NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 690 of 2013

1. Smt. Indu Yadav, W/o Late Amit Kumar Yadav, Aged About 30 Years.
2. Sumit Kumar Yadav S/o Late Amit Kumar Yadav Aged About 6 Years.

   Appellant No.2 throught his Mother Smt. Indu Yadav.
3. Rambol Yadav W/o Late Bhairam Yadav Aged About 65 Years

   All R/o Ward No. 11, Dharsinva, P.S. Dharsinva, Distt. Raipur C.G.

---- Appellants

Versus

1. Sitaram Lahre, S/o Pusauram Lahre, aged about 32 years, R/o village Gujra, Police Chowki- Maro, P.S. Nandghat, Distt. Durg, Presently- through Bhagwat Prasad Agrawal, Village & Post Siliyari, P.S. Dharsinva, Civil and Revenue District Raipur (CG)

   Driver, Truck No.CG04-JB-3437
2. Nilesh Agrawal S/o Radheshyam Agrawal, Aged About 32 Years, Through Bhagwat Prasad Agrawal, Village & Post Siliyari, P.S. Dharsinva, Civil and Revenue District Raipur (CG)

   Owner, Truck No.CG04-JB-3437
3. Oriental Insurance Company Ltd. S/o Through Branch Manager, Kachehri Chouk, Civil and Revenue District Raipur (CG)

   Insurer, Truck No.CG04-JB-3437

---- Respondents

For Appellants	:	Shri Arpana Singh, Advocate under the authority of Shri Devershi Thakur, Advocate
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

30/01/2019

1. This appeal filed by the claimants/appellants arises out of the award dated 05.03.2013 passed by the 2nd Additional Motor Accident Claims Tribunal, Raipur (henceforth 'the Claims Tribunal') in Claim Case No.136/12

whereby in a death case compensation of Rs.12,70,000/- has been awarded to the claimants/appellants herein.

2. Facts of the case, in brief are that on 23.12.2011 in the morning at about 10 a.m. Amit Kumar Yadav (since deceased) along with his wife Indu Yadav was going to Raipur from Dharsiva and when he reached near village Dhaneli, the offending vehicle Truck bearing registration No.CG04-CM-4700, which was being driven by respondent No.1 herein in a rash and negligent manner, came from backside and gave dash to the motorcycle of said Amit Kumar Yadav as a result of which he suffered injuries on various parts of his body including head and died on spot. Report of the said accident was lodged with the concerned police station with brief narration as to how accident had taken place. A claim case was filed by the claimants/appellants, who are unfortunate wife and children of deceased, claiming compensation to the tune of Rs.26,11,000/- under various heads, *inter alia,* pleading that at the time of accident the deceased was aged about 32 years and he was Contractor in Bharat Sanchar Nigam Limited and earning Rs.18,500/- per month. They were dependent on him and on account of his untimely death a loss of income has occasioned to them, therefore, they are entitled to get compensation as claimed by them from the non-applicants, jointly and severally.

3. Respondents No.1 & 2 have filed joint written statement before the Claims Tribunal denying the averments made in the claim application. It has been averred by them that the claim of the claimants is exaggerated one. On the date of accident, the offending vehicle was insured with the respondent No.3-Insurance Company. The driver was having valid and effective driving to drive the offending vehicle. It has also been averred that the accident took place due to negligent act of the deceased.

4. Respondent No.3-Insurance Company contested the claim case by filing its reply and denied its liability on the ground that the deceased himself was negligent in driving the motorcycle and therefore it is a case of contributory negligence. Driver of the offending vehicle was not having valid and effective driving license to drive the said vehicle. The vehicle was being plied without there being any valid permit and fitness certificate. As such, there was breach of insurance policy and therefore the insurance company is not liable to pay any compensation to the claimants, if awarded by the Claims Tribunal.

5. After appreciating the entire evidence (oral and documentary) on record and pleadings of the respective parties, the Claims Tribunal by the impugned award awarded total compensation Rs.12,70,000/- to the appellants under various heads such as loss of income, loss of estate & funeral expenses, along with interest @ 6% p.a.

6. While partly allowing the claim application, the Claims Tribunal had arrived at a conclusion that there was no violation of any of the conditions of insurance policy and that death of deceased Amit Kumar Yadav took place in a road accident with the offending vehicle. For the purpose of calculating the compensation, the Claims Tribunal has assessed the monthly income of the deceased as Rs.18,500/-. The Claims Tribunal applied the multiplier of 17 on the basis of age of deceased mentioned in the post-mortem report i.e. 34 years. After making necessary deduction towards personal expenditure of the deceased and after adding towards the loss of love and affection & funeral expenses, the compensation, as mentioned above, was awarded.

7. Learned counsel for the appellants submits that monthly income of the deceased as assessed by the Claims Tribunal is on lower side in the light

of income tax return (Ex.P-14) brought on record by the appellants wherein gross income of the deceased has been shown as Rs.2,52,170/- per annum. She further submits that number of dependants of the deceased are 3 including wife and therefore the Claims Tribunal has erred in deducting 50% instead of 1/3rd towards personal expenditure of the deceased for the purpose of assessing the compensation. She further submits that the Claims Tribunal has also not awarded any amounts towards future prospectus of the deceased. The sum awarded under the conventional heads is also on the lower side.

8. Learned counsel appearing on behalf of respondent No.3 Insurance Company would submit that the Claims Tribunal has rightly assessed the monthly income of the deceased, however, committed error in applying the multiplier of 17 instead of 16, therefore, the impugned award may be modified to that extent.

9. I have heard learned counsel for the parties and perused the record of the Claims Tribunal including impugned award.

10. The claimants/appellants in support of their plea with respect to income of the deceased have filed the income-tax return (Ex.P-14) of the deceased for the assessment year 2005-06 to 2009-10. Considering the income tax return of the deceased and other evidence available on record, this Court is of the view that the Claims Tribunal has not committed any illegality or irregularity in assessing monthly income of the deceased as Rs.18,500/-. Even otherwise, the said finding of the Claims Tribunal has not been challenged by the Insurance Company in any manner.

11. Perusal of the impugned award would show that the Claims Tribunal had assessed the monthly income of deceased as Rs.18,500/- and thus yearly

income comes to Rs.2,22,000/- (18500x12) and after deducting 50% from the said income towards the personal expenditure of the deceased, the Claims Tribunal has calculated the total loss of dependency as Rs.74,000/-. It appears that due to oversight, the Claims Tribunal has assessed total loss of dependency as Rs.74,000/- instead of Rs.1,11,000/- and thereby committed arithmetical mistake in calculating the total compensation payable to the claimants. Therefore, the aforesaid finding of the Claims Tribunal is not sustainable in law and is hereby set aside.

12. Further, the Claims Tribunal has not granted any compensation under the head of 'future prospects'. If a person is not in a permanent employment or self-employed or on a fixed salary then also there is every possibility of enhancement in his income due to one reason or the other periodically and therefore while calculating compensation to be awarded to the claimants, the future prospects are also to be added in the income of the deceased. The Hon'ble Apex Court has considered the issue of 'future prospects' in detail in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** and held thus:-

> "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."

In the present case, the claimants have pleaded and proved by adducing cogent and clinching evidence that the deceased was aged about 34 years and self-employed, engaged in the business of supplying goods & other contract works and therefore, in view of the aforesaid decision, future prospects at the rate of 40% have to be taken into consideration.

13. It is well settled that where the number of dependent family members is 1 to 3, the deduction towards personal and living expenses of the deceased should be one-third. In the present case, though the number of dependent family members is 3, but the Claims Tribunal has deducted half towards personal expenditure of the deceased in place of one-third. Similarly, as the deceased was aged about 34 years on the date of incident, therefore, the Claims Tribunal ought to have applied multiplier of 16 instead of 17, as has been prescribed by the Hon'ble Supreme Court in the matter of Sarla Verma vs. Delhi Transport Corporation and another reported in (2009) 6 SC 121.

14. In view of above discussions, this Court proposes to recalculate the compensation amount payable to the claimants/appellants.

15. Considering the above facts and having regard to the date of accident, the monthly income of the deceased is taken as Rs.18,500/-, as assessed by the Claims Tribunal, and by adding 40% towards future prospects, as held by the Hon'ble Supreme Court in the matter Pranay Sethi's case (supra), the monthly income of the deceased is assessed at Rs.25,900/- (18,500+7400). After deducting one-third towards personal expenditure of the deceased, the loss of dependency would come to Rs.17,267/- (25,900-8,633) per month. Annual loss of dependency is calculated at Rs.2,07,204/- (17,267x12) and after applying multiplier of 16 to it, the total loss of dependency is calculated at Rs.33,15,264/- (2,07,204x17). Besides this, a lump sum amount of Rs.70,000/- is also awarded towards other conventional heads. The claimants, thus, become entitled to receive a total sum of Rs.33,85,264/- (33,15,264+70,000) as compensation for the death of deceased Amit Kumar Dubey in the motor accident. Now the appellants are entitled for a total sum of Rs.33,85,264/- as compensation

instead of Rs.12,70,000/- as awarded by the Claims Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. The amount of compensation, if any, already received by the claimants shall be adjustable.

16. Appeal is thus allowed in part with the modification in the award impugned as indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-