NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 1261 of 2014

Smt. Puniya Bai (died) through Legal representatives :

1. Sukhsai S/o Late Gomati Prasad, aged about 30 years, R/o Ward No.13, ETA Daffai New Ledari, Manendragarh, District Koriya, Chhattisgarh.
2. Kaju Lal S/o Late Gomati Prasad, aged about 28 years, R/o Gram Pendari (Ghutara) Koriya, District Koriya, Chhattisgarh.
3. Rajkumar S/o Late Gomati Prasad, aged about 26 years, R/o Ward No.13, Rajendra Ward New Ledari, South Jhagrakhand Colliery, Koriya, District Koriya, Chhattisgarh.

---- Appellants

Versus

1. Sunil Kumar Minj, S/o Sohan Uraon, aged about 29 years, Occupation Driver, R/o Ramnagar, P.S. Bijuri, District Anuppur M.P. Presently residing at Lakhanpur, District Surguja, Chhattisgarh.
2. Maksud Khan, S/o Ahamad Khan (Proprietor Chhattisgarh Bus Service) R/o Village and Post Lakhanpur, P.S. and Tehsil Lakhanpur, District Surguja, Chhattisgarh.
3. Branch Manager, The Oriental Insurance Company Limited, Branch Office Manendragarh Road Nagar Ambikapur, District Surguja, Chhattisgarh.

---- Respondents

For Appellants	: Shri A.N. Pandey, Advocate
For Respondents No.1 & 2	: Shri Rakesh Jha, Advocate
For Respondent No.3	: Shri Deepak Gupta, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

28.09.2020

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 06.09.2014 passed by the Second

Motor Accident Claims Tribunal Surguja, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.125 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.2,91,354/- as compensation.

2. Facts relevant for disposal of this appeal, are that, on 27.11.2012 when Puniya Bai travelling on a Bus bearing registration No.CG-15/AB/0226 (hereinafter referred to as 'offending vehicle') and going to Ambikapur from Lakhanpur. On the way, non-applicant No.2/driver of offending vehicle drove it rashly and negligently and caused accident near village Jogibandh Bhittikala Road. In the aforesaid accident, Puniya Bai suffered grievous injuries on her head and left hand. She was taken to District Hospital, Ambikapur for treatment. The accident was reported to concerned Police Station, based upon which, Crime No.614 of 2012 was registered against non-applicant No.1/driver of offending vehicle for the offence punishable under Sections 279, 337, 338 and 304A of IPC.

3. Injured- Puniya Bai filed claim application under Section 166 of the M.V. Act pleading therein that on the date of accident, she was aged about 44 years and doing the work as labourer and agricultural activities and thereby earning Rs.4,500/- per month. It was further pleaded that on account of injuries suffered by her in motor vehicular accident, she was hospitalized from 27.11.2012 to 04.01.2013; during the course of treatment, her left hand was

amputated below elbow due to serious injuries on it and sought compensation of Rs.11,65,000/- on different heads.

4. Non-applicants No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application and while denying the pleadings made in claim application pleaded that injured- Puniya Bai was not passenger of the Bus. It was further pleaded that on the date of accident, non-applicant No.1/driver of the offending vehicle has not driven the vehicle rashly and negligently but suddenly, one Buffalo came on road, due to which driver of the offending vehicle has applied breaks, due to which, *patta* (suspension) of the Bus was broken and it became out of control. It was also pleaded that on the date of accident, driver of offending vehicle was possessing valid and effective driving licence and the offending vehicle was being insured with non-applicant No.3/Insurance Company; there was valid fitness and permit of the offending vehicle, hence, the liability, if any, to pay the amount of compensation would be on the Insurance Company.

5. Non-applicant No.3/Insurance company submitted reply to claim application while denying the pleadings made in claim application, pleaded that the amount of compensation claimed is highly exaggerated; injured- Puniya Bai has not incurred any expenditure towards treatment. It was further pleaded that injured- Puniya Bai has not suffered accident from the offending vehicle, there was breach of conditions of insurance policy as on the date of

accident, there was no valid registration, permit and fitness of the offending vehicle, hence, the Insurance Company is not liable to satisfy the amount of compensation.

6. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that injured- Puniya Bai suffered motor accidental injuries on account of rash and negligent driving of offending vehicle by non-applicant No.1/driver of offending vehicle; there was valid and effective driving licence, permit, fitness and insurance policy with non-applicant No.1 and awarded a total sum of Rs.2,91,354/- as compensation.

7. Shri A.N. Pandey, learned counsel for the claimants submits that during the pendency of this appeal, Puniya Bai died on 10.02.2018, hence her name was substituted by her children vide order dated 15.09.2020. He further submits that learned Claims Tribunal erred in awarding meager amount of compensation assessing the income of able-bodied woman aged about 44 years to only Rs.36,000/- per annum. He also submits that looking to percentage of disability as assessed by doctor to the extent of 85% vide Ex.P/23, learned Claims Tribunal erred in awarding loss of income to the extent of 50% only. It is contended that learned Claims Tribunal has not awarded any amount towards future prospects in the facts of the case where learned Claims Tribunal had held that injured- Puniya Bai suffered 50% loss of earning capacity. It is contended that learned Claims Tribunal has not

awarded any amount towards pain and suffering for the injuries suffered by the injured. It is lastly contended that learned Claims Tribunal erred in not awarding any amount towards loss of amenities and enjoyment in life, special diet and conveyance expenses.

