NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 642 of 2015

1. Smt. Nagina Devi, W/o Late Shrawan Kumar Singh Aged About 45 Years, Caste-Rajput, R/o C/o Paras Mahto, Khiju Tola, R.T.I. High School, Tahsil And District Jashpur, Civil And Revenue District Jashpur, Chhattisgarh
2. Amit Kumar S/o Shrawan Kumar Singh Aged About 20 Years Caste-Rajput, Occupation – Labour R/o Village And Post Lodam, Tahsil And District Jashpur, Civil And Revenue District Jashpur Chhattisgarh

---- Appellants/Claimants

Versus

1. Md. Dastgir, S/o Md. Shariq Aged About 23 Years, Caste-Musalman, Occupation-Driver R/o Lichi Bagan, Birsa Chowk, Police Statio Jagannathpur, Ranchi Jharkhand(Driver)
2. Rajesh Kishor Nath Sahani R/o Gurukripa Complex, Bhanpuri, Raipur Tahsil And District Raipur Chhattisgarh (Driver)
3. Bharti Axa General Insurance Com. Ltd. Chawla Complex, 1st Floor Devendra Nagar, Raipur, Tahsil And District Raipur Chhattisgarh (Insurer)
4. Pankaj Kumar Gupta, S/o Ramchandra Sao R/o Village And Post Bagicha, District Jashpur Chhatttisgarh At Present R/o Gumla Jharkhand
5. Bajaj Alliance General Insurance Com. Ltd S/o Shivmohan Bhawan, Vidhan Sabha Road , Pandri, Raipur Chhattisgarh

---- Respondents/Non-Applicants

For Appellants	:	Shri Rishikant Mahobia, Advocate
For Respondent-3	:	Shri DL Dewangan, Advocate on behalf of Shri Abhishek Sinha, Advocate

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Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

06.11.2020

1. Appellants/claimants have preferred this appeal under Section 173 of Motor Vehicles Act, 1988 seeking enhancement of amount of compensation awarded by the Additional Motor Accidents Claims Tribunal, Jashpur (for short,'Claims Tribunal') in Claim Case-2 of 2014 challenging the award dated 17.03.2015 whereby learned Claims Tribunal allowed the application under Section 166 of the Act of 1988 and awarded Rs.8,29,049/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 10.02.2013, Shravan Kumar Singh (since deceased) was driving Truck bearing No.CG04JA8806 and coming towards Jashpur, while so, when he reached near village Dumarbahar, at about 4 pm, one another Truck bearing No. CG04 JB 2537 (hereafter, referred to as offending vehicle) driven by NA1 rashly and negligently, dashed the truck driven by Shravan Kumar Singh and caused accident. In the said accident, Shravan Kumar Singh suffered grievous injuries over his person; he was taken to Community Health Centre, Pathalgaon, from where he was taken to RIMS Hospital at Ranchi. He took treatment as In-patient at Ranchi till 18.02.2013. Looking to the serious condition of Shravan Kumar Singh, it was decided to shift the injured to Patna. During the process, when they were going to Patna, on the way near Fatehpur Palki, Shravan Kumar Singh breath his last.

3. Claimants/appellants, who are widow and children of deceased filed application under Section 166 of the Act of 1988 pleading therein that on the date of accident deceased was aged about 51 years, working as Truck Driver and earning Rs.12,000/- per month as salary, and Rs.150/- daily allowance.

4. NA1 and 2, who are driver and owner of offending vehicle did not appear before the Claims Tribunal, nor filed reply to the claim application and were proceeded *ex-parte.*

5. NA3/Insurance Company submitted reply to the claim application and denied the facts pleaded therein. It was further pleaded that the offending vehicle was being driven in breach of policy conditions as on

the date of accident, NA1 was not possessed with valid and effective driving license, there was no valid permit and fitness of offending vehicle. It was further pleaded that as per FIR, the Truck driven by the deceased dashed the offending vehicle; there was contributory negligence of drivers of both the Truck.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties, held that the deceased died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by NA1; absence of license with NA1 and breach of policy conditions of Insurance Policy of offending vehicle was not found to be proved; similarly, absence of license with the deceased and breach of policy conditions of the truck driven by the deceased and contributory negligence on the part of the deceased was also not found to be proved. Learned Claims Tribunal allowed the application awarded Rs.8,29,049/- as total compensation.

7. Shri Rishikant Mahobia, learned counsel for the appellants submits that learned Claims Tribunal erred in awarding meagre amount of compensation. He submits that learned Claims Tribunal committed gross error in not considering the pleading and evidence placed on record by the appellants with regard to income of the deceased as Rs.12,000/- per month and Rs.150/- per day as daily allowance, but assessed monthly income as Rs.5,500/- and Rs.1,500/- monthly allowance and assessed income of deceased as Rs.7,000/- per month, which is on lower side. He further submitted that learned Claims Tribunal erred in not awarding any

amount towards loss of future prospects, even after recording age of deceased as 51 years.

8. Shri DL Dewangan, learned counsel for the Insurance Company while controverting the submissions made by learned counsel for the appellants, submitted that income of the deceased has been rightly assessed by the Tribunal in absence of any documentary proof placed on record in this regard. The claimants in support of income of the deceased except their pleading, have made oral statement, they have not filed any document to show income of deceased as salary drawn from the work of driver. He further contended that learned Claims Tribunal awarded Rs.2,00,000/- on other conventional heads which is much on higher side. He further submits that taking into consideration all the facts and circumstances of the case, amount awarded to the claimants cannot be said to be on lower side, the impugned award does not call for any interference.

9. I have heard learned counsel for the parties and also perused the record of claim case.

10. Learned Claims Tribunal after awarding amount of compensation, has fastened liability upon NA1, NA2 and NA3 jointly and severally. Respondent-3 being Insurance Company, is burdened with first liability to pay amount of compensation. The impugned award is not challenged by respondent-3 Insurance Company on any of the grounds if available to it. Present appeal is only for enhancement of amount of compensation.

11. So far as the first submission raised by the appellants with regard to income of deceased, the deceased suffered accident while driving Truck No.CG04JA8806. Engagement of deceased as driver was proved by the appellants by examining Deepak Kumar Gupta, S/o Ramchand Sao as AW1. In his evidence, he specifically admitted that Pankaj Kumar Gupta, was having business of transportation of goods. Deceased Shravan Kumar Singh was engaged by him as driver to drive the vehicle. He was being paid salary of Rs.12,000/- per month and Rs.150/- per day as daily allowance. This witness further admitted that he and his brother Pankaj Kumar Singh were having one truck each in their name and both trucks were engaged in transport business.

12. Learned Claims Tribunal upon considering the evidence placed on record with regard to occupation, engagement and earning of deceased as driver, arrived at a finding on the basis of document Ex.A1, only Certificate of income is placed on record. But no document showing his payment of salary or salary register is placed on record and assessed the income of deceased as Rs.5,500/- per month and awarded Rs.1,500/- monthly allowance. Learned Claims Tribunal further recorded that monthly income of the deceased has been assessed taking into consideration weekly off. In engagement of truck driver, there may not be weekly off for him, hence, taking into consideration the nature of his employment as truck driver, income of the deceased may be more than what is prescribed for the skilled labour under the minimum wages act, where, while assessing the wages weekly off has also been taken into consideration.

13. In the aforementioned facts, in the opinion of this Court, learned Claims Tribunal erred in assessing income of the deceased as Rs.5,500/- per month, overlooking the date of accident, ie of 10.02.2013.

14. In the opinion of of this Court, income of the deceased is assessed as Rs.7,000/- per month instead of Rs.5,500/-. Apart from above, the persons engaged in profession like driver and cleaner in business of transport, have to travel all over the State or inter State and they are being paid daily allowance for the purpose of their duty. Learned Claims Tribunal has assessed Rs.40/- per day which also looking to the date of accident is on lower side and the same is assessed at Rs.75/- per day and 75 X 30=2,250/- per month. Total monthly income will now come to Rs.9,250/- instead of Rs.7,000/- per month.

15. The second submission made by learned counsel for the claimant is with regard to not awarding any amount towards future prospects, law in this regard is now well settled in case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in (2017) 16 SCC 680, and held that a person who is more than 50 years of age, and less than 60 years of age, and not in permanent employment is entitled for an addition of 10% of established income towards future prospects.

16. The submission of learned counsel for the respondent insurance Company that learned Claims Tribunal erred in warding Rs.2,00,000/- on other conventional heads to be on higher side is having some force. It has been correctly pointed out in view of law laid down by Hon’ble Supreme Court in cases of **Pranay Sethi** (supra) and **Magma General**

Insurance Company Limited Vs Nanu Ram reported in 2018 ACJ 2782. Though no appeal is preferred on behalf of the Insurance Company but then while recomputing the amount of compensation, appropriate amount of compensation is to be awarded to make the compensation just and proper. The compensation to be awarded should not be a bonanza.

17. In the aforementioned two judgments, Supreme Court has held that widow is entitled Rs.40,000/- towards loss of consortium, child is entitled loss of parental consortium of Rs.40,000/-, Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses, thereby total amount comes to Rs.1,10,000/- on other conventional heads, whereas Claims Tribunal awarded Rs.2,00,000/- on other conventional heads, which is on higher side.

18. As this Court is considering the appeal for enhancement of award for awarding just amount of compensation to the appellants/claimants, amount of compensation to be paid to the claimants /appellants requires reconsideration and recalculation, which is as under:

a) This Court has assessed income of deceased as Rs.7,000/- per month towards salary and Rs.2,250/- for daily allowance, making total monthly income as Rs.9,250/- and Rs.1,11,000/- per annum.

b) By adding 10% to the established income of the deceased towards future prospects, total yearly income of the deceased comes to Rs.1,22,100/- {111000 + (111000 x 10/100)}.

c) After deducting 1/3rd towards personal and living expenses from the yearly income of the deceased, yearly loss of dependency comes to Rs.81,400/- {122100 – (122100x1/3)}.

d) As the deceased on the date of accident was 51 years of age, therefore, appropriate multiplier would be 11. By multiplying yearly loss of dependency with multiplier of 11, total loss of dependency comes to Rs.8,95,400/- (81400 x 11).

e) Apart from above, claimants are entitled for Rs.40,000/- for spousal consortium, Rs.40,000/- towards parental consortium, Rs.15,000/- for loss of estate and Rs.15,000/- towards funeral expenses.

19. Now claimants will be entitled for a total sum of **Rs.10,05,400/-** as compensation (895400 + 40000 + 40000 + 15000 + 15000) instead of Rs.8,29,049/- as awarded by learned Claims Tribunal.

20. Aforementioned total amount shall carry interest @ 9 % per annum from the date of filing of claim application till its realization.

21. Other conditions of Claims Tribunal shall remain intact.

22. For the foregoing reasons, the appeal is allowed in part and the amount awarded is modified to the extent as indicted above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma