

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1577 of 2015

1. Smt. Usha Dhiwar W/o Late Balaram Dhiwar, Aged About 31 Years.
 2. Ku. Lata Dhiwar, D/o Late Balaram Dhiwar, Aged About 10 Years.
 3. Ku. Geeta Dhiwar D/o Late Balaram Dhiwar, Aged About 8 Years
- Appellant Nos.2 & 3 are Minor on Behalf of Through Her Legal Guardian Mother Smt. Usha Dhiwar.
4. Smt. Soniya Dhiwar W/o Shri Itwari Ram Dhiwar, Aged About 65 Years.
 5. Deleted.

All are R/o Village Tumgaon, PO & PS- Tumgaon, District Mahasamund C.G.

Present R/o. Village- Tamaseoni, PO, PS & Tah- Abhanpur, District Raipur C.G.

---- Appellants

Versus

1. Deonath Gond S/o Subhedi Gond, Aged About 55 Years R/o Ward No. 21, Village Gadaghat, Nagar Panchayat Tumgaon, Post Office And Police Station Tumgaon, Tahsil And District Mahasamund, Chhattisgarh.
2. Harpal Singh Gill S/o Gyani Sohan Singh Gill, Aged About 30 Years R/o Gurudwara, Gurunanak Nagar, Ravi Nagar, Raipur, Post Office Raipur, Police Station Telibandha, Raipur, Tahsil And District Raipur C.G.
3. The Branch Manager, The Shriram General Insurance Company Limited, Through Branch Manager, Branch Office Maruti Business Park, Aamanaka, G.E. Road, Raipur, District Raipur C.G.

---- Respondents

For Appellants	:	Shrt Shivendu Pandya, Advocate.
For Respondent Nos.1 & 2	:	None.
For Respondent No.3	:	Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

24/06/2019

- 1 By the instant appeal, claimants/appellants are challenging the legality and validity of impugned award dated 12.03.2015 passed by learned Chief Motor Accident Claims Tribunal, Raipur, Distt -Raipur, C.G (for short 'the Tribunal') in Claim Case No.140/2012, whereby the Tribunal

allowed claim application in part and awarded a total sum of **Rs.5,07,000/-** as compensation in death case.

- 2 Brief facts necessary for disposal of this appeal are that on 19.12.2011 Balaram Dhiwar (deceased) was going towards Bhoring, Tumgaon Chowk on his motorcycle. On the way, one Truck bearing registration No.CG05-D-0141, (hereinafter shall be referred to as “offending vehicle”), driven by non-applicant no.1/respondent No.1-Deoath Gond, dashed against his motorcycle, on account of which he fell down and suffered multiple injuries over his person. He was taken to Bhimrao Ambedkar Hospital, Raipur, where during the course of treatment on 21.12.2011, he succumbed to his injuries. Matter was reported to PS-Tamgaon, based on which criminal case was registered against driver of offending vehicle.
- 3 On account of death of Balaram Dhiwar, appellants/claimants who are wife, children & parents of deceased, filed claim application under Section 166 of the Motor Vehicles Act, 1988 (for short ‘M.V Act’) before competent Claims Tribunal claiming **Rs.24,75,000/-** as compensation on the ground mentioned therein.
- 4 Non-applicants no.1 & 2/respondent nos. 1 & 2, driver and owner of offending vehicle, even after service of notice did not appear before the Tribunal and, therefore, they were proceeded ex-parte.
- 5 Respondent No.3/Insurance Company submitted its separate reply to claim application and denied claim of claimants. It was pleaded that there was violation of condition of insurance policy as on the date of

accident driver of offending vehicle was not possessing valid & effective driving license and even there was no valid permit and fitness certificate to ply offending vehicle on road and, therefore, insurance company is not liable to pay any amount of compensation.

