NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1377 of 2015

1. Laxmi Devi W/o Late Lilaram Yadav, Aged About 30 Years
2. Jugru Ram Yadav S/o Mukhiya Yadav, Aged About 70 Years
3. Lav Kumar Yadav S/o Late Lilaram Yadav, Aged About 6 Years Minor Through Mother Laxmi Devi Yadav
4. Dev Kumar Yadav S/o Late Lilaram Yadav, Aged About 1 Year, Minor Through Mother Laxmi Devi Yadav

   All are R/o P.O.- Dharashiv, Thana- Pamgarh, Tehsil And Distt.- Janjgir, Chhattisgarh, At Present R/o Sitamadi, Korba, Tehsil And Distt.- Korba, Chhattisgarh ....Claimants

---- Appellants

Versus

1. Kailash Chandra Jaiswal S/o Bhagwati Prasad, Aged About 32 Years R/o Village- Hardi Bazar College Chowk, Ward No.17, Thana- Kusmunda, Korba, Tehsil And Distt.- Korba, Chhattisgarh
2. Umesh Chandra Jaiswal S/o Bharatlal, At Present R/o Radhika Vihar, Phase-2, Sipat Road, Bilaspur, Tehsil And Distt.- Bilaspur, Chhattisgarh
3. M/s H D F C Irgo General Insurance Company Limited, Through- Branch Manager, R/o T.P.Nagar, Korba, Distt.- Korba, Chhattisgarh
4. Laxmi Prasad Dewangan S/o Narayan Prasad, R/o Dewangan Muhalla, Ward No.2, Bhathapara, Bhojpur Road, Champa, Thana- Champa, Tehsil And Distt.- Janjgir-Champa, Chhattisgarh
5. M/s Royal Sundaram Alliance Insurance Company Limited, Bilaspur, Chhattisgarh, Tehsil And Distt.- Bilaspur, Chhattisgarh .... Non-Applicants

---- Respondents

For Appellants	:	Shri Sanjay Patel, Advocate
For Respondents- 1, 2 and 5	:	None appears
For Respondent-3	:	Shri Rohitashwa Singh, Advocate on behalf of Shri NK Thakur, Advocate
For Respondent- 4	:	Shri Ajay Kumar Chandra, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

12.03.2020

1. Challenge in this appeal is to the impugned award dated 18.08.2015 passed in Claim Case-136 of 2013 passed by the Additional Motor Accident

Claims Tribunal, Korba (FTC) (for short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.4,08,000/- as compensation in a death case along with interest @ 6% per annum from the date of filing of claim application till its realisation.

2. Brief facts relevant for disposal of this appeal are that on 21.11.2012, Leelaram since deceased, driving Bolero Pick-up vehicle bearing No.CG 11 AB 2012 (for short, 'Bolero') and going towards Janjgir-Champa from Dhamda. At that relevant time, when he reached near village Tilai, one Trailor bearing No.CG 10 C 7947 (for short, 'offending vehicle') driven by non-applicant No.1 dashed the Bolero. In the aforementioned accident, Leelaram suffered grievous injuries over his person and succumbed to those injuries on the spot. The accident was reported to concerned Police Station, based upon which Crime No.860 of 2012 was registered against respondent 1, driver of offending vehicle Trailer.

3. Claimants who are widow, children and father of deceased Leelaram filed claim application under Section 166 of Motor Vehicles Act, 1988 before Claims Tribunal, claiming total amount of compensation of Rs.89,90,000/- on account of Accidental death of Leelaram.

4. Non-applicant No. 1 did not appear before the learned Claims Tribunal and was proceeded *ex-parte*.

5. Non-applicant No. 2, who is owner of offending vehicle submitted reply to the claim application and denied the fact of accident from his vehicle. It was also pleaded that on the date of accident, driver of offending vehicle was possessing valid and effective driving license and only after verifying the license, he was kept in employment as driver.

6. Non-applicant No. 3/ Insurance Company submitted its reply and pleaded that there was non-compliance of directions under Section 149(2) and 147 of Motor Vehicle Act, 1988. Pleadings made in the claim application are with respect to the accident and involvement of offending vehicle in it. The fact of accident has been denied by non-applicants No.1 and 2, driver and owner of offending vehicle respectively. It was also pleaded that claimants are not dependant on the deceased and there was contributory negligence on the part of deceased. Further, it was pleaded that on the date of accident, offending vehicle was being driven in violation of conditions of Insurance Policy and therefore, there is no liability on the part of Insurance Company of satisfying the award.

7. Non-applicant No.4, owner of Bolero pleaded that deceased Leelaram was working as driver on aforementioned vehicle and he was being paid Rs.300/- per day. It was also pleaded that deceased was under temporary employment with him, deceased was driving his vehicle on his own side and there was no negligence on the part of deceased Leelaram, but accident took place on account of rash and negligent driving of non-applicant No. 1, driver of offending vehicle. Bolero was insured with non-applicant No. 5.

8. Learned Claims Tribunal, on appreciation of pleading and evidence available on record held that non-applicant No.1, driver of offending vehicle drove his vehicle rashly and negligently and dashed Bolero and in aforementioned accident, Leelaram died; there was no violation of conditions of Insurance Policy; there was no contributory negligence on the part of deceased Leelaram and awarded a total sum of Rs.4,08,000/- as compensation along with interest @ 6 % per annum.

9. Shri Sanjay Patel, learned counsel for the appellants submits that learned Claims Tribunal erred in assessing income of deceased as Rs.3,000/- per month ignoring the fact that he was working as driver of offending vehicle. He further pleaded that deceased Leelaram was getting Rs.300/- per day. He further points out that even otherwise, looking to the date of accident ie on 21.11.2012 it is undisputed fact that deceased was working as driver and met with an accident while driving the vehicle in which he was engaged as driver. Nature of work of deceased comes within the category of skilled labour and therefore, learned Claims Tribunal ought to have assessed income of deceased as Rs.6,000/- per month instead of Rs.3,000/-. It is further submitted by learned counsel for the appellant that learned Claims Tribunal erred in applying deduction of 1/3rd instead of 1/4th as per law laid down in **Sarla Verma (Smt) and Others Vs Delhi Transport Corporation and Another** reported in **(2009) 6 Supreme Court Cases 121**, wherein, number of dependant family members are 4-6, deduction towards personal expenses of deceased should be 1/4th of his income. In the instant case, dependant claimants are four in number. Learned counsel further points out that learned Claims Tribunal erred in not awarding any amount towards loss of future prospects and further that, the amount awarded on other conventional heads is on lower side as learned Claims Tribunal has awarded only Rs.24,000/-, instead of Rs.70,000/- as it was held by Hon'ble Supreme Court in the matter of **National Insurance Company Vs Pranay Sethi** reported in **(2017) 16 SCC 680.**

10. Per contra, Shri Rohitashwa Singh, learned counsel appearing for respondent-3/insurer of offending vehicle submits that learned Claims Tribunal after taking into consideration overall facts and circumstances of the case and also evidence placed on record by the claimants, awarded reasonable amount of compensation to the claimants, which do not call for any interference.

11. Shri Ajay Kumar Chandra, learned counsel for respondent No.4, owner of Bolero supports the impugned award.

12. I have heard learned counsel for the respective parties and perused the record.

13. Employment of deceased Leelaram as driver of Bolero is not in dispute. At the time of accident, he was engaged as driver by respondent No.4 and deceased was driving Bolero. Learned Claims Tribunal, considering the fact that claimants failed to prove income of deceased by producing cogent and reliable piece of evidence and also the fact that owner of Bolero / non-applicant No.4 was not examined before learned Claims Tribunal to prove income of deceased, assessed his income as only Rs.3,000/- per month.

14. Looking to the wage rate prevailing and also price index at that time, in the opinion of this Court, income of Rs.3,000/- per month assessed by learned Claims Tribunal is on lower side. The nature of employment on which the deceased was engaged comes within category of skilled labour. In view of the above, it will be proper to assess income of deceased as Rs.4,500/- per month, instead of Rs.3,000/-.

15. Hon'ble Supreme Court in the matter of **Sarla Verma and others** (supra), laid down law for deduction towards personal and living expenses of deceased while calculating income of deceased, in which Hon'ble Supreme

Court in categorical terms has held that where the dependant family members of deceased are 4-6, appropriate deduction would be ¼. In case at hand, number of dependants who are claimants are four. In this fact of the case, deduction towards personal & living expenses will be ¼ instead of 1/3.

16. Learned Claims Tribunal not awarded any amount towards future prospects of deceased. In the facts and circumstances of present case, age of deceased has been taken as 32 years, ie in between 31-35 years, based on the post-mortem report (Ex.P4). Award of additional amount towards future prospects in income of the deceased in case of fatal accident has been considered and decided by Hon'ble Supreme Court in the matter of **National Insurance Company Limited Vs Pranay Sethi and others** reported in **2017 16 SCC 680**, wherein it is held that in case where deceased was below 40 years of age and was self employed or on a fixed salary, there should be addition of 40% of the established income towards future prospects in the income of deceased.

17. In the instant case, deceased was below 40 years of age and therefore, claimants are entitled for an addition of 40% of the established income of deceased towards future prospects for calculating income of deceased.

18. In view of aforementioned facts emerging from records and submissions made by learned counsel for the appellant, impugned award requires re-consideration and re-calculation.

19. As briefed in preceding paragraphs, income of deceased is assessed as Rs.4,500/- per month and Rs.54,000/- (4,500 x 12) per annum. By adding 40% of established income towards future prospects total yearly income of deceased will be Rs.75,600/- {(54000 x 40 /100) + 54000}. There will be deduction of ¼ towards personal and living expenses from the total income which make the yearly loss of dependency as Rs.56,700/- {75600- (75600 x ¼)}. The deceased on the date of accident was aged about 32 years for which the appropriate multiplier would be 16. By applying multiplier of 16 to the yearly loss of dependency, total loss of dependency comes to Rs.9,07,200/- (56700 x 16). Apart from the aforementioned loss of dependency, the claimants are further entitled for additional amount of Rs.70,000/- towards other conventional heads.

20. Now the appellants will be entitled for a total sum of Rs.9,77,200/- (907200 + 70000) instead of Rs.4,08,000/- awarded by the learned Claims Tribunal. The amount of compensation will carry interest @ 6% from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal will remain intact.

21. Appeal is allowed in part and the impugned award is modified to the extent as indicated above.

22. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma