NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 109 of 2013

1. Smt.Janki Bai Sahu W/o Late Jagdhar Sahu Aged About 36 Years

2. Mohan Lal Sahu S/o Late Jagdhar Sahu Aged About 16 Years Minor

3. Girish Sahu S/o Late Jagdhar Sahu Aged About 14 Years Minor,

   [Appellant No.2 & 3 being minor on behalf of through their legal guardian mother Smt. Janki Bai Sahu, Appellant No.1]

4. Smt. Inderbati Sahu W/o Amar Singh Sahu Aged About 60 Years

5. Amar Singh Sahu S/o Late Bisahu Sahu Aged About 62 Years

   All R/o Khapri, P.O. Tamaseoni, P.S. & Tahsil Arang, Distt. Raipur (CG)

---- Appellants

Versus

1. Ramesh Kumar Rajwanshi S/o Joginder Rajwanshi Aged About 33 Years R/o Narayan Complex, Ring Road No. 2, Gondpara, P.S. & P.O. Khamtarai, Raipur, Distt. Raipur C.G.

2. Dilip Kumar Arawal S/o Ramchand Agrawal Aged About 40 Years R/o Ekta Nagar, Gudhiyari, P.S. & P.O. Gudhiyari, Raipur, District Raipur C.G.

3. The Cholamandalam General Insurance Company Limited Through Branch Manager, Branch Office, Chawla Complex, Devendra Nagar, Tiraha Road, P.S. Devendra Nagar, P.O. Raipur, Raipur, District : Raipur (CG)

---- Respondents

For Appellants	:	Shri Shivendu Pandya, Advocate
For Respondent No.3	:	Shri D.L. Dewangan, Advocate on behalf of Shri Abhishek Sinha, Adv.

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

10/05/2019

1. Appellants-claimants have challenged the award dated

29.10.2012 passed by the learned 7th Additional Motor Accident Claims Tribunal, Raipur (for short 'the Claims Tribunal') in Claim Case No.18/12 whereby the Claims Tribunal partly allowed claim application of claimants and awarded compensation of Rs.4,40,000/- to claimants/ appellants herein along with interest @ 6% p.a. from the date of filing of claim application, in a death case.

2. Facts of the case, in brief, are that on 5.12.2011 at about 7.30 p.m. Jagdhar Sahu (since deceased) along with Hemlal Sahu was going on his motorcycle bearing registration No.CG04-JC-0284. When they reached ahead of Preet Auto-mobile, Paragaon, Police Station Arang, District Raipur, at that time one truck bearing registration No.CG04-JC--4595 (henceforth 'the offending vehicle'), driven by respondent No.1 herein, dashed motorcycle as a result of which both the occupants of motorcycle sustained grievous injuries and died on spot. Accident was reported to concerned police station based on which Crime No.316/11 for commission of offence under Section 304A of the Indian Penal Code was registered against respondent No.1-driver.

3. Claimants/appellants herein, who are widow, children & parents of deceased respectively, have filed a claim application claiming compensation to the tune of Rs.13,00,000/- under various heads on the ground that on the date of accident, deceased was earning livelihood by doing tailoring work and they were dependent on earning of deceased.

4. Respondent No.1 & 2, owner & driver of offending vehicle, filed their reply to claim application denying averments made therein. They have pleaded that accident took place due to sole negligence of driver of motorcycle and therefore respondent No.1 cannot be held liable for accident. It was further pleaded that as insurance company of motorcycle has not been arrayed as party, therefore, application is not maintainable for non-joinder of necessary party. On the date of accident, driver of offending vehicle was having valid & effective driving license and as offending vehicle was fully insured with respondent No.3-insurance company, therefore, insurance company is liable to indemnify owner in case any compensation is awarded by the Claims Tribunal.

5. Respondent No.3 Insurance Company filed its separate reply and denied averments made in claim application except that on the date of accident the offending motorcycle was insured with it. It was contended that accident in question occurred due to negligence on the part of driver of motorcycle himself and therefore claimants are not entitled to get any compensation; there was violation of condition of insurance policy as on the date of accident driver of offending vehicle was not having valid & effective driving license and therefore insurance company is not liable to indemnify insured.

6. The Claims Tribunal after appreciating the pleadings and evidence placed on record (oral and documentary both) by the respective parties has partly allowed claim application and awarded compensation of Rs.4,40,000/- along with interest @

6% p.a. by taking monthly income of deceased as Rs.3,000/- on notional basis. The Claims Tribunal has arrived at a conclusion that accident was the result of rash and negligent driving by respondent No.1, driver of offending vehicle, there was no contributory negligence on the part of deceased driver of motorcycle and saddled liability upon insurance company to pay compensation by holding that there was no violation of any of the conditions of insurance policy.

7. Learned counsel for claimants/appellants submits that the claimants in their evidence have specifically stated that on the date of accident, deceased was doing tailoring work and thereby earning Rs.300/- per day and in support thereof they have examined Teeju Dewangan (AW-3), owner of shop from where deceased was running his tailoring business but the Claims Tribunal had not assessed income of deceased accordingly. He further argued that the Claims Tribunal has not awarded any amount towards future prospects and even the amount awarded under other conventional head are also on lower side.

8. Per contra, learned counsel appearing on behalf of respondent No.3- Insurance Company submits that the Claims Tribunal has rightly assessed income of deceased as the claimants failed to prove income of deceased by adducing cogent and reliable piece of evidence. He further argued that the Claims Tribunal after considering overall facts, circumstances and evidence available on record, has rightly assessed compensation and the same does not call for any

interference.

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

10. So far as the submission of learned counsel for appellants that the Claims Tribunal wrongly assessed monthly income of deceased i.e. Rs.3,000/- p.m., is concerned, perusal of evidence available on record, particularly statement of appellant No.1 Smt. Janki Bai (AW-1), would show that deceased Jagdhar was running a tailoring shop in name and style of 'Mohan Tailors' in a tenanted premises in village Tamaseoni and her husband used to earn Rs.300/- per day. Tiju Dheemar (AW-3) is the owner of shop in which deceased Jagdhar was running tailoring shop. Though this witness has stated that the deceased had taken his shop at the monthly rent of Rs.500/-, but he failed to produce any rent agreement to prove fact of tenancy of deceased in his shop. However, looking to the facts of case at hand and specific pleadings and statements made by witnesses examined on behalf of claimants that tailoring shop was situated in a village and not in a city, non-submission of agreement of tenancy cannot be said to be fatal to the claimants' case because in rural areas in routine course for giving any accommodation on rent, the tenancy agreement is not executed by parties. There is also no dispute that at the relevant point of time, the wage rate in District Raipur where village Tamaseoni is situated cannot be said to be less than Rs.150/- per day. Thus, considering overall facts and circumstances of case, nature of work as

pleaded and stated by claimants before Claims Tribunal, and also considering wage rate prevailing in District Raipur, I am of the view that income of deceased can be fixed at Rs.150/- per day i.e. Rs.4,500/- per month, instead of Rs.3000/- per month as assessed by the Claims Tribunal.

11. Further, the Claims Tribunal has not granted any compensation under the head of 'future prospects'. The Hon'ble Supreme Court in catena of its decisions including in **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** has held that in case the deceased, victim of motor accident, was between the age group of 40 to 50 years and self-employed, an addition of 25% of actual income of deceased towards future prospects should be made. Relevant paragraph of Pranay Sethi's case (supra) 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."

12. In the present case, the deceased was 40 years old self-employed man i.e. running a tailoring shop, but the Claims Tribunal while calculating compensation payable to claimants failed to add any amount to annual income of deceased

towards future prospects and thereby committed serious error, which is required to be corrected by this Court.

13. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to the claimants/appellants.

14. Accordingly, income of deceased is taken as Rs.4,500/- per month and since at the time of accident the deceased was 40 years old self-employed man, therefore, in view of the law laid down in the matter of **Pranay Sethi's case** (supra), the income of deceased is required to be enhanced by 25% towards future prospects, which comes to Rs.5,625/- (25% of 4500). Thus, annual income of deceased for the purpose of calculating compensation comes to Rs.67,500/-(5625x12). Out of this amount, 1/4th is to be deducted towards personal expenses of deceased and after deducting 1/4th, annual loss of dependency would come to Rs.50,625/- (67500-16875). By applying multiplier of 15, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.7,59,375/- (50625x15). Besides this, claimants/ appellants are also entitled for a lump sum amount of Rs.70,000/- under other conventional heads. Thus, claimants/ appellants are now entitled to a total compensation of Rs.8,29,375/- (7,59,375+70,000), recoverable from the respondents jointly and severally. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of conditions mentioned in the impugned award shall remain intact.

15. Any amount already paid to 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

roshan/-.