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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 696 of 2014

1. Smt. Rasula Bai, W/o Shri Meghnath, aged about 48 Years
2. Vimla Bai, W/o Late Shri Chandan Patel, aged about 24 years by Caste- Aghariya
3. Minor Ku. Deena D/o Late Shri Chandan Patel, aged about 2 Years, by Caste- Aghariay, through natural guardian mother Smt Vimla Bai

   All R/o Raja Dera, Thana- Pithoura, Civil & Revenue Distt. Mahasamund, Chhattisgarh

---- Appellants

Versus

1. Yasin Khan, S/o Late Gulab Khan, by Caste – Musalman, Occupation- Driver, R/o RDA Plot, Sanjay Nagar, Behind Nalghar, Raipur, P.S. Tikrapara, Distt. Raipur, Chhattisgarh (Driver of vehicle No.CG-04-JC-0670)
2. Dakesh Kumar Sahu, S/o Late Mannu Ram Sahu, Aged About 40 Years, R/o Village-Sandi, Post- Bhansoj, Thana- Mandir Hasaud, Tah. Arang, District : Raipur, Chhattisgarh (Owner of vehicle No.CG-04-JC-0670)
3. Branch Manager S/o HDFC General Insu.Co.Ltd., Devendra Nagar, Raipur, District : Raipur, Chhattisgarh (Insurer of vehicle No.CG-04-JC-0670)

-----Respondents

For Appellants	:	Shri Sunil Sahu, Advocate
For Respondent-3	:	Shri SS Rajput and Shri Sangeet K Kushwaha, Advocates
For Respondents- 1 and 2	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

19.08.2019

1. Appellants/claimants have filed this appeal under Section 173 of Motor Vehicle Act, 1988 challenging the legality and validity of the impugned award dated 31.10.2013 passed by the 4th Additional Motor Accident Claims Tribunal, Raipur (for short, 'Çlaims Tribunal') in a motor accident Claim Case No. 343 of 2011, wherein learned Claims Tribunal, while allowing the claim application in part, awarded a total sum of

Rs.5,90,000/- as compensation along with interest @ 6% per annum from the date of application, in a death case.

2. Brief facts relevant for disposal of this appeal are that on 19.07.2011 Chandan Patel was travelling on his motorcycle Hero Honda bearing No.CG 06-D-6569 and when he reached near Nawagaon, at that relevant time, one Tata DI-207 bearing No.CG04-JC-0670 (hereafter, referred to 'offending vehicle') dashed the motorcycle. In the aforementioned accident, Chandan Patel, who was driving the motorcycle suffered multiple injuries over his person and he was taken to the Government Hospital at Mahasamund in 108 Ambulance. From there, he was referred to Ramkrishna hospital where he took treatment from 19th to 28th of July, 2011. Thereafter, he was shifted to MEKAHARA Hospital, Raipur, where he succumbed to injuries during the course of treatment on 4th August, 2011 at 7.30 pm. The matter was reported to concerned Police Station, based on which Criminal case was registered against respondent-1 for committing offences punishable under Sections 279, 337 and 304A of the IPC.

3. The claimants, who are wife, children and parents of deceased-Chandan Patel filed claim application before competent Claims Tribunal claiming Rs.24,95,000/- as compensation against death of Chandan Patel on the grounds mentioned therein.

4. Non-applicants-1 and 2, driver and owner of offending vehicle after service of notice submitted reply to claim application and denied all the adverse pleadings in the claim application. It was further pleaded that the claimants are not entitled for any amount of compensation from non-applicants- 1 and 2. They have also pleaded that on the date of accident, offending vehicle was insured with the Insurance Company and therefore, the liability if any, for payment of amount of compensation will be on the Insurance Company.

5. Non-applicant-3/ Insurance Company also submitted its separate reply denied all adverse pleadings made by the claimants and pleaded that non-applicant-1, driver of offending vehicle was not possessing a valid and effective driving licence on the date of accident and sought for its exoneration.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, held that the accident took place due to rash and negligent driving of offending vehicle by non-applicant- 1 and death of Chandan Patel took place due to motor accident. Learned Claims Tribunal also held that there was no violation of conditions of Insurance Policy and awarded a total sum of Rs.5,90,000/-, including Rs.1,67,000/- towards medical expenses of deceased.

7. Learned counsel appearing for the appellants/claimants submits that learned Claims Tribunal committed error in assessing income of the deceased as Rs.3,000/- per month only, ignoring the pleading and evidence led by the claimants before learned Claims Tribunal, wherein they pleaded and stated that the deceased was earning Rs.200/- per day from dairy-farm work apart from his agricultural income of Rs.4,00,000/-

per annum. He further pleaded that meagre amount was awarded on other conventional heads.

8. Per contra, learned counsel appearing for respondent-3/Insurance Company submits that as the claimants have not placed on record any documentary evidence with respect to income of deceased, learned Claims Tribunal rightly assessed income of deceased on the basis of notional income as Rs.3,000/- per month, which does not call for any interference.

9. I have heard learned counsel for the parties and perused the record. Claimants in their pleadings pleaded that income of deceased from dairy-farm work as Rs.200/- per day, apart from his agricultural income. It was also stated by Meghnath Patel (AW-1), who is father of deceased in his evidence that deceased was earning Rs.200/- per day from dairy business apart from agriculture income. Apart from the oral submissions, pleadings in the claim application and oral submissions of AW-1, no other evidence was brought on record to prove the income of deceased. No evidence was led with respect to his doing dairy business and agricultural activities. The appellants failed to prove income by reliable evidence and therefore, the income is to be assessed in notional basis.

10. In view of above, income of the deceased is to be taken on the basis of notional income prevailing at the time of accident.

11. As the date of accident was 19.07.2011, therefore, notional income of the deceased is to be taken on the basis of minimum wages prevailing at the time of accident in the concerned district and State, where the deceased was residing. Notional income assessed by learned Claims Tribunal is based on the income much before the date of accident. As the accident took place in the year 2011 and looking to the minimum wages prevailing in the concerned State and District, it will be appropriate to assess the income of deceased as Rs.4,000/- per month.

12. Learned Claims Tribunal has not awarded any amount towards future prospectus. Therefore, apart from above established income, the appellants will also be entitled for an addition of 40% of the established 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.

13. Learned Claims Tribunal also committed error in awarding very meagre amount of Rs.7,000/- towards other conventional heads.

14. In view of the above, award passed by learned claims tribunal requires re-calculation and re-consideration which this Court proposes as under:

Income of the deceased as held in preceding paragraphs, is to be taken as Rs.4,000/- per month and Rs.48,000/- (4000 x 12) 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.67,200/- {48000 + (48000 x 40/100)}. After deduction of 1/3rd of income towards personal and living expenses of the deceased, yearly dependency of claimants would come to Rs.44,800/- {(67200 – (67200 x

1/3)}. On the date of accident, deceased was about 28 years, therefore, appropriate multiplier would be 17. By applying multiplier of 17, total dependency of claimants would be Rs.7,61,600/- (44800 x 17). Apart from this amount, the claimants are also entitled for an amount of Rs.70,000/- towards other conventional heads and Rs.1,67,000/- towards medical expenses.

15. Now, the claimants are entitled for a total sum of Rs.9,98,600/- (Rupees nine lakhs ninety eight thousand six hundred) (761600+70000+167000) along with interest @ 6% per annum from the date of claim application till its realisation instead of Rs.5,90,000/-.

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

17. 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

padma