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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 415 of 2015****Reserved on 25.11.2020****Pronounced on 01.12.2020**

1. Smt. Shyamkunwar Bai @ Sham Kunwar Bai, Wd/o Late Kejuram Navrange R/o Village Pathariya, Post-Bhedesara, Tahsil-Dhamdha, District Durg, Chhattisgarh.
 2. Devkumar Navrange S/o Late Kejuram Navrange Aged About 42 Years R/o Village Pathariya, Post-Bhedesara, Tahsil-Dhamdha, District-Durg, Chhattisgarh.
 3. Gajanand Navrange S/o Late Kejuram Navrange Aged About 40 Years R/o Village Pathariya, Post-Bhedesara, Tahsil-Dhamdha, District-Durg, Chhattisgarh.
- Appellants**

Versus

1. Rajkumar Verma, S/o Johan Ram @ Sukhram Verma Aged About 31 Years R/o Shivaji Nagar, Khursipar Gate, Police Station-Khursipar Bhilai, Tahsil And District- Durg C.G. At Present Village-Khairanawapara, Tahsil-Chhuikhadan, District-Rajnandgaon, Chhattisgarh.
 2. Sukhcharan Janghel S/o Jhumuk Janghel Occupation-Agriculturist, R/o Village-Khairanawapara, Tahsil-Chhuikhadan, District- Rajnandgaon, Chhattisgarh.
 3. L. And T. General Insurance Company Limited Branch Office Through Branch Manager, First Floor, Maginile Floor, Chawla Complex, Sai Nagar, Devendra Nagar Road, Raipur, Tahsil And District-Raipur, Chhattisgarh.
- Respondents**

For Appellants:	: Shri Avinash Chand Sahu, Advocate.
For Respondents No.1 and 2:	: Shri Abhishek Sharma, Advocate.
For Respondent No.3:	: Shri N.K.Thakur, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal
CAV Judgment order

1. The claimants have preferred this appeal for enhancement of the award impugned dated 21.11.2014 passed in Claim Case No.39/2013, whereby, the learned Tribunal has awarded the total amount of compensation to the tune of Rs.2,12,000/- (Rupees Two Lacs Twelve Thousand Only) with 6% interest per annum from the date of filing of

the claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description in the Tribunal.

2. Briefly stated, the facts of the case are that on 03.12.2012, the deceased Kejuram Navrange was standing in front of his nephew's house, while talking with one Ladu Ram Ratre. At that particular time, Non-Applicant No.1, namely, Rajkumar Verma, the driver of the vehicle in question 'Tractor' bearing registration no.CG-08-P-4498, owned by Non-Applicant No.2/ Sukhcharan Janghel, insured with Non-Applicant No.3/L&T General Insurance Company Limited, while driving the same in a rash and negligent manner, hit the deceased vehemently. As a result of which, the deceased was injured badly and was admitted into the Government District Hospital at Rajnandgaon and during the course of his treatment, he succumbed to the injuries on 20.12.2012, giving rise to the institution of the claim by the claimants, who are his legal representatives. According to the claimants, the deceased, 58 years old, was a Carpenter by profession and used to earn Rs.350/- per day and, thus, claimed total amount of compensation of Rs.19,90,000/-, under various heads.
3. The driver and owner of the vehicle in question, while denying the involvement of the vehicle in connection with the alleged accident, pleaded further that since it was insured with the L&T General Insurance Company Limited, therefore, in case of any liability being fastened, the same could be indemnified by the said company. While, the insurer of it contested the claim mainly on the ground that the driver of the alleged offending vehicle was not possessing the effective and

valid driving licence, therefore, no liability could be fastened upon it.

4. After considering the evidence led by the parties, the Tribunal arrived at a conclusion that the alleged accident occurred due to rash and negligent driving by the driver of the alleged offending vehicle, resulting into the sad demise of Kejuram Navrange, who was found to be 60 years old at the relevant time. It held further that the vehicle in question was not being used in violation of the Insurance Policy and that by considering the notional income of the deceased to the tune of Rs.36,000/- (Rupees Thirty Six Thousand Only) per annum awarded total amount of compensation as mentioned herein above along with its interest, while fastening the liability upon the insurance company.
5. Shri Avinash Chand Sahu, learned counsel appearing for the Claimants submits that while determining the amount of compensation, the Tribunal has committed an illegality in assessing the notional income of the deceased, only to the tune of Rs.36,000/- per annum and thereby erred in awarding a meagre amount of compensation even, without considering the future prospects of his income. According to him, the deceased was a Carpenter by profession and, therefore, falls within the category of skilled worker and, as such, the amount of compensation ought to have been assessed in a proper manner. Having failed to do so, the Tribunal has committed an illegality in not awarding the just and fair compensation payable to the claimants. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of *National Insurance Company Limited vs. Pranay Sethi* and *Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram And Others* reported in (2017) 16 SCC 680 and

(2018) 18 SCC 130 respectively.

6. On the other hand, Shri N.K. Thakur, learned counsel appearing for Non-Applicant No.3 has submitted that in absence of proof of the income of the deceased, the Tribunal has rightly considered his notional income to the tune of Rs.36,000/- per annum, while determining the amount of compensation and as such, the award impugned does not require to be interfered.
7. I have heard learned counsel for the parties and perused the entire record carefully.
8. From perusal of the record, it appears that the amount of compensation, as determined by the Tribunal, while assessing the annual income of the deceased to the tune of Rs.36,000/-, even without considering the future prospects of his income is unjustified and deserves to be modified.
9. According to the claimants, the deceased was a Carpenter and the unrebutted statement of his wife namely, Smt. Shyamkunwar Bai (AW-1), which is duly supported by one Ladu Ram Ratre (AW-2), would reveal the fact that he was working as such. It is true that in order to establish the fact that the deceased was engaged as a Carpenter, no documentary evidence was produced by the claimants. However, in my opinion, a person, who was working as a Carpenter, it is difficult to expect for production of such a documentary evidence in order to establish the said fact. Considering the unrebutted statements of the claimants, it would safely be presumed that the deceased was a Carpenter by profession. However, in absence of any cogent and reliable evidence, his income cannot be held to be Rs.350/- per day or

Rs.10,500/- per month, as claimed in the petition. Under such circumstances, the claimants are entitled to be awarded compensation on the basis of wages of deceased as was applicable to that of skilled worker, as he (deceased) was found to be engaged in doing the carpentry work and would thus be appropriate to consider his income, as a skilled worker as provided under the Minimum Wages Act, 1948.

10. As the alleged accident occurred on 03.12.2012, it would, therefore, be appropriate to consider his monthly income to the tune of Rs.5,088/-, rounded off to Rs.5,100/-, yearly Rs.61,200/-, prevailing at relevant point of time for skilled worker as per the notification issued by the Prescribed Authority under the said Minimum Wages Act, 1948. Since the deceased was 60 years old, as evidenced by the Post-Mortem Report (Ex. P-11), therefore, while determining his actual income, an addition of 10% of it, i.e., Rs.6,120/-, towards future prospects of his income, is to be made in the light of the principles laid down by the Constitution Bench of the Supreme Court in the matter of *National Insurance Company Limited vs. Pranay Sethi (Supra)*. It would thus come to Rs.67,320/- (Rs.61,200/- + Rs.6,120/-) and by deducting 1/3rd of it, i.e., Rs.22,440/-, towards his personal and living expenses, as done by the Tribunal, the yearly dependency would come to Rs.44,880/- (Rs.67,320/- – Rs.22,440/-). By applying the multiplier of 9, looking to the age of the deceased in the light of principles laid down by the Supreme Court in the matter of *Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another* reported in (2009) 6 SCC 121, the total dependency would thus arrive at Rs.4,03,920/- (Rs.44,880/- x 9).

11. Besides, the widow and sons are entitled to be awarded loss of consortium under the head of spousal and parental consortium, as laid down by the Supreme Court in the matter of *Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram And Others (supra)*. Consequently, in addition, the claimants are entitled to the following amounts under the conventional heads:-

Sl. No.	Mode of Compensation	Amount (in Rs.)
(I)	For loss of spousal consortium to widow	40,000/-
(ii)	For loss of parental consortium to sons	40,000/-
(iii)	For funeral expenses	15,000/-
(iv)	For loss of estate	15,000/-
	Total	Rs.1,10,000/-

And, it is to be increased by 10% in the light of the dictum of the Constitution Bench of the Supreme Court as laid down in para-59.8 in the said matter of **Pranay Sethi** (supra). Therefore, the claimants would be entitled to a sum of Rs.1,21,000/- (Rs.1,10,000/- + 10% of it, i.e., Rs.11,000/-) under the conventional heads.

12. Consequently, the claimants would be entitled to a total sum of Rs.5,24,920/- (Rs.4,03,920/- + Rs.1,21,000/-), with 6% interest per annum from the date of filing of claim petition till the date of actual payment. Out of the said amount, the widow of the deceased namely, Smt. Shyamkunwar Bai (Claimant No.1) would be entitled a sum of Rs.4,24,920/-, (Rupees Four Lakhs Twenty Four Thousand Nine Hundred and Twenty Only), while Claimants No.2 and 3, namely, Devkumar Navrange and Gajanand Navrange, respectively would be entitled to rest of the amount, i.e., Rs.1,00,000/-, (Rupees One Lakh

Only), in equal parts of Rs.50,000/-, (Rupees Fifty Thousand Only) each, along with the interest as held herein above and, the same shall be disbursed, as per the observations contained in the award impugned.

13. In view of the above, the appeal is allowed in part to the extent indicated herein above with the aforesaid observations. Rest of the observations as made by the Tribunal shall remain intact.

No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE