NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1171 of 2014

- The New India Assurance Company Limited, thru- Divisional Manager, The New India Assurance Co.Ltd., Bilaspur, 2nd Floor, Rama Trade Centre, Opposite Rajeev Plaza, Bus Stand Road, Bilaspur, Chhattisgarh

---- Appellant/Insurer

Versus

1. Dhan Bai. Wd/o Amol Das Tandan Aged About 50 Years, Occupation-House wife
2. Bharat Lal Tandan S/o Amol Das Tandan Aged About 28 Years, Occupation-Agriculturist
3. Jagdish Tandan S/o Amol Das Tandan Aged About 26 Years, Occupation-Agriculturist

   All are R/o Village- Ghuksa, P.S. Kawardha, Tah. Kabirdham, Distt. Kabirdham (Kawardha), Chhattisgarh (Claimants)
4. **(Deleted)** Jitendra Mishra S/o Siyaram Mishra Aged About 43 Years R/o In front Of Kshitij School, House No. Mig- 120-A, Dhanwantari Nagar, Jabalpur, P.S. Gada, Jabalpur M.P., District : Jabalpur, Madhya Pradesh (Driver)
5. Dilbag Singh Bal, S/o Martkhan Singh Bal R/o H.D. 16, Dhanwantari Nagar, Jabalpur M.P.

----Respondents

For Appellant/Insurance Company	:	Shri Saurabh Sharma, Advocate
For Respondents	:	Shri Dinesh Tiwari, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
04.08.2020

1. Appellant/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 20.08.2014 passed in Claim Case-52 of 2014 by Motor Accident Claims Tribunal, Kabirdham (Kawardha) CG (for short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed Claim application in part and awarded a sum of Rs.7,76,000/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 07.03.2013, Amol Das Tandan (since deceased) was guarding the Tractor-Trolley which was standing in the industrial area of Harinchapra, by sitting in front

of the vehicle. While so, at about 9.30 pm, one Truck bearing No.MP HB-4171 (for short, 'offending vehicle'), driven by NA1 rashly and negligently dashed the Tractor-Trolley. In the aforementioned accident, Amol Das Tandan suffered grievous injuries over his person. He was taken to the Government Hospital, Kawardha, where doctors declared him dead.

3. Claimants, who are widow and children of deceased have filed an application under Section 166 of Motor Vehicle Act, 1988 seeking compensation of Rs.18,85,000/- on the ground that the deceased was engaged in agricultural work as well as labour work. He was earning Rs.5,00,000/- per annum from agricultural work and Rs.2,00,000/- per annum from labour work. The claimants are dependants upon the deceased.

4. NA1 and 2 , who are driver and owner of offending vehicle even after service of notice, did not appear before the Claims Tribunal and they were proceeded *ex-parte*.

5. Appellant/NA3/Insurance Company submitted reply to claim application, while denying the facts pleaded therein, further pleaded that deceased while driving Tractor-Trolley, met with an accident with offending vehicle; income as pleaded in the claim application of the deceased was also denied; information of accident as required under the Act 1988 was not forwarded to the Insurance Company by owner of offending vehicle, NA1/driver of offending vehicle was not possessing valid and effective driving licence, there was breach of conditions of Insurance Policy.

6. Learned Claims Tribunal, upon appreciation of pleadings and evidence placed on record by respective parties, held that the claimants were dependant

upon the deceased; motor accidental death of deceased was on account of rash and negligent driving of offending vehicle driven by NA1; by assessing income of deceased as Rs.1,25,000/- per annum, awarded a sum of Rs.7,76,000/- as compensation.

7. Learned counsel for the appellant submits that the challenge in this appeal is only with respect to the quantum of compensation awarded to respondents/claimants by assessing Rs.1,25,000/- as proved income of the deceased. He submits that except the pleading with regard to the income of Rs.5,00,000/- from the agricultural work, and Rs.2,00,000/- from labour work, there is no any other material/evidence placed on record by the claimants. It was further argued that the claimants have not even placed on record the documents with regard to the agricultural property recorded in name of deceased to presume any income from agricultural work/property. He further submits that even if it is accepted that the deceased was having agricultural property, the property will remain with the claimants /legal heirs of the deceased after his death and therefore, loss of income could not be assessed taking the entire income from his agricultural property. But loss, if at all, said to have been suffered by the claimants, is only the amount of payment to be made to the care taker/supervisor of agricultural property, at the most. He places his reliance on the judgment passed by Hon'ble Supreme Court in the case of **State of Haryana and another vs Jasbir Kaur and others** reported in AIR2003 SC 3696 and in **Ponnumany @ Krishnan and another Vs VA Mohanan and others** reported in AIR 2008 SC 2014 to support his contention.

8. Per contra, Shri Dinesh Tiwari, learned counsel for the respondents/claimants submits that learned Claims Tribunal taking into

consideration entire facts and circumstances of the case and evidence placed on record by the claimants in support of their pleadings, has rightly assessed income of the deceased and awarded just amount of compensation to the claimants, which does not call for any interference.

9. We have heard learned counsel for the respective parties and also perused the record.

10. So far as the ground of challenge raised by the appellant/Insurance Company in this appeal, ie income assessed by learned Claims Tribunal, we have perused the record of claim case. The claimants in para-6 of claim application, have pleaded that deceased was engaged in agricultural work and also labour work, from which he was earning Rs.5,00,000/- and Rs.2,00,000/- respectively. Accordingly, income of the deceased has been pleaded as Rs.7,00,000/- per annum. In the pleading, the claimants have not pleaded in very specific terms about area of agricultural land recorded in the name of deceased or on which he was doing agricultural work. In support of their claim application, claimants have filed final report under Section 173 of the Cr PC as Ex.A1, copy of FIR as A2, Police notification as A3, proceeding under Section 174 of the CrPC as Ex.A4, proceeding under Section 175 CrPC as A5, Naksha Panchnama as A6, post-mortem report as A7. The claimants have not placed on record any document of any nature showing the agricultural property recorded in the name of deceased himself or in the name of any member of the family. Even the claimants have not placed on record any document to show that the deceased was doing agricultural activities by taking the agricultural land of some other person.

11. Perusal of statement of the witnesses recorded before the learned Claims Tribunal of the claimants would show that Bharat Lal Tandan, son of the deceased was examined as AW1. In his affidavit under Order 18, Rule 4 of the CPC, except the manner in which the accident took place and the income of the deceased as Rs.7,00,000/- per annum, has not specifically stated as to from which property and the area of the agricultural land the deceased was earning Rs.5,00,000/- per year. The other witness examined is, Jag Tandan, who is also son of deceased. In his affidavit under Order 18 Rule 4 of the CPC stated that when deceased was on his way to Bhoramdev Sugar Factory, for selling sugar cane of his agricultural field, accident took place. This witness also has not stated the area of agricultural land deceased was having, no document of the land records have been placed on record for consideration. In these facts and circumstances of the case, when no documentary evidence with regard to the agricultural land has been placed on record before the learned Claims Tribunal to prove that this much agricultural land is recorded in the name of deceased or in the name of family members of deceased, we find some force in the submission of learned counsel for the appellant/Insurance Company that learned Claims Tribunal assessed the income of deceased on much higher side for computing compensation. In the above facts income of deceased can only be taken on notional basis for the purpose of calculating amount of compensation in absence of any admissible piece of evidence.

12. Hon'ble Supreme Court while considering the income of deceased from agricultural property have held that the agricultural property will remain with the family members even after the death of original owner of agricultural property and if the family members are unable to do agricultural activities, then it can be managed through supervisor or manager and therefore, the compensation, which

is required to be awarded to the claimants will be considered in accordance with the additional expenditure to be incurred by the family members of the deceased for it.

13. In the matter of **State of Haryana and another s Jasbir Kaur and others** reported in AIR2003 SC 3696, Hon'ble Supreme Court has held thus:

> “7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be “just and reasonable”. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has be to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non- arbitrary. If it is not so it cannot be just. (See Helen C. Rebello v. Maharashtra State Road Transport Corporation (AIR 1998 SC 3191).
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> 8. It is clear on a bare reading of the Tribunal's decision as affirmed by the High Court that no material was placed before the former to prove as to what was the income. As rightly contended by learned counsel for the appellants, there was not even any material adduced to show type of land which the deceased possessed. The matter can be approached from a different angle.

The land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered. Furthermore, there was no material before the Tribunal to arrive at the figure of Rs.4500 per month. No reason has been indicated to arrive at this figure. In the light of what has been discussed above about "just compensation" the income cannot be estimated without any material to justify the estimation. In the normal course, we would have remitted the matter back to the Tribunal for fresh consideration. But considering the fact that one young person lost his life, and the matter was pending before the Tribunal and the High Court for some years, we feel it appropriate to take all relevant factors into consideration, and decide the matter. Gauzing the relevant aspects, noted above, the monthly income is fixed at Rs.3000/- per month, and after deducting Rs.1,000/- for personal expenses, financial contribution so far as the claimants are concerned is fixed at Rs.2,000/- per month. Worked out on the basis of multiplier of 18, the compensation is fixed at Rs.4,32,000/-. The amount of Rs.2,000/- awarded by the Tribunal for funeral expenses is not interfered with and thus the total compensation comes to Rs.4,34,000/-. The rate of interest i.e. 9% per annum as fixed by the Tribunal and affirmed by the High Court is appropriate, and does not need any alteration. After adjusting the sum which was deposited pursuant to the order of this Court dated 14.12.2001, the balance amount along with interest shall be deposited within three months from today before the Tribunal. On the deposit being made along with the amount already deposited, a sum of Rs.3 lakhs shall be kept in the fixed deposit in the name of the claimants and a sum of Rs.50,000/- shall be kept in fixed deposit in the name of Smt. Baldev Kaur, mother of the deceased. They shall be entitled to draw interest on the deposit, which shall be re-deposited for further terms of five years. In case of urgent need, it shall be open to the claimants to move Tribunal for release of any part of the amount in deposit. The Tribunal shall consider the request for withdrawal and shall direct withdrawal in case of an urgent need and not otherwise of such sum as would meet the need. It shall be specifically indicated to the Bank where the deposits are to be made that no advance or withdrawal of any kind shall be permitted without the order of the Tribunal. It shall be open to the claimants to approach the Tribunal for variance of the order relating to deposit

> in fixed deposit, if any other scheme would fetch better returns and also would provide regular and permanent income."

14. In case of **Ponnumany @ Krishnan and another Vs VA Mohanan and others** reported in AIR 2008 SC 2014, Hon'ble Supreme Court has held thus:

> "6. The assessment of damages to compensate the claimants is beset with difficulties because from the nature of the things, it depends on many factors such as the amount that the deceased would have earned during the remainder of his life, the chances that the deceased may not have lived to their life expectancy, the chances that the deceased might get more or less income.
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> 7. In the present case, although the first appellant has placed material before the court to show that he owned the agricultural lands but there is no convincing evidence to prove the income out of that. That apart, since he owned the land it cannot be said that there is a total loss of income due to the injury suffered by the appellant: thus, the calculation of the amount of compensation on the basis of the notional income cannot be faulted with."

15. As the claimants failed to produce the area of agricultural land available with them on the date of accident to ascertain the agricultural income and even if there is agricultural land, then, the family can manage through supervisor, we are of the view that income assessed by learned Claims Tribunal to the tune of Rs.1,25,000/- per annum is not sustainable and it is hereby set aside.

16. It is no doubt, that the Act of 1988 is a beneficial piece of legislation and the legal heirs of deceased, who succumbed to death on account of motor accidental injuries are entitled for just and proper amount of compensation. For calculating the just amount of compensation from which the claimants have been deprived off due to untimely motor accidental death of their only bread winner, proper mode for assessing income of the deceased would be on notional basis,

considering several factors like age of the deceased, price index, wage structure, cost of living etc.

17. In the case at hand, age of the deceased has been shown in the claim application as 55 years and in the post-mortem report also, age of deceased has been shown as 55 years. Therefore, age of the deceased can be taken as 55 years on the date of accident. He being an able man and looking to the pleading made in the claim application about the earning from his agricultural as well as labour work, we find it appropriate to assess the income of deceased as Rs.6,000/- per month and Rs.72,000/- per annum.

18. Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in **2017 16 SCC 680**, has held that the person/deceased who was not in permanent employment or in self employment, then, there will be an addition of 10% of his established income towards future prospects, in case the deceased was in between the age group of 50-60 years.

19. The claimants will also be entitled for the amount on other conventional heads as held by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and in the case of **Magma General Insurance Company Limited Vs Nanu Ram** reported in 2018 ACJ 2782.

20. In view of the facts and circumstances of the case, we find it appropriate to re-calculate the amount of compensation, which is as under.

a) Income of the deceased is taken @ Rs.6,000/- per month and Rs.72,000/- (6000 x 12) per annum.

b) By adding 10% of his established income towards future prospects as per case of **Pranay Sethi** (supra), total yearly income comes to Rs.79,200/- {72000 + (72000 x 10/100)}.

c) There will be deduction of 1/3rd towards personal and living expenses from yearly income. Now, yearly loss of dependency comes to Rs.52,800/- {79200 – (79200 x 1/3)}.

d) On the date of accident, deceased was shown to be of 55 years. Therefore, multiplier of 11 will be applicable. Upon multiplying the yearly loss of dependency with 11, total loss of dependency will come to Rs.5,80,800/- (52800 x 11).

e) Apart form above loss of dependency, claimants are further entitled for Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- for parental consortium, Rs.15,000/- for loss of estate, and Rs.15,000/- for funeral expenses.

f) Now the claimants are entitled for a sum of **Rs.6,90,800/**- (580800 + 40000 + 40000 + 15000 + 15000).

21. Aforementioned amount will carry interest @ 6% per annum from the date of claim application, till its realisation. Other conditions imposed by the learned Claims Tribunal shall remain intact.

22. The appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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