NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 843 of 2015

1. Smt. Pushpa Rai W/o Ramenrai, aged about 35 years.
2. Ku. Ranjeeta Rai D/o Ramenrai aged about 19 years.
3. Ranjeet, S/o Ramenrai, aged about 14 years.
4. Deepali Rai, D/o Ramenrai, aged about 12 years.
5. Sujeet Rai S/o Ramenrai, aged about 10 years.

   All R/o P.V. 18, Mayapur, Tahana and Tahsil Pakhanjore, Distt. Uttar Bastar Kanker (CG). Appellant No.3 to 5 being minor through mother Smt. PUshpa Rai, aged about 35 years, W/o Ramenrai, R/o P.V. 18, Mayapur, Tahana and Tahsil Pakhanjore, Distt. Uttar Bastar Kanker (CG).

---- Appellants

Versus

1. Ratan Rai, S/o Ramen Chandra Rai, aged about 38 years, R/o P.V. 27, Tahana and Tahsil Pakhanjore, Distt. Uttar Bastar Kanker (CG)
2. Badal Haldar, S/o Nitai Haldar, aged about 36 years, R/o P.V. 27, Tahana & Tahsil Pakhanjore, Distt. Uttar Bastar Kanker (CG)
3. ICICI Lombard General Insurance Co. Ltd. through Branch Manager, ICICI Lombard House, 414, Veer Savarkar Marg, Near Sidhi Vinayak Temple, Prabradevi Mumbai 400025.

---- Respondents

For Appellants	:	Mrs. Bhavika Kotecha, Advocate
For Respondent No.3	:	Mr. P. Acharya, Advocate.

SB: Hon'ble Mr. Justice Parth Prateem Sahu
Order On Board

03.11.2020

1. Claimants/appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988')

seeking enhancement in the compensation awarded by the learned Additional Motor Accident Claims Tribunal, Bhanupratappur, District North Bastar Kanker (for short 'the Claims Tribunal') vide award dated 30.3.2015 passed in Claim Case No.21/2013 by which learned Claims Tribunal partly allowed application of claimants and awarded a total amount of Rs.4,35,000/- as compensation in a death case.

2. Facts of the case, in brief, are that on 9.12.2012 Ramen Rai was going on his motorcycle bearing registration number CG04-CD-2650 to village Hondahur from Pakhanjur. At about 4.30-5.00 p.m. when he reached in front of Middle School, Hondahur, motorcycle bearing registration number CG19-BA-5199, driven by non-applicant No.1 in rash and negligent manner, dashed against motorcycle of Ramen Rai and caused accident. In the aforementioned accident, Ramen Rai suffered grievous injuries and died.

3. Claimants, who are widow & children of deceased, have filed an application under Section 166 of the Act of 1988 before the Tribunal seeking total compensation of Rs.11,55,000/- under various heads. It was pleaded in the application that on the date of accident, the deceased was an able bodied person, he was working as agriculture labourer and earning Rs.5,000/- per month.

4. Non-applicant Nos.1 & 2, driver & owner of offending vehicle, submitted their reply to claim application and denied the pleadings made therein. It was pleaded by them that non-

applicant No.2 has sold the offending vehicle to non-applicant No.1 prior to the date of accident, non-applicant No.1 was possessing valid and effective driving license and the offending vehicle was insured with non-applicant No.3 on the date of accident. Hence, in case any amount of compensation is awarded by the Claims Tribunal, non-applicant No.3-Insurance Company is liable to indemnify the insured.

5. Non-applicant No.3 also filed its reply to claim application and denied the pleadings made therein. It was pleaded that the accident took place on account of negligence on the part of deceased, claim application was filed on false and fabricated grounds, the amount claimed as compensation is highly exaggerated. It was also pleaded that on the date of accident, neither the deceased, driver of motorcycle, nor non-applicant, driver of offending motorcycle, was having valid and effective driving license. There was contributory negligence on the part of deceased. Breach of conditions of insurance policy issued in favour of offending vehicle has also been pleaded.

6. On appreciation of pleadings and evidence placed on record by the parties, the Claims Tribunal vide impugned award reached to the conclusion that deceased Ramen Rai died on account of motor accidental injuries suffered by him in an accident took place due to rash and negligent driving of offending motorcycle by its driver i.e. non-applicant No.1. There was no breach of any of the conditions of insurance policy and awarded Rs.4,35,000/- as compensation, along with interest @ 6% p.a.,

as compensation.

7. Mrs. Bhavika Kotecha, learned counsel representing claimants-appellants submits that income of deceased as assessed by the Claims Tribunal is on lower side. She submits that the Claims Tribunal while fixing income of deceased has not taken into consideration the price index, inflation rate, wage structure prevailing at the time of accident and only on the basis of conjectures & surmises has assessed income of deceased as Rs.3,000/- per month on notional basis, which is on lower side and requires enhancement. She further submits that the Claim Tribunal has not awarded any amount towards future prospects and the amount awarded under other conventional heads is also on lower side. On the aforementioned grounds, learned counsel seeks to enhance the amount of compensation suitably.

8. Mr. Acharya, learned counsel appearing on behalf of respondent No.3-Insurance Company has supported the impugned award and submitted that the claimants failed to prove income of deceased by bringing cogent and clinching documentary evidence on record before the Claims Tribunal, hence, the compensation awarded by the Claims Tribunal is just and proper and the same is not required to be enhanced at all.

9. I have heard learned counsel for both sides and perused the records of the Claims Tribunal.

10. As regards the income of deceased, date of accident is

19.12.2012. Claimants/appellants have pleaded in their application that they are residents of village PV-18 Mayapur, Tahsil Pakhanjur, District North Bastar Kanker and the deceased was working as agriculture labourer. Taking into consideration the wage structure, price index and inflation rate prevailing on the date of accident, in the opinion of this Court, the income of deceased assessed by the Claims Tribunal is on lower side. The accident occurred on 19.12.2012 and on that date an unskilled labour could have earned not less than Rs.4,200/- per month by working as labourer. Hence, I assess the income of deceased as Rs.4,200/- per month.

11. As far as non-grant of future prospects is concerned, in the matter of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, Hon'ble Supreme Court while dealing with the issue of grant of future prospects has held thus:

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

In the case hand, there is no dispute that on the date of accident, the deceased was 40 years of age, as mentioned in claim application and post mortem report Ex.P-6, and was not in permanent employment, therefore, in view of law laid down by the Apex Court in Pranay Sethi's case (supra), the claimants/ appellants are entitled for an additional amount of 25% of monthly income of the deceased as future prospects.

12. Application of multiplier of '16' and deduction of one-fourth from the income of deceased towards personal and living expenses of deceased by the Claims Tribunal is in consonance with the guidelines laid down by Hon'ble Supreme in **Sarla Verma & ors Vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 121**, therefore, the same are hereby affirmed.

13. As regards the amount awarded under other conventional head i.e. Rs.10,000/- for loss of consortium, Rs.10,000/- for loss of love & affection; Rs.5,000/- for loss of estate and Rs.5,000/- for funeral expenses, in the opinion of this Court, the amount awarded under other conventional heads are on lower side and deserve to be enhanced as per decision of Hon'ble Supreme Court in Pranay Sethi's case (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130**.

14. For the foregoing reasons, I propose to recompute the amount of compensation payable to claimants/appellants to award just compensation.

15. The income of deceased is taken as Rs.4,200/- per month and since at the time of accident the deceased was in the age group of 40 to 50 years and was not in permanent employment, in view of law laid down in the matter of **Pranay Sethi** (supra),

the income of deceased is required to be increased by 25% towards future prospects, which comes to Rs.5,250/- (4200+1050). Accordingly, annual income of deceased for the purpose of calculating compensation comes to Rs.63,000/- (5250x12). Out of this amount, one-fourth is to be deducted towards personal & living expenses of the deceased and after deducting one-fourth, annual loss of dependency would come to Rs.47,250/- (63000-15750). By applying multiplier of 15, as applied by the Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.7,08,750/- (47250x15). Besides this, appellant No.1, widow of deceased, is entitled for a sum of Rs.40,000/- towards spousal consortium and appellant Nos.2 to 5, minor children of deceased, are entitled for a sum of Rs.40,000/- towards parental consortium, as held by Hon'ble Supreme Court in the matters of **Pranay Sethi (supra)** and **Magma General Insurance Company Limited (supra)**. In addition to aforesaid amount, the appellants are also entitled to get a sum of Rs.15,000/- for funeral expenses; Rs.15,000/- for loss of estate. Thus, claimants/appellants are entitled for a total sum of Rs.8,18,750/-, instead of Rs.4,35,000/- as awarded by the Claims Tribunal. This amount of compensation shall carry simple interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants/appellants as compensation shall be adjusted from the total amount of compensation as calculated above.

16. In the result, the appeal stands allowed in part and the impugned award stands modified to the extent indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-