**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

**MAC No. 1534 of 2015**

1. Keshawdas S/o Garibdas, Aged About 50 Years
2. Kaushalyadevi W/o Keshawdas Manik, Aged About 49 Years

   Both R/o Post Office Gunderdehi, Thana And Tahsil Gunderdehi, District Balod, Chhattisgarh ..........Claimants

**---- Appellants/Claimants**

**Versus**

1. Bhagat, S/o Dhanraj Yadav, Through Kunal Chattarjee S/o B. Chattarjee, R/o 14, Raj Kumar Chattarjee Street, Adiyadah, Thana Belgadiya, Berakpur District 24 Pargana, Calcutta W.B. ..........Driver
2. Kunal Chattarjee S/o B. Chattarjee, R/o 14, Raj Kumar Chattarjee Street, Adiyadah, Thana Belgadiya, Berakpur District 24 Pargana, Calcutta W.B. ..........Owner
3. Bajaj Allianz General Insurance Co. Ltd., Through Officer In Charge, Bajaj Allianz General Insurance Co. Ltd., Shiv Mohan Bhawan, Pandri, Raipur, District Raipur, Chhattisgarh .........Insurance Company
4. Smt. Seema W/o Late Tomeshwar @ Tarun Manik, Aged About 26 Years (Krishna Das Manikpuri), Presently Residing At Village Dhandhani, P.O. Semradih, Thana And District Balodabazar, Chhattisgarh .........Applicant No.1, District : Balodabazar-Bhathapara, Chhattisgarh

**---- Respondents/Non-Applicants**

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| For Appellants | : | Shri Arvind Shrivastava, Advocate |
| For Respondent-3/Insurance Company | : | Shri DL Dewangan, Advocate |

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**Hon'ble Shri Justice Parth Prateem Sahu**

**Order on Board**

**29.10.2020**

1. Claimants have preferred this appeal under section 173 of Motor Vehicle Act challenging the impugned award dated 28.04.2015 passed by the Chief Motor Accidents Claims Tribunal, Raipur (For short, 'Claims Tribunal') in Claim Case No.161 of 2012 seeking enhancement of amount of compensation awarded by the Claims Tribunal.

2. Facts relevant for disposal of this appeal are that on 07.04.2012 at about 4.15 pm, one Truck bearing No.WB 23B 5484 driven by NA1 rashly and negligently, dashed the Motorcycle of Tomeshwar Manik near Railway crossing, Telibandha, Raipur. In the said accident, Tomeshwar Manik suffered grievous injuries and died. The accident was reported to concerned Police Station, based upon which Crime was registered against NA1 and after completion of investigation, Charge-sheet was filed in the Court of jurisdictional Magistrate.

3. Claimants, who are widow and parents of late Tomeshwar Manik (henceforth deceased) filed application under Section 166 of the Act of 1988 seeking compensation of Rs.36,06,000/- pleading therein that the deceased was working as Administration Manager in the DP Bansal Commercial Company and earning Rs.10,000/- per month.

4. NA1 and 2, who are driver and owner of the offending vehicle did not appear before the Claims Tribunal and were proceeded *ex-parte.*

5. NA3/ Insurance Company submitted its reply to the claim application denying the pleadings made therein. It was further pleaded that on the date of accident NA1 was not possessed with valid and effective driving license. There was breach of conditions of Insurance Policy, hence, the Insurance Company is not liable to pay any amount of compensation. There was contributory negligence on the part of deceased and further there is non-joinder of the necessary parties.

6. Upon appreciation of pleadings and evidence brought on record by the respective parties, learned Claims Tribunal 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; contributory negligence on the part of deceased and absence of valid and effective driving license with NA1 was not found to be proved; there was no breach of policy conditions and awarded Rs.8,62,000/- as compensation.

7. Shri Arvind Shrivastava, learned counsel for the appellants/claimants submits that learned Claims Tribunal erred in deducting half of the income towards personal and living expenses of the deceased, whereas, the deceased was a married person and his widow was party to the claim application as applicant-1. He further submits that in view of the law laid down by Hon'ble Supreme Court, in a case where the deceased is a married person, appropriate deduction would be 1/3$^{rd}$ and not ½. He further contended that learned Claims Tribunal erred in adding 20% towards future prospects contrary to the law laid down in case of **National Insurance Company Limited Vs Pranay Sethi and others reported in** (2017) 16 SCC 680, wherein Hon'ble Supreme Court held that in case of a person who is in permanent employment and below 40 years of age, there shall be addition of 50% of the established income. Learned Claims Tribunal taking into consideration the pleadings and evidence on record with regard to the income of the deceased has accepted income of the deceased as Rs.10,000/- per month but added 20% towards future prospects. He further contended that learned Claims Tribunal erred in applying multiplier of 11 instead of 16, as on the date of accident, deceased was only 31 years of age. He places his reliance in case law of

**Sarla Verma and others Vs Delhi Transport Corporation and another reported in** (2009) 6 SCC 121.

8. Per contra, Shri DL Dewangan, learned counsel for the Insurance Company while opposing the submissions made by learned counsel for the appellants, submits that learned Claims Tribunal has awarded just amount of compensation in the facts of the case, which does not call for any interference. He submits that learned Claims Tribunal taking into consideration re-marriage of widow of the deceased during the pendency of claim application, has considered the appellants only to be the claimants and dependants upon the deceased and deducted ½ towards personal and living expenses of the deceased. He further submits that the deceased was not in permanent employment, but on fixed salary, which is evident from his salary certificate placed on record as Ex.P12, as per the case of appellants/claimants themselves, the deceased was appointed on salary of Rs.10,000/- per month, which shows that income of the deceased was fixed salary. He further argued that the Claims Tribunal taking into consideration the law laid down by Hon'ble Supreme Court in case of **National Insurance Company Vs Shyam Singh** (2011) AIR SCW 2410, applied multiplier of 11 considering age of father and mother of the deceased. He submits that the amount of compensation is just and proper, the impugned award does not call for any interference.

9. I have heard learned counsel for the parties and also perused the record of the Claim Case.

10. Perusal of claim application would show that the deceased was a married person and claimant -1 to be his widow. Applicant-1 was residing with the deceased prior to the date of motor accidental death of her husband. As per law laid down by Hon'ble Supreme Court in case of **Sarla Verma** (supra), deduction for personal and living expenses of the deceased to be based on the number of dependants or legal heirs left behind the deceased. Hon'ble Supreme Court has considered the factor for deduction towards personal and living expenses in case of married and unmarried persons. Hon'ble Supreme Court has held deduction to be 1/3rd of the income of the deceased, if the deceased was married and ½ (50%), in case of a bachelor. Further the deduction to be varied looking to the number of dependent applicants.

11. Appellant-1, father of the deceased was examined before Claims Tribunal as AW1. In his evidence at para-9, he admitted that widow of deceased, applicant-1 got re-married and in support of his evidence, he filed documents Ex.D1C, D2C and D3C. Perusal of aforementioned documents would show that applicant-1 got herself remarried with one Krishnadas Manikpuri, resident of village Dhan Dhani, PO Somharadih, Tah and District Baloda Bazar in front of members of Community.

12. In view of above, the submission of learned counsel for respondent that applicant-1 got herself re-married is true, but then, only because the widow of deceased was married after his death will not reduce deduction towards personal and living expenses because the deduction is to be applied considering the life time of deceased and it is not in dispute that

when the deceased was alive, applicant-1 was residing with him as his wife.

13. In case at hand, deceased was married; along with his parents, he was having wife behind him as dependents on the date of accident. Taking into consideration the status of the deceased on the date of accident, finding recorded by the Claims Tribunal that there shall be deduction of ½ towards personal and living expenses is erroneous and not sustainable, hence it is hereby set aside and deduction towards personal and living expenses shall be 1/3rd.

14. Learned Claims Tribunal has awarded only 20% towards future prospects. Award of future prospects has been settled by Hon'ble Supreme Court in its constitutional Bench judgment in case of **Pranay Sethi** (supra) and held that the persons who are in permanent employment and below 40 years of age, there shall be addition of 50% of the established income towards future prospects and 40% of the established income, where the deceased person is on fixed salary or self employment. From the evidence placed on record by the claimants themselves, it is apparent that the deceased was on fixed salary of Rs.10,000/- per month, hence, there will be addition of 40% of the established income towards future prospects and not 50% as argued by learned counsel for the appellants. Addition of 20% towards future prospects awarded by the Claims Tribunal is erroneous and contrary to the law laid down by Hon'ble Supreme Court in case of **Pranay Sethi** (supra).

15. Learned Claims Tribunal further erred in applying multiplier of 11, taking into consideration the age of parents. Application of multiplier where the deceased is survived by parents has been considered by Hon'ble Supreme Court in case of **Sube Singh and another Vs Shyam Singh (dead) and others** reported in 2018 (3) SCC 18 and held that even if the deceased was a bachelor, multiplier to be applied based on the age of the deceased and not on the age of parents.

16. In the case at hand, the deceased was not a bachelor but married person, but even then, learned Claims Tribunal has applied multiplier of 11, which is not sustainable and it is hereby set aside. I hold that there shall be application of multiplier of 16.

17. For the foregoing reasons, the amount of compensation to be awarded to the claimants requires re-computation/recalculation as under:

a) Income of the deceased as assessed by the Claims Tribunal Rs.10,000/- per month and Rs.1,20,000/- per annum.

b) By adding 40% of the established income of the deceased towards future prospects, his yearly income comes to Rs.1,68,000/- {120000 + (120000 x 40/100)}.

c) After deducting 1/3$^{rd}$ of yearly income towards personal and living expenses, annual loss of dependency comes to Rs.1,12,000/- {168000— (168000 x 1/3}.

d) Upon applying multiplier of 16 to the annual loss of dependency, total loss of dependency comes to Rs.17,92,000/- (112000 X 16).

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

18. Now the appellants/claimants are entitled for a total sum of **Rs.18,62,000/-** as compensation instead of Rs.8,62,000/-, awarded by learned Claims Tribunal. The amount of compensation shall carry interest @ 6% from the date of filing of the claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

**Sd/-**
(Parth Prateem Sahu)
JUDGE

padma