NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 181 of 2013

1. Smt. Padma Deshmukh, aged about 40 years, W/o late Samaru Ram Deshmukh
2. Ku. Savita Deshmukh, aged about 19 years D/o late Samaru Ram Deshmukh
3. Rakesh Kumar Deshmukh, aged about 16 years S/o late Samaru Ram Deshmukh
4. Roshan @ Lokesh Kumar Deshmukh, aged about 11 years, late Samaru Ram Deshmukh

   Appellants 3 and 4 are minor through legal guardian mother Smt. Padma Deshmukh
   All are R/o village Dundera, Police Station Utai, Tahsil and District Durg, C.G.

------Appellants/Claimants

VERSUS

1. Nehru Ram Deshmukh, aged about 32 years, S/o late Shivkumar Deshmukh, R/o Village Albaras, P.S. Anda, Tahsil Gunderdehi, District Durg C.G. **------Driver**
2. Shri Jindal Surtax, through the Manager-Shri Jindal Surtax, Address-Village Chandkhuri, Police Station Pulgaon, Tahsil and District Durg. C.G. **----Owner**
3. Cholamandalam M.S. General Insurance Company limited, through the Manager, Branch Office, Cholamandalam M.S. General Insurance Company limited, first Floor, Hinduja Complex 22 Paras Nagar Chowk, Near Railway Line, Devendra Nagar, P.S. Raipur, District Raipur C.G. **-----Insurer**

For Appellants	:	Mr. Goutam Khetrapal, Advocate.
For Respondents	:	None.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, J.

17/07/2020

1. Appellants-claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988, challenging the impugned award dated 08-11-2012 passed by Second Additional Motor Accident Claims Tribunal, Durg, C.G. in claim case No. 80/2011, whereby learned Claims Tribunal allowed claim application in part and awarded total sum of Rs. 13,40,000/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 02-01-2011, Samaru Ram was traveling on his motor cycle bearing Registration No. CG 07LU 3411, while

so, when he reached near Police Station Utai, one Truck bearing Registration No. CG 07C 9651 (referred to as “offending Truck”) driven by Respondent 1/ Non-applicant 1 rashly and negligently dashed the motor cycle of Samaru Ram from its back side. In the aforementioned accident, Samaru Ram came under the wheel of the offending Truck and succumbed to injuries on spot. Appellants-claimants who are widow and children of the deceased filed application under Section 166 of the Motor Vehicles Act, 1988, before the Claims Tribunal seeking compensation of Rs. 38,97,090/-, pleading therein that deceased was an employee of Bhilai Steel Plant and thereby earning Rs. 18135/- per month and they were dependents upon the deceased who was the sole breadwinner of the family.

3. Respondent 1 and 2/ Non-applicant 1 and 2 submitted reply to the claim application and denied the fact of accident and further in alternate they have pleaded that even if it is found that the accident as pleaded in the claim application was with the offending Truck then it is the liability of Respondent 3/ Non-applicant 3- Insurance Company as on the date of accident, offending Truck was insured with it.

4. Respondent 3/ Non-applicant 3-Insurance Company submitted reply to the claim application and denied the fact of insurance of the offending Truck on the ground of its verification, the death of Samaru Ram is not related with the alleged accident, no information was forwarded to the Insurance Company as per the requirement under Section 158(6) and 134-C, of the Motor Vehicles Act.

5. On appreciation of pleadings and evidence placed on record by the respective parties, learned Claims Tribunal arrived at a finding that deceased Samaru Ram died on account of motor accidental injuries due to rash and negligent driving of Respondent 1/ Non-applicant 1 driver of offending Truck, there was no breach of conditions of insurance policy, there was no contributory negligence on the part of the deceased and awarded total sum of Rs. 13,40,000/- as compensation.

6. Learned counsel for the appellants submits that the Claim Tribunal erred in not considering the documentary evidence placed on record with regard to the income of the deceased which is marked as Ext. P-12, P-13, P-14 and P-15 on record but erroneously assessed the income as Rs. 8,000/- per month on the basis of presumption and surmises instead of the income as mentioned in Ext. P-15, in which Gross Income has been shown as Rs. 16,890/-, Rs. 13,690 as Net Income. He further submitted that looking to the age of the deceased as 42 years, 30% of the income is required to be added towards future prospects and further the amount of award on other conventional heads is on lower side.

7. No one appeared on behalf of Respondent 3-Insurance Company as the liability to pay the amount of compensation is fastened upon the Non-applicants/ Respondents jointly and severally and the learned Claims Tribunal has recorded that there is no violation of conditions of insurance policy and the appeal is only for the enhancement of the amount of compensation which is to be decided on the basis of the documentary evidence placed on record with regard to the income of the deceased and further the law laid down by the Hon'ble Supreme Court with regard to the application of deduction and multiplier and award of amount of compensation on other conventional heads. We have proceeded to decide this appeal in absence of the counsel for Insurance Company.

8. We have heard learned counsel for the appellants and also perused the records.

9. Sofar as, the submission made by the learned counsel for the appellants with regard to income of the deceased is concerned. Claimants in their claim application have pleaded the income of the deceased as Rs. 18,135/- per month and in support of their plea of income, they have filed Ext. P-12, copy of the salary slip of Bhilai Steel Plant which is of December 2010, copy of the payment details is filed as Ext. P-14 and P-15 which is for the month from November 2009 to December 2010. Perusal of Ext. P-15 would show that in the month of December 2010 i.e. just prior to the date of accident, duty pay of deceased is

shown as Rs. 8,889/-, D.A. as Rs. 3,538/- and no other pay or income has been shown in Ext. P-15, but the Gross Pay has been shown as 16,890/- and Net Pay as Rs. 13,690/- after the deduction of Rs. 3,200/-. Looking to the details of the aforementioned past payments, it is not clear as to how the Gross income has been shown as Rs. 16,890/- whereas the income has been shown as Rs. 12,427/-, copy of salary slip is available on record as Ext. P-12 which is of the month of December 2010 in which the details of the income as well as deduction has been shown. Perusal of Ext. P-12 would reveal that the deceased in December 2010 has received Rs. 8,889/- as Duty Pay, Rs. 3,538/- as D.A., Rs. 120/- as C.C.A., Rs. 300/- as Fuel allowance, Rs. 19 as Incentive Fixed, Rs. 42/- as Acting Pay, Rs. 1,778/- as H.R.A., Rs. 802/- as Extra Wages, Rs. 366/- as MPPIS, Rs. 508/- as Incentive, Rs. 180/- as Night Shift Allowance, which comes to Rs. 16,122/- as Gross Income and therefore, in the opinion of this Court, the aforementioned income shown in the salary slip Ext. P-12, which was proved by witness AW-3 who is Junior Manager, Finance and Account of Bhilai Steel Plant can be taken as income of deceased for assessing the income for the purpose of calculating the amount of compensation as Gross income. From the gross income, income tax is to be deducted to calculate the loss of dependency.

10. As per Ext. P-13, the date of birth of the deceased has been shown as 02-02-1969, the date of accident was 02-01-2011, therefore, on the date of accident deceased was aged of 41 years and 9 months. On the date of accident, deceased was more than 40 years of age, therefore, there will be an addition of 30% of the established income towards future prospects, in view of the dictum passed by the Hon'ble Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680.** On the basis of the monthly income of the deceased as Rs. 16,122/-, yearly income will come to Rs. 1,93,464/-, by adding 30% towards future prospects, total income will be Rs. 2,51,503.2/- rounded off to as Rs. 2,51,503/-. During the period of 2011, exempted income under the Income Tax Act, was Rs. 1,90,000/- per annum and

after deducting the exempted income from the total yearly income of the deceased, taxable income will be Rs. 61,503/- [Rs.2,51,503-Rs.1,90,000]. After deducting 10% of tax from Rs. 61,503/- i.e. Rs. 6,150.3/- rounding off as Rs. 6,150/- from yearly income, net income will be Rs. 2,45,353/- [Rs.2,51,503-Rs.6,150]. Deceased was survived by widow and 3 minor children, therefore, appropriate deduction, in view of the dictum of Hon'ble Supreme Court in ***Sarla Verma & others v. Delhi Transport Corp. & Anr*** reported in **(2009) 6 SCC 121** will be of 1/4th and the appropriate multiplier would be 14. After deducting 1/4th from the yearly loss of dependency, total yearly loss of dependency will come to Rs. 1,84,014.75/- [Rs.2,45,353 -1/4th of Rs. 2,45,516], rounded off to as Rs. 1,84,015/-, by applying multiplier of 14, total loss of dependency will come to Rs. 25,76,210/- [Rs. 1,84,015x14]. Apart from the aforementioned amount of loss of dependency, the claimants will further be entitled for Rs. 40,000/- towards consortium of widow, Rs. 40,000/- towards parental consortium to the children, Rs. 15,000/- towards funeral expenses and further Rs. 15,000/- towards loss of estate. Now the Appellants-Claimants will be entitled for total **Rs. 26,86,210/-** [Rs. 25,76,210+Rs. 40,000+Rs. 40,000+Rs. 15,000+Rs. 15,000]. The amount of compensation will carry interest @ 6% from the date of filing of the claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact. Respondent 3 is directed to pay the amount of compensation preferably within a period of three months.

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

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

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