NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 294 of 2015

1. Sammelal S/o Sidar Singh, Aged About 55 Years,
2. Smt. Tiharin Bai W/o Sammelal, Aged About 50 Years,
   Both by caste Gond, R/o Village Jaggahan, Police Station Malkharouda, District Janjgir-Champa, Chhattisgarh.

---- Appellants

Versus

1. Gautam Chauhan, son of Charan Singh, Caste Gada, R/o Nawpara, Tahsil and Police Station Tamnar, District Raigarh, Chhattisgarh. *(Driver)*
2. Bhuvneshwar Sahu S/o Shivprasad Sahu, caste Sahu, R/o Ward No. 5, Raigarh, Indira Nagar, Tahsil and District Raigarh, Chhattisgarh. *(Owner)*
3. The Oriental Insurance Company Limited, Through Branch Office-Raigarh, District- Raigarh, Chhattisgarh.*(Insurer)*

---- Respondents

For Appellants	: Mr. Arjun Lal Singroul, Advocate
For Respondents No.1 and 2	: None
For Respondent No.3	: Mr. Arun Kumar Shukla, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

03/11/2020

1. Appellants/claimants has filed this appeal under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 16/01/2015 passed by the First Additional Motor Accident Claims Tribunal, Sakti, District Janjgir -Champa, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.25 of 2014 whereby learned Claims Tribunal allowed the application under Section 166 of the M.V. Act in part and awarded Rs.3,44,000/- as compensation in a death case.

2. Brief facts relevant for disposal of this appeal, are that, on 17/04/2014 Gulab Singh was travelling on motorcycle bearing No.CG-11/CD/9405 along with one Dhurwa Sidar and going to Kharsiya from his village Jamgahan. When they reached near Bodasagar, at that relevant time, one Bolero vehicle bearing No.CG-13/C/6979 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently dashed motorcycle of Gulab Singh, in which, Gulab Singh suffered grievous injuries and died during the course of treatment. The accident was reported to concerned Police Station.

3. Claimants/appellants who are parents of the deceased Gulab Singh filed an application under Section 166 of the M.V. Act seeking compensation of Rs.33,86,000/- pleading therein that on the date of accident, deceased was aged about 22 years and working as Meson, he was earning Rs.6,000/- per month, but on account of untimely motor accidental death of his son, they have suffered monetary loss and also lost their dependency.

4. Non-applicants No.1 and 2 submitted reply to claim application jointly, while denying the pleadings made therein, pleaded that there was no accident with the vehicle driven by non-applicant No.1, claimants with collision of Police Officials of Police Station Dabhara has lodged false report against non-applicant No.1, Gulab Singh was not having licence to drive motorcycle and met with an accident on account of his own negligence. In alternative, it was pleaded that there was contributory

negligence on the part of deceased, compensation claimed is highly exaggerated and on the date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying the pleadings made therein, pleaded that claim application has been filed on false and fabricated grounds, the owner and Insurance Company of motorcycle driven by Gulab Singh was not arrayed as party and non-applicant No.1 was not possessed with valid and effective driving licence, as such, there was breach of policy conditions.

6. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that Gulab Singh died 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 policy condition was not found to be proved and awarded Rs.3,44,000/- as compensation.

7. Shri Arjun Lal Singroul, learned counsel for the appellants/claimants submits that learned Claims Tribunal overlooking the pleadings and evidence brought on record by claimants with regard to occupation of deceased as Mason and further not considering the date of accident to be 17/04/2014 assessed the income of deceased on notional basis as Rs.3,000/- per month only, which is on lower side. He further argued that learned Claims Tribunal has not awarded any amount towards

future prospects for the purpose of calculating the total income of the deceased.

8. Per contra, Shri Arun Kumar Shukla, learned counsel for respondent No.3/Insurance Company vehemently opposes the submissions made by learned counsel for the appellants and submits that claimants have failed to prove the income of deceased on the date of accident by placing cogent and acceptable piece of evidence on record, hence, learned Claims Tribunal justified in assessing income of deceased on notional basis as Rs.3,000/- per month. He further argued that learned Claims Tribunal taking into consideration overall facts and circumstances of the case, awarded just amount of compensation, which does not call for any interference.

