

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 461 of 2014**

- National Insurance Company Limited, Branch Tatiband, Bushnesh Centre in front of Bharat Mata School, G.E. Road, Raipur C.G.

-----Appellant/Non-applicant 3**VERSUS**

1. Smt. Sarita Bijoura Wd/o Late Dinesh Bijoura, aged about 42 years
2. Rupesh Bijoura S/o late Dinesh Bijoura, aged about 18 years
3. Ku. Rupali Bijoura D/o late Dinesh Bijoura, aged about 16 years
4. Basant Bijoura S/o late Joshan Prasad Bijoura, aged about 69 years
5. Khorbahrin W/o Basand Bijoura, aged about 65 years

All R/o village Karga Tahsil and Police Station Patan, District Durg C.G.

-----Claimants

6. Ramkripal @ Kunal S/o Narad Nirmalkar aged about 23 years, R/o Village Loharshi, Tahsil and Police Station Patan, District Durg, C.G. **-----Driver**
7. Surendra Kumar Banchhor S/o Devnath Banchhor, aged about 52 years, R/o Village Sikola, Tahsil and District Durg C.G. **-----Owner**

For Appellant	:	Mr. Qamrul Aziz, Advocate.
For Respondent No. 1 to 5	:	Mr. Jitendra Gupta, Advocate.
For Respondent 6 & 7	:	Mr. Sunil Verma, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, J.****20/07/2020**

1. The appellant-Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988, questioning the legality and validity of the impugned award dated 04-01-2013 passed in Claim Case No. 69/2013 by Sixth Additional Motor Accident Claims Tribunal, Durg District Durg, Chhattisgarh, wherein learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs. 9,06,300/- as compensation in a death case.
2. The appeal is filed with a delay of 8 days along with an application for condonation of delay in filing the appeal for the reasons assigned in the

application I.A. No.01/2014. Delay in filing the present appeal is condoned.

3. Respondent 1 to 5 have also filed cross appeal under Order 41 Rule 22 of the CPC which is also barred by 6 days. The learned counsel appearing for Respondent 1 to 5 upon pointing out the delay in filing the cross appeal makes an oral prayer that the claimants belong to the family of lower strata and they have approached immediately after making arrangements and for these reasons the delay of 6 days in filing the cross appeal may be condoned. Looking to the fact that the claimants are residents of rural area, the period of Covid 19 pandemic and looking to the beneficial object of the Motor Vehicles Act, we find it appropriate to accept the oral prayer made by the learned counsel appearing for Respondent 1 to 5 for condoning the delay of 6 days in filing the cross appeal. Delay in filing the cross appeal is also condoned.
4. With the consent of both the parties, the appeal is heard finally.
5. Facts relevant for disposal of this appeal are that on 04-12-2012 at about 09:00 p.m. when Dinesh Bijoura was traveling on his motor cycle bearing Registration No. CG 07ZM 9443, returning to his village Karga from Raipur, while so, he was knocked down by one Bolero Jeep bearing Registration No. CG 07 MA 0237 (referred to as "offending Vehicle") in front of Motipur RCM Camp on Funda-Raipur Road. In the aforementioned accident, Dinesh suffered grievous injuries over his person, he was taken to Mekahara Hospital, Raipur, where he was declared dead. The accident was reported to concerned Police Station based on which, crime bearing number 39/12 was registered against Respondent 6/ driver of the offending Vehicle.
6. Respondent 1 to 5 filed claim application under Section 166 of the Motor Vehicles Act before the learned Claims Tribunal seeking compensation of Rs. 40,00,000/- against untimely motor accidental death of late Dinesh, pleading therein that the deceased prior to the accident was engaged as Reporter and also doing business of book depot and fancy store along with agricultural work and earning Rs.

20,000/- per month.

7. Respondent 6 and 7/ Non-applicant 1 and 2 who are driver and owner of the offending Vehicle submitted reply to the claim application and denied almost all the pleadings made in the claim application for want of knowledge and further pleaded that on the date of accident, offending Vehicle was insured with Appellant/ Non-applicant 3-Insurance Company for a period of 21-09-2011 to 20-09-2012, on the date of accident, Respondent 6/ driver was possessing valid and effective driving licence and deceased himself drove his vehicle rashly and negligently. They have further pleaded that the liability, if any, would be upon the Insurance Company.
8. Appellant-Insurance Company submitted its separate reply to the claim application and denied the pleadings made in paragraph 1 to 7 of the claim application, they have also denied the income as pleaded in the claim application, death of late Dinesh was also denied by them to be a motor accidental death, the accident with unknown vehicle as per merg intimation
9. Learned Claim Tribunal, upon appreciation the pleadings and evidence placed on record by the respective parties held that, death of late Dinesh to be on account of motor accidental injuries suffered by him due to rash and negligent driving of the driver of offending Vehicle. Offending Vehicle was insured with Insurance Company, breach of conditions of insurance policy were not found to be proved and awarded a total sum of Rs. 9,06,300/- as compensation on different heads.
10. Learned counsel for the Appellant-Insurance Company submits that the income taken by the learned Claims Tribunal after adding 30% of the future prospects is erroneous. He also pointed out that the learned Claims Tribunal awarded Rs. 4,50,000/- on other heads which is shockingly on higher side and inflated the amount of compensation almost to the double.
11. Respondent 1 to 5/ claimants, in their cross appeal have raised the ground that

the learned Claims Tribunal assessed monthly income of the deceased on lower side and further the addition of future prospects in the income to the extent of 30% in the monthly established income of the deceased is just and proper, award of compensation on other conventional heads is also proper in the facts and circumstances of the case and further that the multiplier applied of 13, in the facts and circumstances of the case to be erroneous.

