

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 786 of 2013

1. Suresh Chand Sao, S/o Late Siyaram Sao Aged About 51 Years
2. Smt. Krutika Sao W/o Suresh Chand Sao Aged About 48 Years
3. Ku. Pallavi Sao D/o Suresh Chand Sao Aged About 23 Years
4. Pranjali Sao S/o Suresh Chand Sao Aged About 12 Years Minor, Thru-Father Suresh Chand Sao

All R/o Road No. 25, Qtr.No. 3A, Sector-08, Bhilai, P.S. Kotwali, Bhilai, Tah. And District : Durg, Chhattisgarh

---- Appellants

Versus

1. Raju Bhai, S/o Devjeet Bhai Sadriya Aged About 28 Years R/o Kot, P.S. Kot, Ahmadabad Gujrat, Gujarat
2. Balwant Bhai S/o Dharmasi Bhai Chawda R/o Bhadvi, Tah. Kotadasnagni, Rajkot, Gujrat., District : Rajkot, Gujarat
3. Manager S/o I.C.I.C.I. Lombard General Insu.Co.Ltd., Icici Bank Tower, Bandra Kurla Complex, Mumbai- 400041, District : Mumbai, Maharashtra

---- Respondents

For Appellants	: Shri Rajbahadur Singh, Advocate on behalf of Shri Awadh Tripathi, Advocate
For Respondents-1 & 2	: None appears
For Respondent- 3	: Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

16.05.2019

1. This is claimants appeal under section 173 Motor Vehicle Act 1988 challenging propriety of impugned award dated 24.11.2012 passed by learned 6th Additional Motor Accident Claims Tribunal (for short, Claims Tribunal) in Claim case No.59/2011 whereby learned Claims Tribunal awarded a total sum of Rs.88,000/- as compensation in a death case.
2. Brief facts for disposal of this appeal are that on 07.08.2009 Ms Prachi along with her classmate Tushar Goel were travelling on Motorcycle bearing

No.CG04/CZ3500 and going towards BIT College, Bhilai. On the way, one truck bearing No. GJ 03-AT 0357 (for short, 'offending vehicle') driven by non-applicant 1 rashly and negligently, dashed Motorcycle due to which Ms Prachi suffered grievous injuries on her person. Immediately she was taken to Sector-IX hospital where during the course of treatment she succumbed to injuries suffered by her. Matter was reported to concerned police station based on which crime number 12 of 2009 for commission of offences under Sections 279, 337,304A IPC was registered against non-applicant 1. On account of death of Ms Prachi, claimants who are parents and two siblings of deceased filed claim application before competent Claims Tribunal claiming Rs.88,20,000/- against non-applicants therein.

3. Non-applicants 1 & 2, driver and owner did not appear before Claims Tribunal even after service of notice and therefore proceeded *ex-parte*.

4. Non-applicant 3 Insurance Company submitted reply to claim application and stated that accident took place due to negligence of driver of Motorcycle and therefore liability of payment of compensation is on the Insurance Company of Motorcycle also. It is further been pleaded that driver of Motorcycle was not possessing a valid and effective driving license and further that there was contributory negligence on the part of the driver of Motorcycle. Insurance Company also took a defence that there was violation of conditions of Insurance Policy.

5. Learned Claims Tribunal on appreciation of pleadings and evidence available on record held that there was contributory negligence of both drivers i.e. driver of Motorcycle and driver of truck i.e. non-applicant 1, deceased died

due to accidental injuries and there was no violation of conditions of Insurance Policy. Learned Claims Tribunal after recording aforementioned findings, awarded compensation while assessing notional income of deceased @ Rs.15,000/- per month and after deducting 50% of assessed income towards her personal living expenses, awarded a total sum of Rs.,88,000/- as compensation to respondents/claimants.

