**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

**MAC No. 1131 of 2013**

1. Smt.Jyoti Thakur, Wd/o Late Sanjay Singh Thakur, Aged About 25 Years
2. Abhay Thakur S/o Late Sanjay Singh Thakur, Aged About 8 Years
3. Amrit Thakur S/o Late Sanjay Singh Thakur, Aged About 6 months

   Appellants 2 and 3 Minors, Thru- their natural guardian mother Smt. Jyoti Thakur (Appellant No.1)

4. Smt. Sakun Thakur, W/o Ram Avtar Thakur, Aged About 52 Years

   All R/o Phool Chowk, Jorapara, P.S. Moudahapara, Raipur, Tah. Raipur, Civil and Revenue Distt. Raipur, Chhattisgarh

**---- Appellants**

**Versus**

1. Arther John Dimonti, S/o Shri Lorens John Dimonti, Aged About 29 Years R/o Tatibandh, Infront Of Dena Bank, P.S. Amanaka, Distt. Raipur C.G (Driver & Owner)
2. Universal Sampo General Insu.Co. Thru- Manager, Divisional Office, In front of T.V. Tower, Shankar Nagar, Tah. And Distt. Raipur, Chhattisgarh (Insurer)

**-----Respondents**

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| For Appellants | : | Shri R Pradhan, Advocate |
| For Respondent-1 | : | Smt Minu Banerjee, Advocate |
| For Respondent- 2 | : | Shri K Rohan, Advocate on behalf of Shri Amrito Das, Advocate |

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**Hon'ble Shri Justice Parth Prateem Sahu**
**Order on Board**

**16.08.2019**

**1.** Appellants/claimants have filed this appeal challenging the legality and validity of the impugned award dated 17.02.2012 passed by the 7th Additional Motor Accident Claims Tribunal, Raipur (for short, 'Çlaims Tribunal') in a motor accident Claim Case- 84 of 2011, wherein learned Claims Tribunal while allowing the claim application in part, awarded a total sum of Rs.13,90,000/- as compensation along with interest @ 6% per annum from the date of application.

**2.** Brief facts relevant for disposal of this appeal are that on 04.04.2010 when Sanjay Singh Thakur was travelling on a two wheeler Hero-Puch and reached near old over bridge down Maruti enclave, GE road, at that relevant time one Chevorlet Spark Car bearing No.CG-04-DK-0330 (hereafter referred to 'offending vehicle') driven by respondent- 1/ non-applicant-1 dashed the two wheeler. In the aforementioned accident, Sanjay Singh Thakur suffered grievous injuries over his person and he succumbed to those injuries. The matter was reported to concerned Police Station, based on which Crime No.89 of 2010 was registered against respondent-1 for committing offences punishable under Section 304A of the IPC.

**3.** The claimants, who are wife, children and parents of deceased-Sanjay Singh Thakur filed claim application before competent Claims Tribunal claiming Rs.38,31,000/- as compensation against death of Sanjay Sanjay Singh on the grounds mentioned therein.

**4.** Non-applicant-1, driver of offending vehicle after service of notice submitted his reply to claim application and denied all the adverse pleadings in the claim application. He also pleaded that the offending car on the date of accident was insured with non-applicant-2/Insurance Company for a period from 2.4.2010 to 1.4.2011 and therefore, the liability if any, for payment of amount of compensation will be on the insurance company.

**5.** Non-applicant-2 Insurance Company even after service of notice remained *ex-parte* before the learned Claims Tribunal.

**6.** Learned Claims Tribunal on the basis of pleadings and evidence placed on record by the claimants, held that the accident took place due to rash and negligent driving of offending vehicle by respondent-1 and awarded a total sum of Rs.13,90,000/- as compensation along with interest @ 6% per annum from the date of filing of claim application.

**7.** Learned Counsel for the appellants submits that learned Claims Tribunal committed error in assessing the income of the deceased as Rs.1,20,000/- per annum, instead of Rs.1,45,170/- only, on the basis of presumption that the deceased was spending some amount towards his business. He also submitted that learned claims tribunal committed error in deducting 1/3rd of income towards his personal and living expenses instead of 1/4th ignoring the number of claimants; in not awarding any amount towards future prospectus of the deceased, ignoring the age of the deceased on the date of accident.

**8.** Learned counsel for respondent- 1 supported the award of learned Claims Tribunal.

**9.** Per contra respondent-2/Insurance Company opposes the submission made by learned counsel for the appellants and submits that learned Claims Tribunal rightly assessed income of deceased and awarded a just and proper amount of compensation which does not call for any interference by this court.

**10.** I have heard learned counsel for the parties and perused the record. The accident, death and the liability of respondent-2 is not in dispute. The only question which arises for consideration is, whether learned Claims Tribunal assessed the income of the deceased correctly or not and further that the compensation awarded to the appellants/ claimants is just and proper in the facts and circumstances of the case.

**11.** To prove the income of the deceased, claimants have placed the income tax return for assessment year 2009-2010 Ex.P/6, and return for assessment year 2008-09 Ex.P/7 on record. The claimants have also placed on record, copy of receipt of ITR register to prove that income tax return has been submitted before the Income Tax office, but learned Claims Tribunal not considered the same.

**12.** The aforementioned documents Ex.P/6, P/7 and P/9 were proved by AW-2 Suresh Mishra, Income Tax Inspector, who in his evidence specifically stated that he is present with the income tax register, registering the original returns submitted by the deceased. Copy of income tax register was marked as Ex.P/9C. Original income tax return of deceased was marked as Ex.P/7 and receipt was marked as Ex.P/10C by learned Claims tribunal.

**13.** In Ex.P/10C at column no.12 total income of deceased for the assessment year 2008-09 has been shown as Rs.1,08,840/- and in Ex.P/12C which is copy of the original income tax return of assessment year 2009-10 submitted in the office on 15.9.2009, his total income per annum has been shown as Rs.1,45,170/-. The said amount has been shown in Column no. 3 of Ex.P/12C under the head of 'Profits and gains from business or profession'.

**14.** In view of the aforementioned documents available on record which have been proved by the Income Tax Inspector Suresh Mishra (AW/2), learned claims tribunal committed an error in deducting an amount of Rs.25,000/- from the total income of his business. From the total income of deceased, only his personal expenses have to be deducted.

**15.** In view of above, income of the deceased is to be taken as Rs.1,45,170/- per annum instead of Rs.1,20,000/- as calculated by the learned Claims Tribunal.

**16.** Learned claims tribunal erred in deducting 1/3$^{rd}$ of the income towards personal and living expenses of the deceased ignoring the number of claimants. Number of claimants as mentioned in the cause title of the claim application was five and in the present memo of appeal, it is four, as one claimant passed away during the pendency of appeal.

**17.** The deduction towards personal and living expenses has been decided by 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 the number of claimants are four or more, then, the deduction towards personal expenses would be 1/4$^{th}$ of income of the deceased. In the case at hand, the number of claimants are 4 and therefore, the deduction towards personal and living expenses would be 1/4$^{th}$ of income of the deceased, instead 1/3$^{rd}$.

**18.** Learned Claims tribunal not awarded any amount towards future prospectus. The deceased on the date of accident was 27 years of age and doing business of fancy items in shop no.323 at Gol Bazar, Raipur and therefore, claimants are also entitled for an addition of income of the deceased towards future prospectus.

**19.** Now, the appellants will also be entitled for an addition of 40% of the income of deceased towards future prospects as held by the Hon'ble Supreme Court in the matter of **National Insurance Company Vs Pranay Sethi** reported in AIR 2017 SC 5157, where the persons who are self employed and working on fixed pay and below 40 years, are held to be entitled for an additional sum of 40% of the income towards future prospects.

**20.** In view of the above, award passed by the learned claims tribunal requires re-calculation, which this court proposes as under:

Income of the deceased as held in preceding paragraphs, is to be taken as Rs.1,45,170/- per annum. After addition of 40% of the income to his established income towards future prospectus, total income of the deceased per annum would come to Rs.2,03,238/- {145170 + (145170 x 40/100)}. After 1/4$^{th}$ deduction of his income towards personal and living expenses, the yearly dependency of the claimants would come to Rs.1,52,428/- {(203238 – (203238x1/4)}. On the date of accident, deceased was 27 years, therefore, appropriate multiplier would be 17. By applying multiplier of 17, total dependency of claimants would be Rs.25,91,276/- (152428 x 17). Apart from this amount, the claimants are also entitled for an amount of Rs.70,000/- towards other conventional heads.

**21.** Now, the claimants are entitled for a total sum of Rs.26,61,276/- (rupees twenty-six lakh sixty-one thousand, two seventy six) along with interest @ 6% per annum from the date of claim application till its realisation.

**22.** Other conditions imposed by the learned Claims Tribunal will remain intact.

**23.** In the result, the appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
**(Parth Prateem Sahu)**
**Judge**

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