

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 771 of 2014**

(Arising out of award dated 21.01.2014 passed in Motor Accident Claim Case No.08 of 2013 by the Motor Accident Claims Tribunal, Jashpur, (C.G.)

1. Andhu Ram S/o Boda Ram, aged about 28 years
2. Minor Kumari Itwari D/o Andhu Ram, aged about 6 years
3. Smt. Sukhmaniya W/o Andhu Ram, aged about 26 years
All Caste Dihari Korva, Appellant No.2 is minor through next friend father appellant No.1, R/o village Rouni, Tahsil Bagicha, District Jashpur, Civil and Revenue District Jashpur (C.G.)

---- Appellants**Versus**

1. Shiv Kumar Yadav, S/o Ganga Prasad Yadav, aged about 42 years, R/o Chandni Chowk, Ward No.20, Near Sunrise School, Ambikapur, District Sarguja (C.G.)
2. Rajendra Prasad Gupta, S/o Satyanarayan Gupta, aged about 30 years, R/o Lal Bahadur Shastri Ward Mayapur, Ambikapur, District Ambikapur (C.G.)
3. Chola Mandalum M.S. General Insurance Company Limited, Regional Office & Branch Office Opp. LIC Building Pandri, Raipur (C.G.)

---- Respondents

For Appellants	: Shri A.K. Prasad, Advocate
For Respondents No.1 & 2	: None
For Respondent No.3	: Shri Abhishek Sinha, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Parth Prateem Sahu, Judge****17.07.2020**

1. Heard on I.A. No.1, which is an application for condonation of delay in filing the appeal. The appeal is barred by 90 days.

For the reasons assigned in the application, the same is allowed. Delay in filing the appeal is hereby condoned.

2. With the consent of the parties, the appeal is being heard finally.
3. This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') by the claimants challenging the impugned award dated 21.01.2014 passed by the Motor Accident Claims Tribunal, Jashpur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.8 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.2,81,400/- as compensation in a death case.
4. Brief facts relevant for disposal of this appeal are that, on 14.10.2012, at about 6.00 PM, Boda Ram went to shop at village Rauni, while so, near Rauni Chowk, one truck bearing registration No.CG-15/AC/0386 (hereinafter referred to as 'offending vehicle') coming from Pandrapath loaded with potato driven by respondent No.1, dashed Boda Ram. In the aforementioned accident, both the legs of Boda Ram came under the wheels of offending vehicle and he suffered grievous injuries over his legs and head. He was taken to Community Health Centre, Bagicham from where he has been referred to District Hospital, Ambikapur. During the

course of treatment, Boda Ram succumbed to the injuries suffered by him on 21.10.2012.

5. The appellants/claimants who are son, granddaughter and daughter-in-law of deceased Boda Ram filed claim application under Section 166 of the M.V. Act seeking compensation of Rs.11,25,000/- on account of untimely motor accidental death of late Boda Ram.
6. Respondents No.1 and 2/non-applicants No.1 and 2, who are driver and owner of the offending vehicle filed reply to claim application denying the pleadings of claim application, they have denied the fact of accident also. It was pleaded that death of Boda Ram was not on account of motor accidental injuries suffered by him and further that the report has been lodged against the driver of offending vehicle on false and fabricated grounds.
7. Respondent No.3/non-applicant No.3/Insurance Company submitted reply to claim application denying the fact of accident as also the death of Boda Ram on account of motor accidental injuries suffered by him, there was no valid permit and fitness of the offending vehicle and there was no valid and effective driving license with respondent No.1 on the date of accident. There was breach of conditions of insurance policy and the Insurance Company is not liable for payment of any amount of compensation.

8. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties held that death of Boda Ram was on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1; breach of conditions of insurance policy could not be proved and awarded a total sum of Rs.2,81,400/- as compensation
9. Shri A.K. Prasad, learned counsel for the appellants submits that learned Claims Tribunal erred in assessing the income of the deceased and taking only 283 working days in a year, whereas the deceased was working as labour, therefore, the working days cannot be reduced and for the purpose of calculating the amount of compensation, whole 12 months ought to have been taken for the purpose of assessing the income of the deceased not awarding any amount towards future prospects. He further submits that learned Claims Tribunal erred in assessing the age of the deceased as 58 years instead of 50 years and thereby applying the wrong multiplier for calculating the amount of compensation. He also submits that learned Claims Tribunal erred in awarding meager amount of compensation towards other conventional heads in view of law laid down by Hon'ble Supreme Court in the matters of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru**

Ram and Others reported in **(2018) 18 SCC 130**. It is also pointed out that learned Claims Tribunal has not calculated and awarded any amount towards loss of future income.

10. Per contra, Shri Abhishek Sinha, learned counsel for respondent No.3/Insurance Company submits that the learned Claims Tribunal has rightly evaluated the age of deceased on the basis of evidence placed on record by the claimants themselves. He further submits that learned Claims Tribunal taking note of the holidays, rightly calculated the amount of compensation by holding the working days as 283 days in a year, which cannot be said to be erroneous. It is further pointed out that so far as the award of amount on other conventional heads has been considered by Hon'ble Supreme Court recently in the matter of **United India Insurance Company Limited v. Satinder Kaur @ Satwinder Kaur and Others** passed in **Civil Appeal No.2705 of 2020** on **30.06.2020**.
11. We have heard learned counsel for the respective parties and perused the record carefully.
12. So far as the first ground raised by learned counsel for the appellants that learned Claims Tribunal erred in taking total number of working days in a year to be 283 days appears to be not correct. The claimants in their pleadings have stated that deceased Boda Ram prior to the date of accident was

earning Rs.150/- per day from agricultural and labour work. The deceased is shown to be working as labour prior to the date of accident. For a labour there is no fixed holidays and he has to earn everyday for his survival. In these circumstances, we are of the view that the working days for labour should be 30 days in a month. It is held accordingly. The learned Claims Tribunal accepted the income of the deceased as Rs.150/- per day. For the purpose of calculating the income of the deceased, the income of the deceased is to be taken as Rs.4,500/- per month (150 x 30) and Rs.54,000/- per annum.

13. So far as the second ground raised by learned counsel for the appellants with regard to age determined by learned Claims Tribunal to be erroneous is concerned, we have perused paragraphs-12 and 13 of the impugned award, in which, learned Claims Tribunal has taken note of the fact that age of the deceased pleaded in the claim application and statement of Andhu Ram (AW-1) to be 50 years, but it does not confirm by any other evidence. Learned Claims Tribunal has taken into consideration Ex.A/5, death information prepared by the Police, Ex.A/6, MLC report of Community Health Centre, Bagicha, wherein age of deceased has been shown to be 58 years. Learned Claims Tribunal also taken into consideration Ex.A/7, covering memo of postmortem report, wherein the age of deceased

has been shown as 58 years as also Ex.A/1, First Information Report, which was lodged by Shoma Ram (younger brother of deceased), in which, the age of informant has been mentioned as 55 years. Learned Claims Tribunal out of the aforementioned evidence, taken note of Ex.A/1, Ex.A/5 and Ex.A/6 and held the age of deceased to be 58 years.

14. Admittedly, in the case at hand, there is no admissible piece of evidence with regard to the age of deceased or the age of informant Shoma Ram. Shoma Ram did not enter into the witness-box. The age recorded in Ex.A/1 i.e. First Information Report is only based on assumption, which cannot be accepted as admissible piece of evidence. In absence of any documentary evidence with regard to age when the claimants who are residents of interior village of tribal area as well as the caste of claimants and deceased has been mentioned as 'Dihari Korva', where the literacy rate is very less in the earlier days when the deceased or his brother have grown up. The documents Ex.A/5 (MLC information given by the District Hospital) and Ex.A/6 (MLC report), which was relied by learned Claims Tribunal for ascertaining the age of deceased where the age of deceased has been shown to be 58 years appears to be recorded on the basis of presumption and the age informed by any person who brought patient to the Hospital or

deceased to the Hospital only on the basis of their presumption, which cannot be said to be the date of birth or age of deceased bearing in these documents to be accurate age of the deceased.

15. The other evidence which is available on record is Ex.A/7 i.e. postmortem report conducted by the doctor at District Hospital at Ambikapur. Before him also, MLC information was there, but he recorded the age of deceased as 50 years. The covering document available on record of Ex.A/7 is the application given by the Police authorities for conducting the postmortem, in which, the age of deceased has been shown to be 58 years. Perusal of the postmortem report (internal page-3), age of the wife of deceased Boda Ram is mentioned showing her to be 45 years of age. Andhu Ram, son of deceased was examined as AW-1 and his age has been shown to be 28 years on 29.01.2013.
16. In view of aforementioned evidence available on record and in view of facts and circumstances of the case where the deceased and informant are residents of interior scheduled area and 'Dihari Korva' by caste, it will be appropriate to take the age of deceased mentioned in the postmortem report (Ex.A/7) for application of multiplier for computing the amount of compensation. In the considered opinion of this

Court, we hold that on the date of accident, the deceased was aged about in between 50 to 55 years.

17. Learned Claims Tribunal has awarded only Rs.40,000/- towards other conventional heads, which in the facts and circumstances of the case appears to be on lower side in view of judgments passed by Hon'ble Supreme Court in the matters of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited** (supra).
18. The case law relied upon by learned counsel for respondent No.3/Insurance Company to say that amount of other conventional heads is to be awarded in view of the law laid down by Hon'ble Supreme Court in the matter of **Satinder Kaur @ Satwinder Kaur** (supra). The Hon'ble Supreme Court for awarding the amount of compensation on other conventional heads has relied upon the judgment passed by Constitutional Bench in **Pranay Sethi** (supra). The amount of other conventional heads are to be awarded under three heads; which are (i) **Loss of Consortium** (ii) **Loss of Estate** (iii) **Funeral Expenses**. In the said judgment, Hon'ble Supreme Court has further taken note of its earlier judgment passed in **Magma General Insurance Company Limited** (supra), in which, concept of 'consortium' has been explained. It can be of three types; (i) **Parental consortium** (payable to children because of the death of parents); (ii)

Spousal consortium (payable to the spouse because of the death of the partner) and (iii) **Filial consortium** (payable to the parents because of the death of children).

19. In view of above, the amount of compensation awarded by learned Claims Tribunal requires re-consideration and re-computation, which is as under :

As discussed above, the income of deceased is taken as Rs.4,500/- per month i.e. Rs.54,000/- per annum. On the date of accident, the deceased Boda Ram was 50 years of age and not in a permanent employment, therefore, in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra), there will be an addition of 10% of the income towards future prospects. By adding 10% of the income towards future prospects, the total annual income of deceased will come to Rs. 59,400/- ($54,000 \times 10\% = 5,400$ and $54,000 + 5,400$). There will be deduction of $1/3^{\text{rd}}$ in view of dictum of Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) v. Delhi Transportation Corporation** reported in **(2009) 6 SCC 121** towards personal and living expenses. After deducting $1/3^{\text{rd}}$ towards his personal and living expenses, yearly loss of dependency of the claimants will come to Rs.39,600/- ($59,400 / 3$ and $59,400 - 19,800$). As we have held the age of the deceased to be in between 50-55 years, the appropriate multiplier would be 11 as

applicable to the age group of 51 to 55 as held by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.)** (supra) and not 8, which was applied by learned Claims Tribunal. By applying the multiplier of 11, the amount of compensation will come to Rs.4,35,600/- (39,600 x 11). Apart from above, the claimants will be further entitled for a sum of Rs.40,000/- towards parental consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

20. Now, the appellants/claimants are entitled for total compensation of Rs.5,05,600/- (4,35,600 + 40,000 + 15,000 + 15,000) instead of Rs.2,81,400/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 7% per annum from the date of filing of claim application till its realization. The other conditions imposed by learned Claims Tribunal shall remain intact.
21. For the foregoing reasons, appeal is allowed in part and impugned award passed by learned Claims Tribunal is modified to the above extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge