NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 576 of 2014

1. Deepak @ Larence, S/o Shivkumar Bhaskar, Aged About 16 Years
2. Janak, S/o Shivkumar Bhaskar, Aged About 12 Years.
3. Bhanu, S/o Shivkumar Bhaskar Aged About 10 Years

All are minor Through legal Guardian - Uncle Pramod Kumar Bhaskar, S/o Kehardas Bhaskar, R/o Village Araiband, Tahsil Takhatpur, Police Station Takhatpur, District Bilaspur, C.G.

Present Residing Dharampura Hardi, Police Station Lormi, Tahsil Lormi, District Bilaspur (CG).

---- Appellants

Versus

1. Sanjay Yadav, S/o Baliram Yadav, Aged About 32 Years, Driver of Vehicle Bearing Registration No. C.G. 10-A/9923, R/o Bada Bazar Mungeli, Police Station & Tahsil Mungeli, District-Bilaspur (CG)
2. Abdul Gaffar, S/o Abdul Samad, owner of Vehicle Bearing Registration No. C.G. 10-A/9923, R/o Sunder Nagar, Raipur, District : Raipur (CG)
3. The New India Insurance Company Limited 3rd Floor, RDA Building, Branch Office, Raipur, District : Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Shri C.K. Sahu, Advocate
For Respondent No.3	:	Shri Deepak Gupta, Advocate.

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

19/06/2019

1. The claimants/appellants have filed this appeal under Section 173 of Motor Vehicle Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 25.10.2012 passed by Additional Motor Accident Claims Tribunal, Mungeli in Claim Case No.105/2011 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.3,75,000/- in a death case.
2. Brief facts relevant for disposal of this appeal are that on 8.2.2008 Shiv

Kumar along with his wife Santoshi Bai i.e. parents of claimants/appellants herein, were going to Takhatpur from village Araiband on motorcycle. Shiv Kumar was driving motorcycle, whereas Santoshi Bai was travelling as pillion rider. On the way, one bus bearing registration No.CG10-A-9923, driven by non-applicant No.1, dashed motorcycle driven by Shiv Kumar, due to which Shiv Kumar & Santoshi Bai sustained grievous injuries and died on spot. Matter was reported to concerned police-station based on which crime bearing No.26/2008 was registered against driver of offending bus and after investigation charge-sheet was also filed against him. Appellants/claimants, who are minor children of deceased Shiv Kumar, filed claim application before competent Claims Tribunal claiming Rs.17,50,000/- as compensation on account of death of their father stating therein that on the date of accident he was engaged in the business of selling clothes and thereby earning Rs.12,000/- to 15,000/- per month.

3. Respondents No.1 & 2, who are driver and owner of offending bus, submitted reply to claim application and pleaded that on the date of accident non-applicant No.1 was possessing valid and effective driving licence, whereas driver of motorcycle was not possessing valid and effective driving license. It was also pleaded that accident took place on account of negligence on the part of driver of motorcycle. On the date of accident, the offending bus was insured with respondent No.3-insurance company and therefore liability, if any, for the payment of amount of compensation would be on Insurance Company.

4. Respondent No.3 Insurance Company filed its separately and pleaded that amount of compensation claimed by claimants is based on fictitious grounds. It was further pleaded that on the date of accident the offending

bus was plied in violation of conditions of insurance policy, therefore, insurance company is not liable to indemnify insured. It was also pleaded that there was head on collusion between two vehicles, therefore, the deceased is also equally responsible for the accident.

5. The Claims Tribunal on appreciation of pleadings and evidence available on record has held that accident took place due to rash and negligent driving by driver of offending bus and accordingly awarded a total sum of Rs.3,75,000/- as compensation. It was also held that there was no violation of conditions of insurance policy.

6. Learned counsel appearing on behalf of appellants/claimants submits that Claims Tribunal erred in assessing monthly income of deceased on notional basis. He further submits that learned Claims Tribunal has not awarded any amount towards future prospects and the amount awarded towards other conventional heads is also on lower side.

7. Per contra, learned counsel appearing on behalf of respondent No.3/ Insurance Company submits that learned Claims Tribunal after considering that no documentary or admissible piece of evidence of income was placed on record by claimants, has rightly assessed income and awarded amount of compensation which do not call for interference.

8. I have heard learned counsel for the claimants/appellants and perused the record.

9. Though claimants have pleaded in their claim application that Late Shiv Kumar was engaged in business of selling cloth and thereby earning Rs.12,000/- to 15,000/- per month but they failed to produce any documentary evidence in support thereof. Therefore, in absence of any documentary, legal or reliable piece of evidence with respect of income of deceased, income of deceased is to be taken on the basis of notional

income.

10. In the case at hand, date of accident is 8.2.2008 and the deceased was resident of District Bilaspur. Thus, keeping in mind the nature of work pleaded by claimants in claim application and wage rate that might be prevailing in District Bilaspur at the relevant point of time as also price index, income of the deceased can be taken as Rs.3,500/- in place of Rs.3,000/- as assessed by the Claims Tribunal.

11. As far as non-grant of future prospects is concerned, it is now well settled that if the deceased was below the age of 40 years and was self-employed or on fixed salary, an addition of 40% of established income of deceased should be made while calculating quantum of compensation. In the present case, though claimants have not produced any document showing exact age of deceased, but in the post-mortem report age of deceased is mentioned as 38 years. Thus, in absence of any documentary proof with respect to age of deceased, his age mentioned in post-mortem is to be taken for the purpose of calculating compensation. Since the deceased was 38 years old at the time of accident and not in permanent employment, therefore, while determining his monthly income, the Claims Tribunal ought to have added 40% of assessed income of deceased towards future aspects.

12. In view of above, this Court proposes to recalculate and reassess amount of compensation payable to claimants/appellants.

13. Accordingly, income of deceased is taken as Rs.3,500/- per month and since at the time of accident the deceased was below the age of 40 years (38 years of age) and was not in permanent employment, therefore, in view of law laid down in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, income of deceased is

required to be increased by 40% towards future prospects, which comes to Rs.4,900/- (3500+1400). Thus, annual income of deceased for the purpose of calculating compensation comes to Rs.58,800/- (4900x12). After deducting one-third towards personal and living expenses of deceased, annual loss of dependency would come to Rs.39,200/- (58800-19600). By applying multiplier of 15, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.5,88,000/- (39200x15). Besides this, claimants/ appellants are also entitled for a lump sum amount of Rs.30,000/- under other conventional heads. Thus, claimants/appellants are now entitled for a total compensation of Rs.6,18,000/- (5,88,000+30,000) instead of Rs.3,75,000/- as awarded by Claims Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization.

14. Out of total amount of enhanced compensation, 50% will be deposited in fixed deposit scheme of any nationalized bank for a period of five years and remaining amount of enhanced compensation will be deposited in saving bank account of claimants/appellants. Other conditions imposed by the learned claims Tribunal shall remain intact.

15. Any amount paid to the claimants/appellants as compensation shall be adjusted from the total amount of compensation as calculated above.

16. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

Nisha/-