12. We have heard learned counsels of both sides.

13. As the policy and the liability fastened upon the Insurance Company by the learned Claims Tribunal is not in dispute and therefore, consideration before this Court is with regard to the quantum of the amount of compensation awarded by the Claims Tribunal only. Learned Claims Tribunal assessed the income of the deceased as Rs. 3,000/- per month and the accident took place on 04-01-2012. As the learned counsel appearing for Respondent 1 to 5 has conceded that the claimants have not filed any acceptable piece of documentary evidence before the Claims Tribunal to prove the income, the only way for assessing the amount of compensation in the cases of motor accidents claim cases is by way of fixing the income on notional basis. The notional income of a person is to be fixed considering the date of accident, price index, cost of living as also the wage structure. As in this case, the claimants have not placed any admissible piece of evidence as admitted by the learned counsel for Respondent 1 to 5/ Claimants, we find it appropriate to assess the income of the deceased on notional basis as Rs. 4,500/- per month, treating him to be a manual labour. The deceased, on the date of accident, has been shown to be 48 years of age, therefore, in view of the dictum of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi** reported in (2017) 16 SCC 680, there will be an addition of 25% of the established income towards future prospects. Five claimants have been shown including the aged parents of the deceased of 69 years and 65 years of age, in the aforementioned facts of the case, the learned Claims Tribunal has rightly applied the deduction of 1/4th towards personal and

living expenses which is in-conformity with the judgment passed by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corp. & Anr** reported in **(2009) 6 SCC 121**. So far as, the application of multiplier is concerned, the age of the deceased on the date of accident has been taken as 48 years and the multiplier applied by the learned Claims Tribunal is 13, which is also in-conformity with the judgment passed by the Supreme Court in **Sarla Verma (supra)**. The Tribunal awarded Rs. 1,00,000/- (One Lac) towards loss of consortium to spouse and Rs. 2,00,000/- (Two Lac) towards loss of love and affection to Respondent 2 and 3 and further Rs. 1,00,000/- (One Lac) towards loss of love and affection to Respondent 5 (mother) and Rs. 25,000/- towards loss of love and affection to Respondent 4 (father), which is definitely on higher side as stated by the learned counsel for the Insurance Company and by the Hon'ble Supreme Court in case of **Pranay Sethi (supra)**.

14. In view of the above, the amount of compensation to be awarded to Respondent 1 to 5/ Claimants requires recalculation which is as under.

15. Income of the deceased is taken as Rs. 4,500/- per month i.e. Rs. 54,000/- per annum, by adding 25% of the established income towards future prospects, total income of the deceased will come to Rs. 67,500/- [Rs. 54000+25% of Rs. 54000], by applying deduction of 1/4th towards personal and living expenses, the yearly loss of dependency will come to Rs. 50,625/-, looking to the age of deceased as 48 years, applying the multiplier of 13, the yearly total loss of dependency will come to Rs. 6,58,125/- [Rs. 50625x13]. The amount on other conventional heads is to be awarded in accordance with the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** as well as **Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others** reported in **(2018) 18 SCC 130**.

16. The Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** has held that the loss of consortium for spouse to be awarded as Rs. 40,000/- as per the

dictum of the Supreme Court in the case of **Nanu Ram (supra)**, the children will be entitled for loss of parental consortium as Rs. 40,000/- and Rs. 40,000/- towards filial consortium to aged parents. Apart from the above, the claimants will be further entitled for Rs. 15,000/- towards funeral expenses and Rs. 15,000/- towards loss of estate, which makes the total amount of compensation on other conventional heads as Rs. 1,50,000/- instead of Rs. 4,50,000/- as awarded by the learned Claims Tribunal. Now the appellants-claimants will be entitled for a total sum of **Rs. 8,08,125/-** [Rs.6,58,125+Rs.1,50,000] instead of Rs. 9,06,300/- awarded by the learned Claims Tribunal. The amount of compensation will carry interest @ 6% p.a. from the date of filing of claim application till its realization. Rest conditions imposed by the learned Claims Tribunal will remain intact.

17. Consequently, the appeal as well as cross objection are allowed in part and the impugned award passed by the learned Claims Tribunal is hereby modified to the extent as indicated herein-above.

Sd/-
(P.R. Ramachandra Menon)
 Chief Justice

Sd/-
(Parth Prateem Sahu)
 Judge