NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 63 of 2013

1. Smt. Chandrakali Dhruv Wd/o Sunderlal Dhruv Aged About 34 Years
2. Narayan Prasad S/o Late Sunder Lal Dhruv Aged About 15 Years
3. Bina Kumari D/o Late Sunder Lal Dhruv Aged About 13 Years
4. Shrikant Dhruv S/o Late Sunder Lal Dhruv Aged About 11 Years
5. Kumari Kalyani D/o Late Sunder Lal Dhruv Aged About 6 Years
6. Ku. Sarita D/o Late Sunder Lal Dhruv Aged About 4 Years
7. Dhelu Ram Dhruv S/o Pardeshi Dhruv Aged About 71 Years
8. Smt. Fulbasan W/o Dhelu Ram Dhruv Aged About 66 Years

Appellant No.2 to 6 are minor through natural guardian mother Smt. Chanddrakali Dhruv Wd/o Late Sunderlal Dhruv

All are R/o Village- Khairi, Post- Gurra, P.S. Bhatapara Rural, Tahsil Bhatapara, District Raipur, Chhattisgarh

---- Appellants

Versus

1. Vijay Kumar Nishad S/o Kanhaiya Lal Nishad Aged About 29 Years R/o Village- Khairi, Post- Gurra, P.S. Bhatapara Rural, Tahsil Bhatapara, District Raipur Chhattisgarh (Driver of offending vehicle Hero Honda Street No.CG 04 ZE 8310)
2. Hariram Nishad S/o Dukhuram Nishad Aged About 36 Years R/o Village- Khairi, Post- Gurra, P.S. Bhatapara Rural, Tahsil Bhatapara, District Raipur, Chhattisgarh (Real owner as a possessor of offending vehicle Hero Honda Street No.CG 04 ZE 8310)
3. Kesar Kumar Kosle S/o Ramesh Kumar Kosle aged about not known R/o Village- Janglour, Post- Palari, P.S. And Tahsil Palari District Raipur, Chhattisgarh (Registered Owner of offending vehicle Hero Honda Street No.CG 04 ZE 8310)
4. M/s Agrawal Motors Proprietor- Umesh Agrawal, R/o Baloda Bazar, Tahsil Baloda Bazar

---- Respondents

For Appellants	:	Mr. Prakash Kumar Mishra, Advocate
For Respondents No.1 & 2	:	None
For Respondent No.3	:	Mr. Dev Ashish Biswas, Advocate on behalf of Ms. Renu Kochar, Advocate
For Respondent No.4	:	None

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

12/04/2019

1. By this instant appeal, appellants/claimants assailed the legality, validity and propriety of impugned award dated 06.09.2012 passed by learned Additional Motor Accident Claims Tribunal, Bhatapara, C.G. (hereinafter referred to as 'Claims Tribunal') in Claim Case No.27/2010, whereby learned Claims Tribunal partly allowed claim application filed by appellants/claimants and awarded total compensation of Rs.2,35,000/- in a death case.

2. Brief facts for disposal of this appeal, are that, on 12.12.2008 deceased Sunderlal Dhruv along with Vijay Kumar was travelling on a Hero Honda Street motorcycle bearing registration No. CG04/ZE/8310 (hereinafter referred to as 'offending vehicle'). At the time of accident, non-applicant No.1 was driving offending vehicle and Sunderlal Dhruv was travelling as a pillion rider. Offending vehicle met with an accident by dashing a tree on road side. In the aforementioned accident, Sunderlal Dhruv sustained grievous injuries on his head, waist and other parts of body and succumbed to injuries on spot.

3. On account of death of Sunderlal Dhruv, appellants/claimants filed a claim application under Section 166 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the competent Claims Tribunal claiming Rs.8,00,000/- as compensation on the grounds mentioned therein.

4. Non-applicants No.1 and 2 submitted reply to claim application and denied all adverse pleadings made against them. Non-applicant No.2 in his reply to claim application pleaded that on the date of accident, deceased Sunderlal Dhruv was driving the offending vehicle, therefore, he met with an accident due to his own negligence.

5. Non-applicant No.3 also submitted, reply to claim application and stated that he has sold his motorcycle to M/s Agrawal Motors on 17.11.2006 i.e. non-applicant No.4 i.e. Umesh Kumar Agrawal (M/s Agrawal Motors Balodabazar) and also signed all the relevant documents including transfer paper and it is non-applicant No.4 who negligently could not process the papers, therefore, non-applicant No.3 could not be held liable to pay any amount of compensation.

6. Non-applicant No.4 pleaded in his reply that offending vehicle was received by it under exchange and sold the same to non-applicant No.2 on 25.06.2008 and also handed over all the relevant documents to him. Non-applicant No.2 even has given assurance that he will process the required documents of transfer of ownership with the competent authority and also executed documents by mentioning

therein that from the date of purchase, all liability with respect to offending vehicle will be of his.

7. Learned Claims Tribunal while appreciating the pleadings and evidence available on record held that deceased Sunderlal Dhruv was travelling on offending vehicle as pillion rider, it is non-applicant No.1, who was driving offending vehicle at the time of accident and accident took place due to his rash and negligent driving.

8. Learned Claims Tribunal while calculating the amount of compensation, awarded a total sum of Rs.2,35,000/- by holding the income of deceased on notional basis as Rs.15,000/- per annum and fastened the liability upon all the non-applicants to satisfy the award.

9. Non-applicants therein have not challenged the impugned award. The appeal has been preferred by claimants for enhancement of award.

10. Learned counsel appearing for appellants/claimants argued that learned Claims Tribunal committed an error in assessing the income of deceased to Rs.15,000/- per annum only, whereas on the date of accident, deceased was working as Mason and earning Rs.150/- per day. He further argued that learned Claims Tribunal also committed an error in not awarding any amount towards future prospects and deducting 1/3rd towards personal expenses whereas number of claimants are eight in number.

11. Per contra, learned counsel appearing for respondent No.3 supported the impugned award passed by learned Claims Tribunal.

12. I have heard learned counsel appearing for parties and perused entire record carefully.

13. As it is an appeal by claimants for enhancement of impugned award, therefore, it is to be seen that whether learned Claims Tribunal has awarded just and reasonable amount of compensation or not ?

14. Claimants in their claim application have specifically pleaded that on the date of accident, deceased was aged about 35 years and working as Mason and thereby earning Rs.4,500/- per month. Learned Claims Tribunal erroneously taken into consideration the notional income as fixed in Schedule attached to M.V. Act, which was on the basis of calculation and assessment of the year 1988. In the instant case, accident took place on 12.12.2008 after about 20 years from the date of coming into force of M.V. Act.

15. In view of aforementioned factual circumstances, notional income as assessed and mentioned in Schedule attached to M.V. Act cannot be applied as it is. Notional income as assessed and fixed in the year 1988 looking to minimum income of a person at that relevant period. By passage of time, looking to price index, rate of wages has also been increased.

16. In the instant case, claimants have pleaded income of deceased to Rs.150/- per day by doing the work of Mason, but has not produced any evidence with respect to place of work of deceased, employer under whom deceased was working or any documentary evidence with respect to income of deceased. Claimants have failed to prove

income as pleaded in their claim application, therefore, in the facts and circumstances of case, income of deceased is to be assessed on notional basis. The accident took place in the year 2008, therefore, looking to minimum wages rate prevailing in the Districts and State, it will be proper to hold engagement of deceased in labour work and his income is to be assessed to Rs.3,500/- per month.

17. It is also evident from the oral and documentary evidence available on record that on the date of accident, deceased was aged about 32 years as held by learned Claims Tribunal, therefore, the learned Claims Tribunal has committed an error by applying the multiplier of 17, whereas in view of law laid down by Hon'ble Supreme Court in the matter **of Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[1]**,** correct multiplier would be 16. The finding recorded by learned Claims Tribunal that multiplier of 17 is applicable to the case is erroneous in law and it is set aside. In the considered opinion of this Court, the relevant multiplier will be of 16.

18. The learned Claims Tribunal has not awarded any amount towards conventional heads. The amount towards conventional heads is also fixed by Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**[2], therefore, in view of the law laid down in aforementioned case, claimants are also entitled for an amount of Rs.70,000/- towards conventional heads in total, in addition to the amount of compensation.

1 **(2009) 6SCC 121**
2 **AIR 2017 SC 5157**

19. Learned Claims Tribunal has also not awarded any amount towards future prospects. As per the law laid down by Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra), claimants will be entitled for addition of 40% of the monthly income of deceased towards future prospects as on the date of accident, deceased was aged about 32 years and not in permanent employment.

20. The learned Claims Tribunal has deducted 1/3rd amount of monthly income towards personal expenses of deceased is also not correct looking to the number of dependents. The amount towards personal expenses to be deducted from the income of deceased has been decided by Hon'ble Supreme Court in the matter of **Sarla Verma** (supra) wherein the Hon'ble Supreme Court has provided guideline for deduction of personal expenses. In the case at hand, where dependents are eight in number, 1/5th amount should be deducted from the income of deceased towards his personal expenses.

21. 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.3,500/- per month i.e. Rs.42,000/- per annum. By adding 40% of aforesaid income towards future prospects (42,000 x 40% = 16,800), yearly income of deceased comes to Rs.58,800/- (42,000 + 16,800). After deducting 1/5th towards his personal expenses from the income of deceased i.e. Rs.11,760/- (58,800 / 5), annual dependency of claimants comes to Rs.47,040/- (58,800 – 11,760). After applying multiplier of 16, total loss of dependency of claimants comes to Rs.7,52,640/- (47,040 x 16). Claimants are also entitled for Rs.70,000/- towards other conventional heads.

22. On the basis of above calculation, award passed by learned Claims Tribunal is modified accordingly and now appellants/claimants are held entitled for a total compensation of Rs.8,22,640/- (7,52,640 + 70,000).

23. For the foregoing reasons, appeal is allowed in part and impugned award of learned Claims Tribunal is modified accordingly. Appellants are now entitled for total compensation of Rs.8,22,640/- instead of Rs.2,35,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. The other conditions imposed by learned Claims Tribunal shall remain intact. The amount of compensation shall be payable jointly and severally by the non-applicants/respondents.

24. No order as to costs.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh