

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 707 of 2014**

1. Kranti Bai widow of Narmadalal Pardhi, Aged About 28 Years, Occupation-Nil
 2. Jaykishan son of Late Narmadalal Pardhi, Aged About 12 Years, Occupation-Student
 3. Kavya son of Late Narmadalal Pardhi, Aged About 9 Years, Occupation-Student
- Appellants No.2 and 3 minor, through legal guardian mother Smt. Kranti Bai wife of Narmadalal Pardhi
4. Sahodri Bai wife of Dhanelal Pardhi, Aged About 58 Years, Occupation-Nil
 5. Dhanelal son of Late Genda Pardhi, Aged About 62 Years, Occupation-Nil

All are resident of Village Dhamki, Police Station and Tahsil -Kawardha, District Kabirdham, Chhattisgarh

---- Appellants**Versus**

1. Kamlesh Kumar Patel son of B.R. Patel, Occupation Vehicle Driver, Vehicle No.CG-09/5105, resident of Daihandih, Udayakhurd, Tahsil Sahaspur Lohara, District. Kabirdham, Chhattisgarh
2. Shyamlal Jaiswal son of Jaykishan Jaiswal, Occupation Vehicle Owner, Vehicle No.CG-09/5105, resident of Daihandih, Udayakhurd, Tahsil Sahaspur Lohara, District. Kabirdham, Chhattisgarh
3. The Divisional Manager, The Oriental Insurance Company Limited beside L.I.C. Office, Near Railway Station, Rajnandgaon, Chhattisgarh
4. Rakesh Singh son of Late Gyan Singh, Occupation Vehicle Driver, Vehicle No.CG-04/7546, resident of Village J.P. Nagar, in front of Shiv Mandir, Sarwan Kirana Store Ward No. 22, Camp-2, P.S. Chhawani, Bhilai, District Durg, Chhattisgarh
5. Mohd. Siddiqui son of Abdul Majid, Occupation Vehicle Driver, Vehicle No.CG-04/7546, resident of House No. 100, Takiyapara, beside the house of Gunny Bhai Parshad, Durg, District Durg, Chhattisgarh

---- Respondents

For Appellants	: Shri Devesh Chandra Verma, Advocate
For Respondent No.1 & 2	: Shri Dharmesh Shrivastava, Advocate
For Respondent No.3	: Smt. Chitra Shrivastava, Advocate
For Respondents No.4 & 5	: None

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

Judgment on Board

Per Parth Prateem Sahu, Judge

01.09.2020

1. Appellants/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 20.01.2014 passed by the Motor Accident Claims Tribunal Kabirdham (Kawardha) Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.85 of 2012 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.18,74,808/- as compensation in a death case.
2. Brief facts relevant for disposal of this appeal, are that, Narmadalal Pardhi along with his other companions was travelling on a Tata Spacio Sumo vehicle bearing registration No.CG-09/5105 and returning to his village Dhamki on 27.05.2012, at that relevant time, non-applicant No.1 while driving Tata Spacio Sumo vehicle rashly and negligently, dashed with a stationary Truck (Dumper) bearing registration

No.CG-04/G/7546 (hereinafter referred to as 'offending vehicle') near Deori turn at Devkar-Dhamdha main road from its rear side. The accident took place at about 9.15 pm and in the said accident, Narmadalal Pardhi suffered grievous injuries and succumbed to the injuries suffered by him on the spot.

3. Appellants/claimants, who are widow, children and parents of deceased Narmadalal Pardhi filed claim application under Section 166 of the M.V. Act seeking compensation of Rs.26,02,800/- mentioning therein that on the date of accident, deceased was working as Shiksha Karmi Grade-III and earning Rs.8,638/- per month, on which, the appellants/claimants were dependent.
4. Non-applicants No.1 and 2, who are driver and owner of Tata Spacio Sumo vehicle resisted the claim pleading therein that offending vehicle was parked in negligent manner on the road without any indicators, sign or any other indication, which was the cause of accident. It was further pleaded that the amount claimed in the claim application under Section 166 of the M.V. Act is highly exaggerated; adding that on the date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company, as such, liability, if any, would be upon the Insurance Company.

5. Non-applicant No.3/Insurance Company submitted separate reply to claim application pleading therein that there was breach of conditions of insurance policy as on the date of accident, nine persons were travelling on the said vehicle; Tata Spacio Sumo vehicle is used for commercial purpose, whereas it was insured under the private package policy; there was no valid and effective driving licence to drive the said vehicle. It was further pleaded that the Truck (Dumper) is offending vehicle, therefore, the liability to satisfy the amount of compensation would be upon owner and driver of the offending vehicle.
6. Non-applicants No.4 and 5, who are driver and owner of offending vehicle, even after issuance of notice by paper publication, did not choose to appear before learned Claims Tribunal and were proceeded *ex parte*.
7. Learned Claims Tribunal based on the pleadings made on behalf of respective parties, formulated as many as five issues for consideration. On appreciation of the pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that accident took place on account of rash and negligent driving of Tata Spacio Sumo vehicle by non-applicant No.1 and dashing with a stationary offending vehicle; in the said accident, Narmadalal Pardhi died; there was no breach of conditions

of insurance policy and awarded a sum of Rs.18,74,808/- as total compensation to the appellants/claimants.

8. Shri Devesh Chandra Verma, learned counsel for the appellants/claimants submits that learned Claims Tribunal erred in awarding meager amount of compensation. He submits that learned Claims Tribunal has awarded only Rs.9,000/- towards other conventional heads, which is contrary to the law laid down by Hon'ble Supreme Court in the matters of **National Insurance Co. Ltd. v. Pranay Sethi¹** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others²**. It is contended that learned Claims Tribunal erred in deducting 1/4th towards personal and living expenses instead of 1/5th and further deducting an amount towards personal and living expenses even from the award of future prospects; adding to it, learned Claims Tribunal has not taken into consideration about the benefit of revised pay scale, for which, the appellants/claimants will also be entitled as per circular issued by the Government on 17.05.2013. It is further contended that application of multiplier is also wrong and appropriate multiplier would be 17 in view of law laid down by Hon'ble Supreme Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another³** instead of 16 as applied by learned Claims Tribunal.

¹ (2017) 16 SCC 680

² (2018) 18 SCC 130

³ (2009) 6 SCC 121

9. Per contra, Shri Dharmesh Shrivastava, learned counsel for respondents No.1 and 2/driver and owner of Tata Spacio Sumo vehicle submits that first liability to satisfy the amount of compensation is upon the Insurance Company. It is contended that award passed by learned Claims Tribunal is just and proper, which does not call for any interference.
10. We have heard learned counsel for the respective parties and perused the record carefully.
11. As it is a case for enhancement of the award of compensation, where the income of deceased was not in dispute and there is no challenge to findings recorded by learned Claims Tribunal, we have heard this appeal without record as the amount of compensation is to be calculated in the light of law laid down by Hon'ble Supreme Court in the matters of **Sarla Verma (Smt.)** (supra), **Pranay Sethi** (supra) and **Magma General Insurance Company Limited** (supra). Fixation of the liability is not under challenge.
12. The occupation of the deceased as pleaded by the appellants/claimants in claim application that deceased was working as Shiksha Karmi Grade-III and earning Rs.8,638/- per month. The assessment of income by learned Claims Tribunal is not under challenge, but the submission made by learned counsel for the appellants/claimants that in view of declaration made by the State Government for fixation of

new pay scale, according to which, pay scale of Shiksha Karmi Grade-III was Rs.18,601/- and for revision of pay scale, circular was issued by the State Government on 17.05.2013. In the case at hand, date of accident and death of Narmadalal Pardhi was on 27.05.2012, therefore, any pay revision brought in by notification of the State Government subsequent to death of any employee cannot be treated as income of the deceased on the date of his death, but existing pay scale on the date of death of deceased is to be taken as the income of deceased.

13. For the foregoing reason, we assess the income of deceased as assessed by learned Claims Tribunal on the date of accident as Rs.8,638/- per month and Rs.1,03,656/- per annum.
14. Learned Claims Tribunal added 50% towards future prospect in established income, deducted 1/4th towards personal and living expenses and applied multiplier of 16. The application and addition made by Learned Claims Tribunal is inconsonance of the law laid down by Hon'ble Supreme Court in the matters of **Sarla Verma (Smt.)** (supra) and **Pranay Sethi** (supra). Learned Claims Tribunal awarded Rs.2,000/- towards funeral expenses, Rs.2,000/- towards loss of estate and Rs.5,000/- towards love and affection, which is definitely on lower side.

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

The income as assessed by learned Claims Tribunal is taken the income of deceased on the date of accident as Rs.8,638/- per month and Rs.1,03,656/- per annum. On the date of accident, deceased Narmadalal Pardhi was shown to be 32 years of age as per postmortem report (Ex.P/9), therefore, in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra), there will be an addition of 50% of the income towards future prospects. By adding 50% of the income towards future prospects, the total annual income of deceased will come to Rs.1,55,484/- ($1,03,656 \times 50\% = 51,828$ and $1,03,656 + 51,828$). On the date of accident, the deceased was survived by five claimants, therefore, in view of dictum of Supreme Court in **Sarla Verma** (supra), appropriate deduction would be $1/4^{\text{th}}$. After deducting $1/4^{\text{th}}$ towards his personal and living expenses of the deceased, yearly loss of dependency of the claimants will come to Rs.1,16,613/- ($1,55,484 / 4$ and $1,55,484 - 38,871$). As it is held the age of the deceased to be 32 years as per postmortem report (Ex.P/9), the appropriate multiplier would be 16. By applying the multiplier of 16, the amount of compensation will come to **Rs.18,65,808/-** ($1,16,613 \times 16$).

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 parents), **Rs.40,000/-** towards filial consortium to the parents (payable to the parents because of the death of children). **Rs.15,000/-** towards loss of estate and **Rs.15,000/-** towards funeral expenses.

16. Now, the appellants/claimants are entitled for total compensation of **Rs.20,15,808/-** (18,65,808 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.18,74,808/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 7.5% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.
17. In the result, the appeal is allowed in part and impugned award is modified to the extent indicated herein-above.

Sd/-
(P. R. Ramachand Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge