NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 467 of 2015

1. Sitaram Sahu S/o Dayaram Sahu Aged About 45 Years R/o Village Sankra, Tahsil and District Dhamtari Chhattisgarh
2. Likesh Kumar S/o Sitaram Sahu Aged About 22 Years R/o Village Sankra, Tahsil and District Dhamtari Chhattisgarh

----Appellants/Claimants

VERSUS

1. Ganesh Nayar S/o Shri Gopi Nayar aged about 31 Years R/o Gandhi Nagar Ward, Jagdalpur, Tahsil Jagdalpur, Distt. Bastar Chhattisgarh

----------Driver

2. Smt. Manju Tomar W/o Shri Rajendra Singh Tomar Aged About 52 Years R/o Shanti Nagar Ward Jagdalpur, Tahsil Jagdalpur, District Bastar Chhattisgarh

–-------Owner

3. Branch Manager, Shriram General Insurance Company Limited, Corporate Office, E-08, ETIP Rico, Industrial Area Sitapur, Tahsil and District Jaipur, Rajasthan.

–------Insurer

-------**Respondents/Non-applicants**

For Appellants	:	Mr. Anil Gulati, Advocate
For respondents	:	Mr. Deepak Gupta, Advocate & Ms. Shalu Singh, Advocate on behalf of Mr. Sunil Sahu, Advocate

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Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

18/09/2019

1. The appellants-claimants have filed this instant appeal under Section 173 of Motor Vehicles Act challenging the impugned award dated 18-11-2014 passed by Motor Accident Claims Tribunal, Dhamtari, in claim case No. 108/2014, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs. 3,80,000/- as compensation along with interest @ 6% p.a. from the date of filing of claim application till its realization.

2. Brief facts of the case, necessary for disposal of this appeal are that, on 22-10-2013, Banita Bai was returning from Dhamtari to her village Sakra on

Jeep bearing No. CG.04.ZA.2283 (hereinafter “offending Jeep), on the way when the Jeep was unloading the passengers near Sakra turn, at that relevant time, one truck bearing No. CG.17-H-0579 (hereinafter “offending truck”) driven by non-applicant No. 1/respondent No. 1 dashed the Jeep from its back side. In the aforementioned accident, Banita Bai suffered grievous injuries over her person and she succumbed to injuries on the spot. One eye-witness to the accident reported the matter to the Police Station, Arjuni based on which crime bearing No. 219/13 was registered against non-applicant No. 1/respondent No. 1-driver of the offending truck for offences defined under Section 279, 337, 338 & 304A of I.P.C. The claimants, who are husband and son of the deceased, filed a claim application before the competent Claims Tribunal claiming Rs. 26,15,000/- as compensation against non-applicants therein by mentioning that deceased Banita Bai was working as labour and thereby earning Rs. 3,000/- per month.

3. Non-applicants No. 1 & 2/respondent No. 1 & 2 who are the driver and owner of the offending truck denied the fact of the accident and pleaded that the accident occurred due to negligent act of the non-applicant No. 1/respondent No. 1-driver of the offending Jeep. It was also pleaded that non-applicant No. 1/respondent No. 1 was acquitted from the charges leveled against him by the concerned criminal Court. Non-applicant No. 1 & 2/respondent No. 1 & 2 further pleaded that on the date of accident, non-applicant No. 1 /respondent No. 1 was possessing valid and effective driving license and the vehicle was insured with non-applicant No. 3-Insurance Company, therefore the claim application may be dismissed against non-applicant No. 1 & 2.

4. Non-applicant No. 3-Insurance Company also submitted its reply to the claim application and denied the fact of accident occurred due to negligent act of non-applicant No. 1/respondent No. 1 and also denied accidental death of deceased

Banita Bai, her age and income. Insurance Company, in its reply, has pleaded that on the date of accident vehicle was being driven in violation of conditions of insurance policy as non-applicant No. 1/respondent No. 1 was not possessing valid and effective driving license, they have also taken the plea of contrary negligence.

5. Learned Claims Tribunal, on appreciation of the pleadings and evidence placed on record by respective parties held that the accident took place due to rash and negligent driving of the offending truck by non-applicant No. 1/respondent No. 1 and also held that deceased Banita Bai died due to accidental injuries suffered by her. Learned Claims Tribunal also held that, in the aforementioned accident, there was no violation of conditions of insurance policy and awarded a total sum of Rs. 3,80,000/- as compensation.

6. Learned counsel for the appellants-claimants submits that learned Claims Tribunal committed error in assessing income of the deceased as only Rs. 3,000/- per month ignoring the pleadings and oral evidence made by AW-1. He further submits that learned Claims Tribunal had failed to award any amount towards loss of future prospects and awarding less amount towards the other conventional heads. He prays for enhancement of the impugned award suitably.

7. Per contra, learned counsel for respondent No. 3-Insurance Company submits that there is no specific proof of income and age of the deceased, therefore, learned Claims Tribunal had rightly assessed the income of the deceased as Rs. 3,000/- per month on notional basis. He further submits that learned Claims Tribunal had rightly calculated the amount of compensation which is just and proper and do not call for any interference.

8. I have heard learned counsel for the parties, perused the material available on

record with utmost circumspection.

9. The accidental death of deceased Banita Bai, no violation of conditions of insurance policy and liability of respondent No. 3-Insurance Company for payment of compensation are not in dispute. True it is that, the income of the deceased could not have been proved by the claimants by producing any admissible piece of evidence except their oral statement made before the Tribunal. Even, if the claimants fail to prove the income of the deceased then for awarding just and proper amount of compensation to the unfortunate claimants, the income of the deceased is to be assessed on the notional basis prevailing and also looking to the other facts and circumstances like price index etc.

10. In the case at hand, the deceased was a lady aged about 45 years (as per post mortem report), she was working as labour and apart from it, she had to looked after her house as well as her family members, this fact also cannot be ignored. In the aforementioned facts and circumstances, looking to the price index, minimum wages prevailing in the state, it will be appropriate to assess the income of the deceased as Rs. 4,500/- per month, as on the date of death of Banita Bai, she was aged about more than 40 years, therefore, there will be addition of 25% of established income towards future prospects as held by the Hon'ble Supreme Court in the matter of ***National Insurance Company Ltd. vs. Pranay Sethi***[1]. 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."

1 (2017) 16 SCC 680

11. In view of the above, the amount of compensation awarded by learned Claims Tribunal requires reconsideration and re-calculation which this Court proposes as under.

12. By taking income of the deceased as Rs. 4,500/- per month and an addition of 25% of the established income towards future prospects, total monthly income of the deceased will come to Rs. 5,625/- (Rs. 4500+ Rs. 1125) and annual income will come to Rs. 67,500/-. As there are only two claimants i.e. deceased's husband and her son, therefore, there will be a deduction of 1/3rd towards personal and living expenses. After deducting 1/3rd from the amount, yearly loss of dependency would come to Rs. 45,000/- (Rs. 67,500–-1/3rd of Rs. 67,500). As on the date of accident, deceased was aged about 45 years, therefore, multiplier of 14 will be applicable, by applying multiplier of 14, total loss of dependency will come to Rs. 6,30,000/- (Rs. 45,000X14). Apart from the aforementioned amount, the claimants will also be entitled for an amount of Rs. 70,000/- towards other conventional heads. Now, the appellants-claimants would be entitled for total compensation amount of Rs. 7,00,000/- (Rs. 6,30,000+Rs. 70,000) instead of Rs. 3,80,000/- as awarded by learned Claims Tribunal. The aforementioned total amount of compensation will carry interest @ 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal will remain intact.

13. Consequently, the appeal is allowed in part and the award impugned stands modified to the extent indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Pawan