8. Per contra, Shri Rakesh Jha, learned counsel for respondents No.1 and 2 supports the impugned award passed by learned Claims Tribunal.

9. Shri Deepak Gupta, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal taking into consideration the pleadings and evidence as also the fact that injured- Puniya Bai has failed to prove her earning/income has rightly assessed the income as Rs.3,000/- per month. He further submits that learned Claims Tribunal rightly assessed the functional disability of the injured- Puniya Bai to the extent of 50% because she has lost her one hand below elbow. It is contended that the amount of compensation awarded by learned Claims Tribunal is just and proper and does not call for any interference.

10. We have heard learned counsel for the respective parties and perused the record carefully.

11. Injuries suffered by Puniya Bai while travelling in the offending vehicle and finding of breach of conditions of insurance policy is not challenged. This appeal is only for enhancement of the

amount of compensation.

12. So far as the first submission made by learned counsel for the claimants with regard to income of Puniya Bai (since deceased now) is concerned, the date of accident is of 27.11.2012, the occupation of injured has been shown to be labourer. True it is that the income of injured- Puniya Bai has not been proved by placing admissible piece of evidence before the learned Claims Tribunal by claimants, but then, it is duty of the Tribunal to assess the income of the person or deceased on notional basis. The notional income of any person is to be assessed considering the price index, cost of living and wage structure prevailing on the date of accident. Even if, it is taken that the deceased was a housewife, but then the work performed by a housewife for his family cannot be considered to be less than the income of an ordinary manual labour.

13. The housewife works in different capacity in a day for her family. There is no working hours for her and she has to work from early morning till late night. Hon'ble Supreme Court in the matter of **Lata Wadhwa and others v. State of Bihar and others**[1] while dealing with an accident of 1989 of which Civil Appeal came to be decided in the year 2001 held the income of housewife as Rs.3000/- per month in paragraph No.10 of its judgment, which is extracted below :

"10. So far as the deceased housewives

1 **(2001) 8 SCC 197**

> are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000/- per annum in cases of some and Rs.10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3000/- per month and Rs.36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life............."

14. In the light of the aforementioned law laid down by Hon'ble Supreme Court, if facts of present case are considered, date of accident is 27.11.2012; being mother of claimants, she might be doing entire household work, cooking food, taking care of her

children. In view of above, we find it appropriate to assess the income of deceased as Rs.4,500/- per month and Rs.54,000/- per annum.

15. The second submission made by learned counsel for the claimants that learned Claims Tribunal erred in not awarding any amount towards future prospects, the Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**[2]**,** has held that even a person who is not engaged in permanent employment or self-employed, is entitled for amount towards future prospects and have categorized under three age groups i.e. less than 40 years, 40 years but less than 50 years and 50-60 years. On the date of accident, age of injured-Puniya Bai (deceased now) was 44 years, therefore, in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra), there will be an addition of 25% of the income towards future prospects for calculating the monthly/yearly income of the deceased.

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

As discussed above, the income of Late Puniya Bai is assessed by this Court as Rs.4,500/- per month i.e. Rs.54,000/- per annum. On the date of accident, Late Puniya Bai was aged about 44 years, therefore, in view of law laid down by Hon'ble

2 **(2017) 16 SCC 680**

Supreme Court in **Pranay Sethi** (supra), there will be an addition of 25% of the income towards future prospects. By adding 25% of the income towards future prospects, the total annual income of deceased will come to Rs. 67,500/- (54,000 x 25% = 13,500 and 54,000 + 13,500). Learned Claims Tribunal has held the loss of earning capacity to the extent of 50%, therefore, by deducting 50% towards loss of earning capacity, the loss of income comes to Rs.33,750/-. On the date of accident, Puniya Bai (deceased now) was aged about 44 years, the appropriate multiplier would be 14. By applying the multiplier of 14, the loss of earning will come to Rs.4,72,500/- (33,750x 14).

17. Apart from above, the claimants will be further entitled for a sum of Rs.30,000/- towards pain and suffering and Rs.9,354/- towards medical expenditure as awarded by learned Claims Tribunal. The claimants will be also entitled for a sum of Rs.5,000/- towards special diet and conveyance expenses, Rs.10,000/- towards discomfort in life and Rs.13,500/- towards loss of income during the period of treatment. Puniya Bai died during the pendency of this appeal in the year 2018. We are considering the award passed by the Tribunal on 06.02.2014 for her injuries and permanent disability suffered by her.

18. Now, the total amount of compensation will be Rs.5,40,354/- (4,72,500 + 30,000 + 9,354 + 5,000 + 10,000 + 13,500) instead of Rs.2,91,354/- as awarded by learned Claims Tribunal. The appellants who are legal representatives of claimant are entitled to

receive the balance amount of compensation as estate of Late Puniya Bai. This enhanced amount of compensation shall carry interest at the rate of 7% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact. The liability to satisfy the amount of compensation shall be upon respondent No.3/Insurance Company.

19. In the result, the appeal is allowed in part and the impugned award is modified to the extent indicated herein above.

Sd/-	Sd/-
(P. R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Yogesh