NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 145 of 2015

1. Smt. Jayanti Jaiswal W/o Late Narottam Jaiswal Aged About 45 Years R/o Village And Post- Chandipara, Pamgarh, P.S. And Tah. Pamgarh, Distt. Janjgir-Champa C.G.,
2. Kumari Lata D/o Late Narottam Jaiswal Aged About 18 Years R/o Village And Post- Chandipara, Pamgarh, P.S. And Tah. Pamgarh, Distt. Janjgir-Champa C.G.
3. Harshvardhan S/o Late Narottam Jaiswal Aged About 16 Years Minor, Thru- Mother Smt. Jayanti Jaiswal, R/o Village And Post- Chandipara, Pamgarh, P.S. And Tah. Pamgarh, Distt. Janjgir-Champa C.G.
4. Akash Kumar S/o Late Narottam Jaiswal Aged About 14 Years Minor, Thru- Mother Smt. Jayanti Jaiswal, R/o Village And Post- Chandipara, Pamgarh, P.S. And Tah. Pamgarh, Distt. Janjgir-Champa C.G.
5. Ritesh Kumar S/o Late Narottam Jaiswal Aged About 12 Years Minor, Thru- Mother Smt. Jayanti Jaiswal, R/o Village And Post- Chandipara, Pamgarh, P.S. And Tah. Pamgarh, Distt. Janjgir-Champa C.G.
6. Shri Sukhiram Jaiswal S/o Late Rajit Jaiswal Aged About 70 Years R/o Village And Post- Chandipara, Pamgarh, P.S. And Tah. Pamgarh, Distt. Janjgir-Champa C.G.
7. Smt. Laini Bai W/o Sukhiram Jaiswal Aged About 70 Years R/o Village And Post- Chandipara, Pamgarh, P.S. And Tah. Pamgarh, Distt. Janjgir-Champa C.G. **---- Appellants**

Versus

1. Munavvar Ahmad Khan S/o Abdul Sattar Khan R/o Devri Khurd, Behind Water Supply Tank, Near Ware House Godown, P.S. Torwa, Tah. And Distt. (Revenue & Civil) Bilaspur C.G. (Driver of the Auto No.- C.G. 10/C/7556)
2. Pradip Kumar Makre S/o Jagendra Prasad Makre R/o Lal Khadan, In Front Of Pedalwar Farm House, P.S. Torwa, Tah. And Distt. (Revenue & Civil) Bilaspur C.G. (Owner of the Auto No.- C.G. 10/C/7556)
3. Universal SOMPO General Insu.Co.Ltd. Thru- Branch Manager, Branch Office- Express I.T. Park, Plot No. E.L.-94, T.T.C. Industrial Area, M.I.D.C. Mahape, Nawi Mumbai- 400710 **---- Respondents**

For Appellants:	Shri Anand Kesharwani, Advocate.
For Respondents No. 1 & 2:	Shri Vikas Bhaskar, Advocate.
For Respondent No. 3:	Shri Amrito Das along with Ms. Pratibha Das, Advocate.

Single Bench:Hon'ble Shri Sanjay Agrawal, J

Award On Board

30.08.2019

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') questioning the legality and propriety of the award dated 03.09.2014 passed by the Second Additional Motor Accident Claims Tribunal, Bilaspur (hereinafter referred to as 'the Claims Tribunal') in Claim Case No. 364/2014 by which, the learned Claims Tribunal while allowing the claim in part, has awarded total amount of compensation to the tune of Rs. 3,85,000/- with 6% interest per annum from the date of filing of the claim petition till its realization while fastening the liability upon the insurance company. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 19.01.2013, deceased Narottam Jaiswal was returning from Bilaspur to Chandipara Pamgarh by his motorcycle along with his friend Vijay Ogre and as soon as he reached near the village Pendi, it was dashed vehemently by the offending vehicle “Auto” bearing its registration number CG-10-C-7556, which was owned by Non-applicant No. 2 Pradeep Kumar Maakre, insured with Non-applicant No. 3 Universal SOMPO General Insurance Company Limited. At the relevant time, the alleged vehicle was being driven rashly and negligently by its driver Munavvar Ahmad Khan. Owing to which, the alleged accident occurred, by which, deceased Narottam Jaiswal sustained serious injuries and expired on the spot.

3. On account of the aforesaid accident, the Claimants being legal

representatives, instituted a claim petition enumerated under Section 166 of the Act, 1988 by submitting *inter alia* that the deceased, who was 48 years old, was involved in a cloth business and was running a shop known as *Narayan Narottam Cloth & Readymade Store* and used to earn Rs. 15,000/- per month, and therefore, total amount of compensation to the tune of Rs. 21,50,000/- has been claimed by them.

4. The aforesaid claim has been contested by Non-applicants No.1 & 2, driver and owner of the vehicle in question by saying that the driver of the offending vehicle was not negligent in driving the same and the deceased himself was responsible for the alleged accident. It is contested further on the ground that since the vehicle in question was insured with Non-applicant No.3/Insurance Company, therefore, in case of any liability being fastened, the same could be indemnified by the Insurance Company. Non-applicant No.3/Insurance Company while disputing the alleged occupation and income of the deceased contested the claim mainly on the ground that the vehicle in question, which was insured as a Goods carrying package policy, was being driven by the driver, who was not holding the effective and valid driving licence, therefore, the Insurance Company cannot be held liable in relation to the alleged accident.

5. After considering the evidence led by the parties, it was held by the Claims Tribunal that the alleged accident occurred on 19.01.2013 due to rashness and negligent driving by the driver of the offending vehicle, resulting the sad demise of Narrotam Jaiswal. It held further that the vehicle in question was not being used in violation of the insurance policy and that by considering the income of the deceased at Rs. 4000/- per month and that by deducting one-fourth of it towards his personal

expenses and by applying the multiplier of 10, awarded total amount of compensation to the tune of Rs. 3,85,000/-, with 6% interest per annum from the date of filing of the claim petition till its realization.

6. Being aggrieved, the Claimants have preferred this appeal. Shri Anand Kesharwani, learned counsel for the Appellants/Claimants submits that the award impugned as passed by the Claims Tribunal by observing that the monthly income of the deceased is Rs.4000/- is apparently contrary to the materials available on record. He submits further that the deceased was involved in a cloth business and was running a cloth shop for over more than 14-15 years, and therefore, the income of the deceased as assessed by the Claims Tribunal to the tune of just Rs.4000/- was extremely on lower side. He submits further that as many as 7 persons were dependant upon the deceased, therefore, deduction of one-fourth instead of one-fifth was not proper. According to his further submission, the deceased was 48 years old, therefore, a proper multiplier of 13 ought to have been applied. Besides, future prospects of his income in order to provide just and proper compensation was also taken into consideration. Having failed so, the Claims Tribunal has erred in awarding the meagre amount of compensation payable to the Claimants. The award impugned is, therefore, liable to be modified and/or enhanced.

7. On the other hand, learned counsel for the Respondents submits that while awarding the amount of compensation, the Claims Tribunal has rightly assessed the income of the deceased at Rs.4000/- as Claimants have failed to produce any material document in this regard and contrarily, wife of the deceased has admitted that her husband used to earn Rs.3000/- to 4000/- per month. As such, just and fair compensation was

provided to the Claimants and the award impugned is, therefore, not liable to be interfered.

8. I have heard learned Counsel for the parties and perused the entire record carefully.

9. From perusal of the record, it appears that the amount of compensation, as awarded by the Claims Tribunal by assessing the monthly income of the deceased to the tune of Rs.4000/- and by applying multiplier of 10 even without considering the future prospects of the income of the deceased and that by deducting one-fourth instead of one-fifth towards his personal expenses deserves to be modified.

10. It appears from perusal of the record that the deceased was involved in a cloth business and was running a shop known as *Narayan Narottam Cloth & Readymade Store* and in order to establish the income of the deceased, a diary marked as Ex.P.10 pertaining to said business was produced. A bare perusal of it would show that while running the said shop, deceased Narottam Jaiswal had maintained the accounts of his customers for the period of over more than 14-15 years. It, therefore, appears that he would have certainly earned at least Rs.5500/- per month and one-fifth of it would have been expended for himself as total members dependant upon him were 7 in number. He was 48 years old, therefore, multiplier of 13 ought to have been applied instead of 10 in view of the principles laid down in the matter of ***Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another*** reported in **(2009) 6 SCC 121.** That apart, future prospects of the income of the deceased to the extent of 25% of his monthly income along with proper amount of compensation towards conventional heads was also required to be taken into

consideration in order to provide just and proper compensation to the Claimants in the light of the principles laid down in the matters of ***National Insurance Company Limited Vs. Pranay Sethi and others*** and ***Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram and Others*** reported respectively in **(2017) 16 SCC 680** and **(2018) 18 SCC 130.**

11. Considering the facts and circumstances of the case and in view of the principles laid down in the aforesaid decisions, I deem it proper to assess the monthly income of the deceased at Rs. 5500/-, yearly Rs.66,000/- and that by adding 25% of it, i.e., 16,500/- towards future prospects of his income, it would then work out at Rs. 82,500/- (Rs.66,000/- + Rs.16,500/-) and by deducting one-fifth of it, i.e., Rs.16,500/- towards personal expenses of the deceased, it would come to Rs.66,000/- (Rs. 82,500/- - Rs.16,500/-) and by applying multiplier of 13, the total dependency would arrive at Rs.8,58,000/-. In addition to this, the Claimants are also entitled to a sum of Rs.3,50,000/- towards conventional heads instead of Rs.25,000/- as assessed by the Claims Tribunal. The breakup of which is as under:-

(i) Loss of consortium to wife	-	Rs.40,000/-
(ii) Loss of filial consortium to mother and father of the deceased at Rs.40,000/- each	-	Rs.80,000/-
(iii) Loss of love and affection to four children at Rs.50,000/- each	-	Rs.2,00,000/-
(iv) funeral expenses	-	Rs.15,000/-
(v) Loss of estate	-	Rs.15,000/-
Total	**-**	**Rs.3,50,000/-**

12. The Claimants are thus entitled to a total amount of compensation to the tune of Rs.12,08,000/- instead of Rs.3,85,000/- as awarded by the Claims Tribunal and the enhanced amount of compensation, i.e., Rs. 8,23,000/- (Rs.12,08,000/- - Rs.3,85,000/-) shall carry interest at the rate of 6% interest per annum from the date of filing of the claim petition till its realization. As far as other conditions as observed by the Claims Tribunal are concerned, they shall remain intact.

13. Consequently, the appeal preferred by the Claimants is hereby allowed in part to the extent indicated herein above. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

Nikita