- 6 Learned Claims Tribunal after appreciating pleadings and evidence placed on record by respective parties held that accident took-place due to rash and negligent driving of driver of offending vehicle, which resulted in death of Balaram Dhiwar (deceased) and that there was no violation of any condition of insurance policy. Accordingly, the Tribunal allowed claim application in part and awarded a total sum of **Rs.5,07,000/-** as compensation.
- 7 Learned counsel for the appellants submits that the Tribunal committed error in assessing monthly income of deceased as **Rs.3,000/-** per month which is on lower side. Claimants have specifically pleaded that on the date of accident deceased -Balaram Dhiwar was working as 'Driver' and thereby earning **Rs.8,000/-** per month. He further submits that the Tribunal has not been awarded any amount towards future prospects and even the amount awarded towards other conventional heads is also on lower side.
- 8 Per contra, learned counsel for respondent No.3/Insurance Company has supported impugned award and pleaded that the Tribunal has rightly assessed monthly income of deceased at **Rs.8,000** as claimants have failed to produce any admissible and reliable piece of documentary evidence in support of income of deceased. He further submits that as

the amount of compensation awarded by the Tribunal to claimants is just and proper.

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

10 So far as ground raised by learned counsel for the appellants with respect to assessment of monthly income of deceased as **Rs.8,000/-** is concerned, claimants have pleaded in their claim application that on the date of accident income of deceased was **Rs.8,000/-** per month in support thereof examined Smt. Usha Dhiwar, widow of deceased, who has stated in her evidence that deceased was working as 'driver' and thereby earning **Rs.8,000/-** per month. However, claimants failed to produce any documentary evidence on record to prove income of deceased as pleaded by them. Even owner of offending vehicle with whom deceased was working as 'driver', at any point of time, has not been examined by claimants before the Tribunal.

11 In view of material, available on records & non-production of any documentary evidence as well as independent witness with whom deceased was working as 'driver', pleadings and oral statement made by claimants with respect to income of deceased cannot be accepted to be true, therefore, income of deceased is to be assessed on the basis of minimum wages prevailing at the relevant point in the place of work of deceased. Looking to nature of work of deceased as pleaded before Claims Tribunal and considering the wage rate prevailing in District Raipur at the time of accident, which could not be less than **Rs.150/-** per

day. Income of deceased can be assessed at **Rs.4,500/-** per month on notional basis.

12 Next ground raised by learned counsel for appellants/claimants is that Tribunal committed error in not awarding any amount towards future prospects.

13 Issue with respect of award of future prospects has been dealt with and decided in the matter of **National Insurance Co. Ltd. v. Pranay Sethi reported in (2017) 16 SCC 680** wherein Hon'ble Supreme Court has held that in case the deceased, victim of motor accident, was below the age of 40 years and not in permanent employment, an addition of 40% of actual income of deceased towards future prospects should be made.

Relevant paragraph of **Pranay Sethi's** case reads 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.”

14 Indisputably, in case at hand, deceased was aged about 33 years which is less than 40 year, this Court is of the considered opinion that appellants/claimants are entitled for an addition of 40% of established income i.e. **Rs.4,500/-** .

15 On the date of accident deceased was aged about 33 years, as mentioned in postmortem, therefore, appropriate multiplier applicable would be 16.

16 For the above reasons, assessment of compensation done by the Tribunal requires reconsideration and recalculation as under :-

Considering the facts and circumstances of case, and the income of deceased as held as **Rs.4,500/-** per month i.e. **Rs.54,000/-** per annum. By adding 40% of the aforesaid income towards future prospects ($54,000 \times 40\% = 21,600$), yearly income of deceased comes to **Rs.75,600/-** ($54,000 + 21,600$). After deducting $1/4^{\text{th}}$ towards his personal and living expenses from the income of deceased i.e. **Rs.18,900/-** ($75,600 / 1/4$), annual dependency of claimants comes to **Rs.56,700/-** ($75,600 - 18,900$). After applying multiplier of 16, total loss of dependency of claimants comes to **Rs.9,07,200/-** (56700×16). Claimants are also entitled for a lump sum amount towards **Rs,70,000/-** under other conventional heads.

17 In view of above, now claimants will be entitled for total sum of **Rs.9,77,200/-**, instead of **Rs.5,07,000/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rests of the conditions of impugned award shall remain intact.

18 In the result, appeal is allowed in part and impugned award stands modified to the extent as indicated herein-above.

Sd /-

(Parth Prateem Sahu)
Judge