NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 937 of 2014

1. Aanad Singh Mandavi S/o Jailal, Caste-Gond, Aged About 45 Years, R/o Village Halba, P.S. Narharpur, Narth Bastar Kanker, Civil & Revenue Distt. North Bastar, Kanker C.G.
2. Smt. Fuleshar W/o Aanand Singh Mandavi Aged About 40 Years, R/o Village Halba, P.S. Narharpur, Narth Bastar Kanker, Civil & Revenue Distt. North Bastar, Kanker C.G. **---- Appellants**

Versus

1. Selwan S/o Rangaswami Arundhari Aged About 29 Years R/o 7-63, Gandhinagar, P.S. Belkurchi Tamilnadu, Civil & Revenue Distt. Belkurchi Tamilnadu.
2. N. Mohan S/o Nalamuthu Aged About 50 Years R/o 226 Kamka Plators, Post And P.S. Matur, Civil and Revenue Distt. Semal Tamilnadu.
3. Divisional Manager, Royal Sundaram Alliance Insu. Co. Ltd., First Floor, Shri Krishna Plaza No. 1, Nachiyappa Street E Road, Pin Code 638001. **--- Respondents**

For Appellants: : Shri Kunal Das, Advocate.
For Respondent No.3: : Shri Nilesh Kumar Thakur, Advocate.

D.B: Hon'ble the Chief Justice &

Hon'ble Shri Justice Sanjay S. Agrawal

Award/Order On Board

Per Sanjay S. Agrawal, J.

16.10.2020.

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 of 1988') seeking enhancement of the award impugned dated 05.04.2014 passed in Claim Case No.10 of 2014, whereby, the learned Tribunal has allowed the claim in part while awarding the total amount of compensation to the tune of Rs.2,05,000/-, with 7.5% interest per annum from the date of filing of the claim petition till the date of actual payment. The parties to this

appeal shall be referred hereinafter, as per their description in the Tribunal.

2. Briefly stated, the facts of the case are that on 18.03.2011, deceased Chhabilal Mandavi was going along with others in a “bore well support vehicle/Truck” bearing registration no.KN-01-D/6266 for the purposes of fitting the Hand Pump. At the relevant time, it was being driven in a rash and negligent manner by its driver Selwan and when it reached near the village Basna, it turned turtle and fell into the 30 fit deep ditch. As a result of the alleged accident, Chhabilal Mandavi and Vinod Kumar died on the spot, while others sustained injuries, giving rise to the institution of the claim petition, wherein, the claimants who are parents of the deceased, pleaded that their unmarried deceased son was a labourer and used to earn of Rs.4,500/- per month, and claimed compensation of Rs.7,48,000/-.

3. The owner and driver of the alleged offending vehicle were proceeded *ex parte,* while the insurer (Royal Sundaram Alliance Insurance Company Limited) of it, took a defence that the deceased and others were travelling in the alleged vehicle as “gratuitous passengers”, which was being driven in violation of the policy, as the driver of it was not possessing the effective and valid driving licence. As such, no liability could be fastened upon it.

4. The claimants have examined as many as 4 witnesses in support of their claim, while none was examined by the Non-Applicants in rebuttal.

5. After considering the evidence led by the claimants, it has been held by the Tribunal that the alleged accident occurred due to the rash

and negligent driving by the driver of the alleged offending vehicle, leading to the sad demise of Chhabilal Mandavi and Vinod Kumar. It held further that the vehicle in question was not being used in violation of the policy and that by considering the income of the deceased at Rs.3,000/- per month awarded the aforesaid amount of compensation along with its interest as mentioned herein above.

6. According to Shri Kunal Das, learned counsel appearing for the Appellants/Claimants, the finding of the Tribunal holding the income of the deceased only to the extent of Rs.3,000/- per month, is apparently contrary to law. It is contended further that while determining the amount of compensation, the Tribunal ought to have not only taken into consideration the future prospects of his income, but ought to have applied the proper multiplier of 18, in order to provide just and fair amount of compensation payable to the claimants. In support, he placed his reliance upon the decisions rendered by the Supreme Court in the matter of ***National Insurance Company Limited*** vs. ***Pranay Sethi*** and ***Magma General Insurance Company Limited*** vs. ***Nanu Ram Alias Chuhru Ram And Others*** reported in **(2017) 16 SCC 680** and **(2018) 18 SCC 130,** respectively.

7. On the other hand, Shri Nilesh Kumar Thakur, learned counsel appearing for Respondent No.3 has supported the award impugned as passed by the Tribunal.

8. We 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 Tribunal, while assessing the monthly income of the deceased without considering the future prospects of his income and that by applying the multiplier of 10 by taking into consideration the age of parents of the deceased is unjustified and deserves to be modified.

10. According to the claimants, the monthly income of their deceased son was Rs.4,500/-, however, we did not find any material so as to hold his income as such. The deceased was a labourer and was 20 years old, as reflected from the Post Mortem Report (Ex.P-3) and, as the accident occurred on 18.03.2011, it could therefore be presumed the monthly income of the deceased at Rs.4,000/-, yearly Rs.48,000/-, which is nearby the income of an unskilled wager as notified by the Prescribed Authority under the Minimum Wages Act, 1948. Since, the deceased was found to be 20 years old, an addition of 40% of it, i.e., Rs.19,200/-, towards future prospects of his income is to be made, in the light of the decision rendered by the Constitution Bench of the Supreme Court in the matter of ***National Insurance Company Limited*** vs. ***Pranay Sethi (Supra).*** It would thus come to Rs.67,200/- (Rs.48,000 + Rs.19,200/-) and that by deducting half of it, i.e., Rs.33,600/- towards his personal and living expenses, the yearly dependency would be worked out at Rs.33,600/- (Rs.67,200/- – Rs.33,600/-). By applying the multiplier of 18, instead of 10, looking to the age of the unmarried deceased son of the parents, the total dependency would arrive at Rs.6,04,800/- (Rs.33,600 x 18).

11. Besides, the parents are entitled to be awarded the loss of filial consortium as held by the Supreme Court in the matter of ***Magma***

General Insurance Company Limited vs. ***Nanu Ram Alias Chuhru Ram And Others(Supra),*** at the rate of Rs.40,000/- as held by the said decision of ***Pranay Sethi (Supra).***

12. Consequently, in addition, the claimants are entitled to the following amounts towards conventional heads:-

	Mode of Compensation	**Amount (in Rs.)**
(I)	For loss of filial consortium to parents	40,000/-
(ii)	For funeral expenses	15,000/-
(iii)	For loss of estate	15,000/-
	Total	**Rs.70,000/-**

13. The claimants are thus entitled to a total sum of Rs.6,74,800/- (Rs.6,04,800/- + Rs.70,000/-) with 7.5% interest per annum from the date of filing of claim petition till the date of actual payment.

14. In view of above, the appeal is allowed in part to the extent indicated herein above and rest of the observations made by the Tribunal shall remain intact.

No order as to costs.

Sd/- Sd/-

(P.R. Ramachandra Menon)
Chief Justice

(Sanjay S. Agrawal)
Judge

Vivek