6. Learned Counsel for appellants submits that learned Claims Tribunal erred in assessing income of deceased as Rs.15,000/- per month only, whereas deceased Ms Prachi was a brilliant student and was doing course of Engineering from BIT Engineering College, Durg which is one of the best institutions for providing Engineering course in the state of Chhattisgarh. He further argued that learned Claims Tribunal committed error in not awarding any amount towards future prospectus and further that no amount was awarded on other conventional heads.

7. Per contra, learned counsel appearing for Insurance Company supported the award and stated that deceased was an ordinary student and therefore learned Claims Tribunal rightly assessed her income @ Rs.15,000/- per month.

8. I have heard learned counsel for the parties and perused record. Accident and accidental death of Ms Prachi are not disputed. Liability on respondent-3 Insurance Company is also not disputed. Now, only question for consideration is whether learned Claims Tribunal awarded just and proper compensation to claimants or not. Looking to evidence of Surendra, father of deceased and was examined as AW1, who in his evidence specifically stated

that his daughter was a meritorious student and was studying in BIT Engineering College, Durg and was a student of 5th semester. He also specifically pleaded that she being student of Mathematics, she was taking tuition classes of students studying in Class XI & XII thereby earning Rs.9,000/- per month. It is also been stated that she after taking out personal expenses, was helping family by handing over her income to the tune of Rs.6,000/- to Rs.7,000/- per month. It is also stated that looking to the college which is one of the renowned colleges of Bhilai, its students get selected in campus selection by reputed companies and finally they were paid package of about Rs.7.00 lakhs per annum. Classmate of deceased Tushar Goel, AW2 stated that deceased Ms Prachi was travelling with him to college and on the way she met with an accident.

9. From aforementioned evidence available on record, it is not disputed that Ms Prachi was a student of Civil Engineering and was studying in BIT Durg. Though AW1 who is father of deceased stated that his daughter was meritorious student, but no documentary evidence was filed by him. As per evidence placed on record by claimants, income pleaded and stated by AW1 cannot be taken as her income.

10. In view of above, as there is no proof of income of deceased, therefore her income has to be assessed on notional basis.

11. It cannot be lost sight of the fact that deceased was student of Engineering college and therefore evidence of AW1 that she was taking tuitions of students of class XI and XIII cannot be ignored. Her mark-sheets of Class XII and of Engineering Fourth Semester are on record. Class XII

mark-sheet issued by CBSE wherein marks in Mathematics have been shown as 98 and Science as 83. The other mark sheet issued by Chhattisgarh Vivekananda Technical University, Bhilai is of year 2008-09. From the aforementioned documents available on record though not marked as exhibits, but it can very well be taken into consideration.

12. In view of qualification of deceased, her mark-sheets that are available on record and evidence of AW1, father of deceased, it can very well be taken into consideration that deceased was taking tuition classes. Apart from it, after passing out Engineering course, deceased would have been engaged by company or by Government in service.

13. In view of above, in the opinion of this court income of deceased can be taken on the date of accident as Rs.3,500/- per month. By adding 40% of assessed income towards her future prospectus total monthly income of deceased comes to Rs.4,900/- $\{3500 + (3500 \times 40/100)\}$ and yearly income comes to Rs.58,800/- (4900×12) . By deducting half of her income towards personal and living expenses of the deceased, dependency of claimants would come to Rs.29,400/- $(58800/2)$. As on the date of accident deceased was shown as 20 years of age, therefore multiplier of 18 would be applicable. By applying multiplier of 18 to yearly income of deceased, total loss of dependency comes to Rs.5,29,200/- (29400×18) . Apart from this amount, claimants are also entitled for Rs.30,000 for other conventional heads.

14. Now Appellants/claimants will be entitled for Rs.5,59,200/- $(529200 + 30000)$ instead of Rs.88,000/-. The amount of compensation will carry interest @ 6% from the date of filing of application. Rs 3,00,000/- of amount of

compensation to be deposited in fixed deposit with any nationalised bank for a period of five years and the balance amount to be paid to claimants through their bank account.

15. Other conditions imposed by learned Claims Tribunal will remain intact.

16. Appeal is allowed in part. Impugned award is modified to the extent as indicated above.

17. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE