NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 825 of 2015

1. Kaushal Prasad Sahu, S/o Biharilal Sahu Aged About 31 Years
2. Ku. Manisha D/o Kaushal Prasad Sahu Aged About 9 Years
3. Ku. Nisha D/o Kaushal Prasad Sahu Aged About 3 Years
4. Ku. Amisha D/o Kaushal Prasad Sahu Aged About 2 Years

   Appellant No.2 to 4 Minor through Father Kaushal Prasad Sahu, aged about 31 years, son of Biharilal Sahu,

   All resident of Village Madwahi Post Ratga, P.S. and Tahsil Masturi, District- Bilaspur, Presently residing at Village and P.S. Hirri, Tahsil Bilha, District- Bilaspur, Chhattisgarh

---- Appellants

Versus

1. Dilip Kumar Sahu, S/o Hethram Sahu, Aged About 25 Years, R/o Village Jhalfa, P.S. Hirri, Tahsil Bilha, District- Bilaspur, Chhattisgarh (Driver of Vehicle Excavator Loader No.CG04-DM-4778)
2. E G Transport R/o A-5, Om Complex, Fafadih, District- Raipur, Chhattisgarh (Owner of Vehicle Excavator Loader No.CG04-DM-4778)
3. Future General India Insurance Company Limited, Branch Manager, Shop No.3, Second Floor, Maruti Business Park, Near Dhuppad Petrol Pump, Raipur, Chhattisgarh (Insurance Compnay of Vehicle Excavator Loader No.CG04-DM-4778)

---- Respondents

For Appellants	:	Shri CJK Rao, Advocate
For Respondent No.1& 2	:	None
For Respondent No.3	:	Shri Rohitashva Singh, Advocate

Order On Board By Hon. Mr. Justice Parth Prateem Sahu

20/06/2019

1. Claimants/appellants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging

award dated 6.1.2015 passed by learned 3rd Additional Member to the Court of learned 1st Additional Motor Accident Claims Tribunal, Bilaspur (henceforth 'the Claims Tribunal') in Claim Case No.153/14 whereby the Claims Tribunal allowed claim application in part and awarded total compensation of Rs.4,79,000/- with interest @ 6% p.a. from the date of filing of application till realization.

2. Facts of the case, in brief, are that on 17.1.2013 when Geetabai Sahu (since deceased) was working in Taar Factory situated at village Kharkena, one loader bearing registration No.CG04-DN-4778, driven by non-applicant No.1, dashed her as a result she suffered multiple injuries on her person. She was taken to CIMS Hospital, Bilaspur where she succumbed to her injuries during the course of treatment. Matter was reported to concerned police station based on which offence under Sections 279, 337 & 304A of IPC was registered against non-applicant No.1.

3. Claimants, who are husband & minor children of deceased, filed claim application before competent Claims Tribunal claiming an amount of Rs.16,30,000/- as compensation on account of death of deceased Geetabai Sahu due to injuries sustained by her in a motor vehicular accident.

4. Non-applicant No.1 & 2, driver & owner of offending vehicle, did not appear before the Claims Tribunal despite service of summons and therefore they have proceeded ex-parte.

5. Non-applicant No.3 Insurance Company submitted its reply to claim application and denied all material facts and allegations levelled therein. It was pleaded that as the claimants failed to prove their relationship with the deceased, therefore, they are not entitled for any compensation. On the date of accident, driver of offending vehicle was not possessing valid and effective driving license and thereby condition of insurance policy has been violated and therefore insurance company is not liable to indemnify insured.

6. The Claims Tribunal on appreciation of pleadings and evidence

brought on record by respective parties, has allowed claim application in part and awarded a total sum of Rs.4,79,000/- as compensation by holding that accident took place due to rash and negligent driving by driver of offending vehicle in which deceased lost her life. The Claims Tribunal further held that as there was no breach of any of conditions of insurance policy, therefore, non-applicant Insurance Company is liable to make payment of compensation awarded.

7. Learned counsel for claimants/appellants submits that Claims Tribunal erred in assessing income of deceased on lower side i.e. Rs.3,000/- per month, whereas claimants have produced certificate (Ex.P-8) issued by employer of deceased showing that deceased was getting wages of Rs.170/- per day. He further submits that Claims Tribunal has not awarded any amount towards future prospects and the amount awarded under other conventional heads is also on lower side.

8. Learned counsel for respondent No.3 Insurance Company submitted that as claimants failed to prove income of deceased by documentary evidence, therefore, monthly income assessed by Claims Tribunal on notional basis i.e. Rs.3,000/-, cannot be faulted with. He further submits that total amount of compensation awarded by Claims Tribunal is just and proper and needs no interference.

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

10. Indisputably, accident took place on 17.1.2013 within the premises of tar factory situated at village Kharkena where deceased was working as labour and this fact is further evident from FIR (Ex.P-1) in which place of accident is mentioned 'tar plant' situated in village Kharkena. Though the claimants have filed certificate (Ex.P-8) in support of income of deceased, but they failed to prove the same by examining its author before the Claims Tribunal. Hence, income of deceased is to be assessed on the basis of wage rate prevailing with respect to labour in the place where deceased was working on the date of accident. Therefore, in absence of any proof regarding

income, income of deceased is considered as Rs.150/- per day as per wages that might be prevailing in District Bilaspur at the relevant period.

11. As far as non-grant of future prospects is concerned, it is now well settled that if the deceased was below the age of 40 years and was self-employed or on fixed salary, an addition of 40% of the established income of deceased should be made while calculating quantum of compensation. In the present case, as the deceased was 30 years old and was not in permanent employment, therefore, while determining her monthly income, the Claims Tribunal ought to have added 40% of assessed income of deceased towards future aspects.

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

13. Accordingly, income of deceased is taken as Rs.4,500/- per month and since at the time of accident the deceased was below the age of 40 years old i.e. 30 years old, and was self-employed, therefore, in view of law laid down in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, the income of deceased is required to be increased by 40% towards future prospects, which comes to Rs.6,300/-(1800+4500). Thus, annual income of deceased for the purpose of calculating compensation comes to Rs.75,600/-(6300x12). Considering that there are four persons who were dependent on income of deceased, 1/4th is required to be deducted from the income of deceased towards his personal and living expenses. After deducting one-fourth towards personal expenses of deceased, annual loss of dependency would come to Rs.56700/-. After applying multiplier of 17, as applied by Claims Tribunal, total loss of dependency comes to Rs.9,63,900/-(56700x17). Besides this, a lump-sum amount of Rs.70,000/- is also awarded under other conventional heads. Now, claimants/appellants are entitled for a total sum of Rs.10,33,900/- (963900+70000) as compensation for the death of deceased Geetabai Sahu in the motor accident. This amount of compensation shall carry interest @ 6% p.a.

from the date of filing of claim application till its realization. Rests of conditions imposed by Claims Tribunal shall remain intact.

14. 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/-