9. I have heard learned counsel for the respective parties and perused the record carefully.

10. The findings recorded by learned Claims Tribunal with regard to rash and negligent driving by non-applicant No.1/respondent No.1, motor accidental death of late Gulab Singh, insurance of offending vehicle and liability fastened upon non-applicants No. 1 to 3 jointly and severally is not in dispute. The grounds raised in this appeal is with regard to quantum of amount of compensation to be awarded to the claimants.

11. The first submission made by learned counsel for the appellants that the income of deceased assessed by Tribunal as Rs.3,000/- per month to be on lower side, upon perusal of pleadings and documents placed

on record would show that date of accident was of 17/04/2014. Claimants in support of their pleadings with regard to income of the deceased has examined Sammelal as AW-1 and Jadunath as AW-2. Sammelal (AW-1) who is father of deceased has very specifically stated that deceased was working as Mason (skilled labour) and earning Rs.200/- per day i.e. Rs.6,000/- per month, but in cross-examination, he has admitted that he has not placed on record any document with regard to the occupation and income of the deceased, but the fact remains that deceased was working as Mason and not an employee of any Department or Private Company. It could not be expected from the claimants to have placed any document with regard to nature of occupation and income of deceased. Pleadings and evidence cannot be outrightly ignored/rejected.

12. Taking into consideration overall facts and circumstances of the case and particularly, the date of accident to be 17/04/2014, I find it appropriate to assess the income of deceased as Rs.5,000/- per month. Learned Claims Tribunal has not added any amount towards future prospect for the purpose of calculating total income of deceased. The award of future prospect has been considered by Hon'ble Supreme Court in case of **National Insurance Company Limited v. Pranay Sethi and others**[1] wherein it is held that where the deceased was below 40 years of age there shall be an additional of 40% of established income. Taking into consideration the age of deceased to be 22 years

1 **AIR 2017 SC 5157**

and taking support of aforementioned law laid down by Hon'ble Supreme Court, I find it appropriate to award 40% of the established income towards future prospects. Learned Claims Tribunal in the facts of the case has rightly deducted 50% towards personal and living expenses and applied the multiplier of 18, which is inconsonance of the law laid down by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another[2].** Learned Claims Tribunal has awarded Rs.5000/- towards funeral expenses, Rs.5000/- towards loss of estate, Rs.10000/- towards loss of love and affection, which is on lower side and requires enhancement.

13. For the foregoing reasons, the amount of award assessed and calculated by the learned Claims Tribunal requires reconsideration and recalculation. This Court recalculates the award in following terms:-

The monthly income of deceased as assessed by this Court as Rs.5,000/- per month and Rs.60,000/- per annum. By adding 40% of the income towards future prospects i.e. Rs.24,000/-, yearly income of deceased comes to Rs.84,000/- (60,000 + 24,000). On the date of accident, the deceased was a bachelor, therefore, in view of dictum of Hon'ble Supreme Court in **Sarla Verma (Smt.)** (supra), appropriate deduction would be 50%. After deducting 50% towards his personal and living expenses of deceased, yearly loss of dependency of the claimants will come to Rs.42,000/- (84000 / 2 and 84,000 – 42,000).

2 **(2009) 6 SCC 121**

By applying the multiplier of 18, the amount of compensation towards loss of dependency will come to Rs.7,56,000 (42,000 x 18). Apart from above, the claimants will be further entitled for a sum of Rs.40,000/- towards filial consortium to the parents (payable to the parents because of the death of son), Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

14. Now, the claimants are entitled for total compensation of Rs.8,26,000/- (7,56,000 + 40,000 + 15,000 + 15,000) instead of Rs.3,44,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

15. In the result, the appeal is allowed in part. The impugned award is modified to the extent indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh