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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 714 of 2013

1. Smt. Nitu Yadav widow of late Rajesh Kumar Yadav, aged about 23 Years
2. Aryan Kumar S/o late Rajesh Kumar Yadav, aged about 03 months, Minor, through legal guardian mother Appellant No.1 Smt. Nitu Yadav,
3. Tejram S/o late Kundaru Ram, aged about 55 Years, Occupation service,
4. Smt. Basanti W/o Tejram, aged about 52 Years, Occupation house wife

   All are R/o Village Nilkanthpur, P.S. Kusmi, Tahsil Samari, Kusmi, Revenue District Balrampur, Civil District Surguja (C.G.).

Versus

1. Vijay Kumar Jain S/o Ashok Agrawal, Pro. Ashok Agencies, Occupation Owner of Vehicle, R/o Bhaiyathan Road, Surajpur, P.S. and Tahsil Surajpur, District Surajpur (C.G.).
2. Branch Manager, United India Insurance Company Limited, Bramharoad, Ambikapur, District Surguja (C.G.).

---- Respondents

For Appellants	: Shri A.N. Pandey, Advocate
For Respondent No.1	: None
For Respondent No. 2	: Smt. Chitra Shrivastava, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

06/10/2020

1. Appellant/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 29/04/2013 passed by the Third Additional Motor Accident Claims Tribunal Ambikapur Surguja Chhattisgarh (hereinafter referred to as

'Claims Tribunal') in Motor Accident Claim Case No.133 of 2012 whereby learned Claims Tribunal allowed the claim application in part and awarded total sum of Rs.7,02,000/- as compensation in a death case.

2. Facts of the case in nutshell, are that, on 26/03/2012, Rajesh Yadav was travelling on his Motorcycle along with his two relatives and going to village Kanchi from Ambikapur. When they reached the place of occurrence, one Jeevan Tigga while driving vehicle bearing No.CG/15/AC/0640 *(Chhota Hathi)* (hereinafter referred to as 'offending vehicle') dashed the motorcycle driven by Rajesh Yadav near Dhaba at village Parsagudi on Rajpur Ambikapur main road. In the aforementioned accident, Rajesh Yadav/driver of motorcycle and his other two relatives entangled in the offending vehicle and dragged to some extent on road, on account of which, motorcycle got fired. Rajesh Yadav suffered grievous injuries over his person, he was taken to Primary Health Centre, Rajpur, but on the way, he succumbed to the injuries. Other two persons also suffered injuries in the said accident. The accident was reported to concerned Police Station, based upon which, crime No.48/2012 was registered against the driver of offending vehicle for the offence punishable under Sections 279, 337 and 304A of the IPC.

3. Claimants, who are widow, minor son and parents of deceased Rajesh Yadav filed claim application under Section 166 of the M.V. Act before the learned Claims Tribunal pleading therein that on the date of accident, deceased was earning Rs.5,000/- per month from his employment with Petrol Pump and Rs.5,000/- from agriculture field; they were dependent upon the income of deceased and claimed Rs.13,43,000/- as compensation.

4. Non-applicant No.1/owner of offending vehicle submitted reply to claim application pleading therein that deceased Rajesh Yadav met with an accident on account of his own negligence; three persons were travelling on his motorcycle; driver of offending vehicle was possessing valid and effective driving licence; there was valid fitness and registration; on the date of accident, offending vehicle was insured with non-applicant No.2/Insurance Company for a period from 05/11/2011 to 04/11/2012, as such, liability, if any, would be upon the Insurance Company to satisfy the amount of compensation.

5. Non-applicant No.2/Insurance Company submitted reply to claim application pleading therein that on the date of accident, there was no valid and effective driving licence with the driver of motorcycle as well as driver of offending vehicle; on the date of accident, offending vehicle was being

driven without any valid permit and there was breach of conditions of insurance policy. As there was accident between two motor vehicles, there was contributory negligence on the part of driver of motorcycle i.e. deceased Rajesh Yadav.

6. On appreciation of the pleadings, evidence and material placed on record by the respective parties, held that driver of offending vehicle drove his vehicle rashly and negligently and caused accident to Rajesh Yadav, on account of which, he died; negligence on the part of driver of motorcycle/deceased Rajesh Yadav was not found to be proved, breach of conditions of insurance policy was found to be proved on the ground that driver of offending vehicle was possessing licence authorizing him to drive 'Light Motor Vehicle' only and not of 'Transport Vehicle'. Awarded sum of Rs.7,02,000/- as compensation and fastened liability upon non-applicant No.1/owner of offending vehicle for satisfying the amount of compensation.

7. Before proceeding with the case, it will be relevant to record that against the impugned award, non-applicant No.1/respondent No.1 has preferred an appeal bearing MAC No.620 of 2013; parties being, **Vijay Kumar Jain v. Smt. Nitu Yadav and Others**, challenging the liability fastened upon him. The said appeal came to be allowed vide

judgment dated 16.11.2018 and the liability was fastened upon the Insurance Company considering the judgment passed by Hon'ble Supreme Court in case of **Mukund Dewangan v. Oriental Insurance Company Limited**[1].

8. In view of above, as the liability fastened upon non-applicant No.1/respondent No.1/owner of offending vehicle was set aside and the liability to satisfy the amount of compensation was fastened upon the Insurance Company, now the grounds under challenge in this appeal is only with regard to the quantum of amount of compensation.

9. Shri A.N. Pandey, learned counsel for the appellants/claimants submits that learned Claims Tribunal erred in not taking into consideration the income of deceased as pleaded and proved by the claimants as Rs.10,000/- per month, but has erroneously taken the income as Rs.5,000/- per month only. He further argued that no amount of compensation has been awarded towards future prospects as per the law laid down by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi**[2]. Learned Claims Tribunal erred in deducting 1/3rd towards personal and living expenses instead of 1/4th in view of the law laid down by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport**

1 **(2017) 14 SCC 663**
2 **(2017) 16 SCC 680**

Corporation and another[3]. It is lastly contended that learned Claims Tribunal erred in awarding only Rs.22,000/- towards other conventional heads, which is on lower side in view of the law laid down by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others**[4].

10. Per contra, Smt. Chitra Shrivastava, learned counsel for respondent No.2/Insurance Company submits that the liability part has already been decided by this Court in MAC No.620 of 2013. She further submits that claimants have failed to prove the income of deceased as Rs.10,000/- per month and learned Claims Tribunal based on the evidence and material placed on record, has rightly assessed the income of deceased as Rs.5,000/- per month. It is contended that learned Claims Tribunal has awarded just amount of compensation to the claimants, which does not call for any interference.

11. We have heard learned counsel for the respective parties and perused the record carefully.

12. So far as the first ground raised by learned counsel for the appellants/claimants with regard to income of deceased is concerned, claimants have examined Kailash Agrawal (AW-

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3 **(2009) 6 SCC 121**
4 **(2018) 18 SCC 130**

3), who in his evidence stated that he is owner of the Vishal Petrol Pump and deceased was engaged by him on a salary of Rs.5,000/- per month. The claimants have not produced any other material in support of any additional income as pleaded in claim application by them.

13. In view of aforementioned facts and circumstance of the case as well as nature of evidence placed on record with regard to income of deceased, we are of the view that learned Claims Tribunal has rightly assessed the income of deceased as Rs.5,000/- per month. We affirm the finding of learned Claims Tribunal with regard to income of deceased.

14. The award of future prospects was considered by Hon'ble Supreme Court in case of **Pranay Sethi** (supra), in which, Hon'ble Supreme Court has held that there shall be an addition of 40% of the established income towards future prospects where the person is not in permanent employment and below 40 years of age. In the case at hand, deceased was shown to be in between 26 to 30 years of age group, hence, there will be addition of 40% of the established income towards future prospects.

15. Learned Claims Tribunal was justified in applying the multiplier of 17 and applying deduction of 1/3rd towards his personal and living expenses in the facts and circumstances of the case, which are also affirmed by this Court. The award

of compensation of Rs.22,000/- towards other conventional heads is definitely on lower side.

16. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the claimants requires re-consideration and re-computation, which is as under :

The monthly income of the deceased is taken as Rs.5,000/- per month and Rs.60,000/- per annum as assessed by learned Claims Tribunal. On the date of accident, deceased Rajesh Yadav was shown in between 26-30 years, therefore, in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra), there will be an addition of 40% of the income towards future prospects. By adding 40% of the income towards future prospects, the total annual income of deceased will come to Rs.84,000/- (60,000 x 40% = 21,000 and 60,000 + 24,000). On the date of accident, the deceased was survived by three dependents (father aged about 55 years is not treated to be dependant), therefore, in view of dictum of Hon'ble Supreme Court in **Sarla Verma (Smt.)** (supra), appropriate deduction would be 1/3rd. After deducting 1/3rd towards his personal and living expenses of the deceased, yearly loss of dependency of the claimants will come to Rs.56,000/- (84000 / 3 and 84,000 – 28,000). As it is held the age of the deceased to be in between 26-30 years, the appropriate multiplier would be 17. By applying multiplier of 17, amount of compensation towards loss of dependency will come to Rs.9,52,000 (56,000 x 17). Apart from above, the claimants will be further entitled for a sum of Rs.40,000/- towards spousal consortium to the wife (payable to the spouse because of the death of partner), Rs.40,000/- towards parental consortium to the children (payable to children because of the death of father), Rs.40,000/- towards filial consortium to the parents (payable to the parents because of the death of their son), Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

17. Now, the claimants are entitled for total compensation of Rs.11,02,000/- (9,52,000 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.7,02,000/- 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.

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

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

Yogesh