NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 787 of 2015

Shriram General Insurance Company Limited Divisional Office 4th Floor, Maruti Heights, Mohaba Bazar,G.E. Road, Raipur, Chhattisgarh

---- Appellant

Versus

1. Smt. Malti Bai Sahu W/o Late Sakharam Sahu Aged About 32 Years, Occupation House wife

2. Ku. Kalyani Sahu D/o Late Sakharam Sahu Aged About 13 Years

3. Ku. Durga Sahu D/o Late Sakharam Sahu Aged About 11 Years

   Respondents No. 2 and 3 are minor represented through natural guardian mother Smt. Malti Bai Sahu w/o Late Sakharam Sahu, aged about 32 years, Occupation House wife,

   All caste Teli, All are resident of Village Thanguripali, Post Office Tendukona, Thana Bagbagaha, District Mahasamund (CG)

4. Vishal Thakur S/o Maniram Thakur Aged About 35 Years occupation Driver R/o Basula Dabri, Thana Bagbahara, District- Mahasamund, District : Mahasamund, Chhattisgarh

5. Shekharlal Chandrakar S/o Himmatlal Chandrakar Occupation Registered Owner Truck No. CG 04J/7217 R/o Old Thanapara, Bagbahara, Tahsil Bagbahara, District- Mahasamund, Chhattisgarh, District : Mahasamund, Chhattisgarh

---- Respondents

For Appellant	:	Mr. S.S. Rajput, Advocate.
For Respondents No.1 to 3	:	Mr.Shivendu Pandya,Advocate
For other respondents	:	None

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

20/06/2019

1. The appellant/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter the 'Act 1988') challenging the impugned award dated 26.3.2015 passed by the Motor Accidents Claims Tribunal, Mahasamund (CG) (hereinafter the 'Claims Tribunal') in Claim case No.109/2014, wherein the learned claims tribunal allowed claim application in part and awarded a total sum of Rs.11,20,600/- as compensation.

2. Brief facts relevant for disposal of this appeal are that on 24.4.2014 at about 2.00 pm Sakharam Sahu was travelling on a motorcycle bearing No.CG 06 C 1289 as a pillion rider. The motorcycle was hit by a truck bearing No.CG 04J/7217 driven by non-applicant 1. In the aforementioned accident, Sakharam Sahu suffered grievous injuries over his person and he succumbed to those injuries. Matter was reported to concerned police station on the same day within few minutes of the accident and Crime No. 101/2014 was registered against driver of the offending vehicle bearing No.CG 04J/7217 for the offences under Sections 279, 337 and 304(A) of the IPC.

3. Claimants, who are widow and children of deceased, filed claim application before the competent claims tribunal claiming Rs.24,00,000/- as compensation on account of death of her husband and their father.

4. Non-applicants 1 and 2 who are driver and owner of the truck submitted reply to claim application and pleaded that the accident did not take place with the offending truck but when one Digeshwar was carrying Sakharam and one another person on motorcycle, the motorcycle slipped on the road due to which, Sakharam suffered injuries and succumbed to those injuries. They have further pleaded that on the date of accident, the offending vehicle was insured with non-applicant 3 and therefore, liability, if any, would be on the Insurance company.

5. Non-applicant 3 submitted reply to claim application and pleaded that there was negligence on the part of the deceased himself as he was travelling on a motorcycle along with 2 persons without wearing helmet and driver of motorcycle was not holding valid and effective driving license. It was further pleaded that there was contributory negligence on the part of driver of motorcycle.

6. The learned claims tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that the accident took place due to rash and negligent driving of the offending vehicle-truck by non-applicant 1 and death of Sakharam took place due to accidental injuries suffered by him. The claims tribunal also recorded finding that there was no violation of conditions of insurance policy and there is no non-joinder of

necessary parties and accordingly, allowed claim application in part and awarded a total sum of Rs.11,20,600/-.

7. Learned counsel appearing for the appellant/insurance company submits that as they have obtained permission under Section 170 vide Annexure A3 for challenging the award and quantum, therefore, he is raising the ground of quantum of the award only. He submits that the learned claims tribunal though has held that the age of the deceased on the basis of postmortem report to be 37 years, but even then applied multiplier of 17 which is not permissible. He submits that appropriate multiplier in view of the age of the deceased on the date of accident would be 15. He further submits that the learned claims tribunal committed error in awarding default interest of 9% p.a. whereas, under the Motor Vehicles Act, there is no provision for imposing default interest. Learned counsel appearing for the appellant also argued that the claims tribunal committed error in awarding Rs.2,25,000/- on other other conventional heads, which is contrary to law as laid down by the Hon'ble Supreme Court in the matter of **National Insurance Company Vs. Pranay Sethi** reported in **2 AIR 2017 SC 5157.**

8. Per contra, learned counsel appearing for respondents/ claimants submits that income of deceased was pleaded as Rs.350/- per day but the learned claims tribunal committed error in assessing income as Rs.4,500/- per month only and therefore, looking to the

assessment of less monthly wages of deceased even if it is found that wrong multiplier is applied and excess amount is awarded on other conventional heads then also the impugned award may not be interfered with as the award passed by the learned claims tribunal is just and proper.

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

10. So far as the submission made by learned counsel for the respondents that the claims tribunal has assessed monthly wages of the deceased on lower side is concerned, the claimants though have pleaded the nature of work of the deceased as mason, but they have not produced any legal and admissible piece of evidence to show the engagement of the deceased as mason or any documentary proof to show the engagement of the deceased as mason. Apart from the aforementioned fact even if the respondents/claimants have aggrieved by the less assessment of monthly wages of the deceased then also they have not chosen to challenge the impugned award for the said reason. Even after service of notice of the appeal filed by the insurance company challenging the impugned award on the ground of quantum, they have not challenged the impugned award by filing cross-objection, which shows that the claimants were not aggrieved by the assessment of monthly wages as Rs.4500/- by the learned claims

tribunal and therefore, the arguments raised by the learned counsel for the respondents/claimants that the claims tribunal committed error in assessing the monthly wages of the deceased on lower side is not sustainable and it is hereby repealed.

11. So far as the grounds raised by appellant/insurance company that the learned claims tribunal committed error in applying multiplier of 17 instead of 15 is concerned, there is no age proof of the deceased available on record. The claimants have not produced any material and documents to prove the age of the deceased. In view of the above facts, it will be appropriate to consider the age of the deceased as mentioned in the postmortem report i.e. Ex. P5 to which the claims tribunal has rightly held as 37 years. But the correct multiplier in respect of deceased between the age group of 35 to 40 years of age is 15. As held by the Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and Others Vs. Delhi Transport Corporation and Another** reported in **(2009) 6 Supreme Court Cases 121**, where number of claimants exceeds to four or more, then the deduction towards personal expenses would be 1/4th of income of the deceased.

12. In view of the above, the claims tribunal has committed error in applying multiplier of 17 instead of 15 and therefore, the said part of the impugned award where multiplier of 17 has been applied is

hereby set aside. The correct multiplier which would be applicable in the facts and circumstances of the case would be 15.

13. There is challenge to the quantum of award and therefore, in the facts and circumstances of the case, it is also to be looked into the fact that whether the claims tribunal has applied correct percentage of income to be added in proved assessed income towards future prospect. In the case at hand, the claims tribunal has added 30% of the assessed income towards future prospect which is contrary to law laid down by the Hon'ble Supreme Court in the matter of **Pranay Sethi (supra)** in which it has been held as under :-

> "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."

14. In view of above, as the age of deceased on the date of accident is less than 40 years and he was not in permanent employment, therefore, there will be an addition of 40% of established income in income for calculating amount of compensation. In view of the

aforementioned discussion, this Court propose to recalculate the amount of compensation.

15. Income of the deceased as assessed is Rs.4,500/- by adding 40% of the assessed income towards future prospects, total monthly income of the deceased would come to Rs.6,300/- (4500+1800) and yearly income as Rs.75,600/- (6300x12). As the deceased was survived by three legal heirs/representatives, therefore, appropriate deduction towards his personal and living expenses would be one-third. After deducting one-third from annual income of deceased, loss of annual dependency would come to Rs.50,400/- (75600-25200). As on the date of accident the deceased was aged about 37 years, therefore, appropriate multiplier would be 15. By applying multiplier of 15 to yearly loss of dependency, loss of total dependency suffered by claimants would come to Rs.7,56,000/- (50400x15).

16. Learned claims tribunal awarded a total sum of Rs. 3,25,000/- on other conventional heads considering case of **Rajesh And Others Vs. Rajbir Singh And Other**s, reported in **(2013) 9 SCC 54.** The Hon'ble Supreme Court in its subsequent judgments **Pranay Sethi** (supra) after considering the judgment of **Rajesh & Ors** (supra) had quantified the amount of other conventional heads i.e. loss of estate Rs.15,000/- loss of consortium Rs.40,000/- and funeral expenses Rs.15,000/- (Total Rs.70,000/-). In view of the judgment passed by

the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), the claimants will be entitled for a sum of Rs.70,000/- towards other conventional heads. Now, the claimants would be entitled for a total sum of Rs.8,26,000/- (Rs.7,56,000/- + Rs.70,000/-) instead of Rs.11,20,600/-.

17. Last submission made on behalf of learned counsel for the parties that the claims tribunal committed error in awarding default interest is concerned, the Act of 1988 do not provide any specific provision for awarding interest if the respondents fail to deposit the amount as awarded by the Claims Tribunal or the Court within specific time. The award of interest is discretionary power granted to the tribunals and courts under the Act of 1988. The Hon'ble Supreme Court in the matter of **National Insurance Company v. Keshav Bahadur & ors** reported in **(2004) 2 SCC 370** has considered issue of awarding penal interest and held thus;-

> "13. Though Section 110CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable

> thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal."

18. In view of the above law laid down by the Hon'ble Supreme Court it is crystal clear that the learned claims tribunal committed error in awarding default interest, which is not sustainable and therefore, award to default interest is hereby set aside. Now the amount of compensation will carry interest only @ 6% p.a. from the date filing of the claim application till its realization.

19. Other conditions imposed by the learned claims tribunal shall remain intact.

20. Accordingly, the appeal is allowed in part. The impugned award passed by the claims tribunal is modified to the extent indicated herein above.

Sd /-

(Parth Prateem Sahu)
Judge

sunita