicants/Respondents No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application and pleaded that accident did not take place due to rash and negligent driving of non-applicant No.1 and complaint has been made on the basis of false and fabricated story. It was further pleaded that on the date of accident, driver of offending vehicle was possessing valid and effective driving licence and there was no violation of conditions of insurance policy. It was lastly pleaded that on the date of accident, offending vehicle was insured with non-applicant/respondent No.3, therefore, owner and driver i.e. non-applicants/respondent No.1 and 2 are not having any liability to pay the amount of compensation.
5. Non-applicant/Respondent No.3-Insurance Company submitted reply to claim application and pleaded that accident did take place due to rash and negligent driving of non-applicant No.1 and amount claimed by claimants before learned Claims Tribunal is on the higher side. It was further pleaded that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence and there was violation of conditions of insurance policy, therefore,

Insurance Company is not liable for payment of any amount of compensation.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties held that accident took place due to rash and negligent act of non-applicant No.1 and Narottam Kashyap died due to accidental injuries. Learned Claims Tribunal also held that non-applicant No.1 was possessing valid and effective driving licence to drive offending vehicle therefore, there was no violation of conditions of insurance policy and awarded a total sum of Rs.3,28,000/- as compensation in a death case.
7. Learned counsel appearing for appellants submitted that learned Claims Tribunal committed error in assessing the income of deceased as Rs.3,000/- per month only ignoring that deceased was having grocery shop and also having the income from agricultural work and thereby earning Rs.15,000/- per month. She further submitted that learned Claims Tribunal committed error in not awarding any amount towards future prospects though it has been held that on the date of accident, deceased was aged about 48 years. She lastly submitted that learned Claims Tribunal committed error in awarding very meager amount towards other conventional heads.
8. Per contra, learned counsel appearing for respondent No. 2 supported the impugned award and submitted that learned Claims

Tribunal on the basis of material and evidence available on record awarded just and reasonable compensation to the claimants.

- 9.** Learned counsel appearing for respondent No.3/Insurance Company also supported impugned award and submitted that learned Claims Tribunal was justified in assessing the income of deceased as Rs.3,000/- per month as the claimants could not be able to produce any documentary or legal evidence with respect to business of grocery shop as well as income from agricultural activities. He further submitted that learned Claims Tribunal awarded just and proper compensation to claimants on the basis of material and evidence available on record.
- 10.** I have heard learned counsel appearing for parties and perused entire record carefully.
- 11.** The question which arises for consideration is whether learned Claims Tribunal awarded just and proper amount of compensation to claimants.
- 12.** Claimants in claim application have pleaded the income of deceased from business of grocery shop as well as from agricultural activities, but they have not placed any documentary evidence on record to show the existence of grocery shop in the name of deceased nor they have filed any document to show that deceased was having any agricultural field in his name.
- 13.** Learned Claims Tribunal has taken the income of deceased as Rs.3,000/- per month on notional basis which was mentioned in

Schedule-2 appended to Section 163-A of M.V. Act in the year 1994. The accident took place after about 19 years from fixation of notional income of Rs.3,000/- and thereafter the value of rupee/money has gone down drastically. Looking to the facts and circumstances of the case and the date of accident, learned Claims Tribunal committed error in assessing the income of deceased as Rs.3,000/- per month on notional basis.

14. In view of absence of any documentary and legal evidence on record to show the business as well as agricultural fields in the name of deceased, it will be appropriate to take the income of deceased on notional basis considering the date of accident. Undisputedly, the accident took place on 27/04/2013 and looking to minimum wages rate prevailing in the Districts and State, it will be proper to hold engagement of deceased as labour work and his income to be assessed on notional basis as Rs.4,500/- per month instead of Rs.3,000/- awarded by learned Claims Tribunal.
15. Learned Claims Tribunal looking to the number of claimants had deducted 1/3rd amount of his income towards personal and living expenses. Looking to the number of claimants who are widow, two children and father as well as considering the law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**¹, in the opinion of this Court, learned Claims Tribunal has rightly deducted 1/3rd

¹ (2009) 6 SCC 121

amount of the income of deceased towards his personal and living expenses.

16. Learned Claims Tribunal has not awarded any amount towards future prospects. As per the law laid down by Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Pranay Sethi**², claimants are entitled for amount towards future prospects. The deceased was aged about 48 years on date of accident as per postmortem report (Ex. A-4) and not in permanent employment therefore, claimants will be entitled for addition of 25% of the monthly income towards future prospects for calculating his total monthly income.
17. Learned Claims Tribunal has awarded only Rs.16,000/- towards conventional heads. The amount towards conventional heads is also fixed by the Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra). Therefore, in view of law laid down in aforementioned case, appellants/claimants are also entitled for a sum of Rs.70,000/- towards conventional heads in total, in addition to amount of compensation.
18. For the aforesaid reasons, amount of compensation awarded by learned Claims Tribunal requires recalculation, which this Court calculates as under:-

Considering the facts and circumstances of case, I hold income of deceased on the date of accident to be Rs.4,500/- per month i.e. Rs.54,000/- per annum. By adding 25% of the aforesaid

² (2017) 16 SCC 680

income towards future prospects ($54,000 \times 25\% = 13,500$), yearly income of deceased comes to Rs.67,500/- ($54,000 + 13,500$). After deducting $1/3^{\text{rd}}$ towards his personal and living expenses from the income of deceased i.e. Rs.22,500/- ($67,500 / 3$), annual dependency of claimants comes to Rs.45,000/- ($67,500 - 22,500$). After applying multiplier of 13, total loss of dependency of claimants comes to Rs.5,85,000/- ($45,000 \times 13$). Appellants/claimants are also entitled for Rs.70,000/- towards conventional heads which makes the total compensation as Rs.6,55,000/- ($5,85,000 + 70,000$).

- 19.** In the result, appeal is allowed in part and impugned award of learned Claims Tribunal is modified accordingly. Appellants/claimants are entitled for total compensation of Rs.6,55,000/- instead of Rs.3,28,000/- 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