NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 573 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.107/2011 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.8,73,624/- 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 Santoshi Bai, filed claim application before competent Claims Tribunal claiming Rs.45,50,000/- as compensation on account of death of their mother stating therein that on the date of accident Late Santoshi Bai was working as Nurse in the Health Department and earning Rs.8,000/- 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.8,73,624/- 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 though Claims Tribunal has assessed income of deceased on the basis of salary slip produced in evidence but failed to award any amount towards loss of future prospects ignoring that deceased was working as Nurse in government department and thus she was in permanent employment. He further submits that learned Claims Tribunal committed error in awarding very meagre amounts towards other conventional heads.

7. Per contra, learned counsel appearing on behalf of respondent No.3/ Insurance Company submits that learned Claims Tribunal after considering income as mentioned in salary slip Ex-P/15 of deceased has rightly awarded amount of compensation and it needs no interference.

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

9. The only question involved in this appeal is whether the claimants are entitled for further amount of compensation towards loss of future prospects or not?

10. The Hon'ble Apex Court has considered the issue of 'future prospects' in

detail in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** and held thus:-

> "59.3. While determining the income, an addition of 50% of the actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

11. In the case at hand, admittedly on the date of accident the deceased was aged about 35 years and was in permanent employment of the State Government and therefore, the Claims Tribunal ought to have added 50% to the income of deceased. However, the Claims Tribunal while calculating amount of compensation payable to claimants failed to add any amount to annual income of deceased towards future prospects and thereby committed serious error.

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.8,944/- per month, as assessed by Claims Tribunal based on document Ex.P-15, and since at the time of accident the deceased was below the age of 40 years (35 yers of age) and was in permanent job i.e. government servant, therefore, in view of law laid down in the matter of **Pranay Sethi's case** (supra), income of deceased is required to be increased by 50% towards future prospects, which comes to Rs.13,416/-(8944+4472). Thus, annual income of deceased for the purpose of calculating compensation comes to

Rs.1,60,992/- (13416x12). Considering the total number of dependants in this case i.e. 3, appropriate deduction towards personal and living expenses of deceased would be one-third. After deducting one-third, annual loss of dependency would come to Rs.1,07,328/- (160992-53664). By applying multiplier of 16, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.17,17,248/- (107328x16). 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.17,47,248/- (17,17,248+30,000) instead of Rs.8,73,624/- 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/-