NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1610 of 2015

1. Bajrang Lal S/o Gandhi Ram Jaiswal, aged about 42 years.

2. Budhiyarin Jaiswal W/o Bajrang Jaiswal, aged about 40 years

   Both are R/o Village Hardi, Post Office Madva, Police Station Chandrapur, Tahsil Dabhra, Revenue and Civil District Janjgir Champa (CG)

---- Appellants

Versus

1. Guru Prasad Yadav, S/o Tiharu Ram Yadav, aged about 45 years R/o Village & Post Baghaud, Police Station & Tahsil Dabhra, Revenue and Civil District Janjgir Champa

   (Driver of the offending vehicle)

2. Kamila Lahre, S/o Mahesh Ram, aged about 44 years, Caste Satnami, R/o Village & Post Gharghoda, Tahsil Gharghoda, Revenue and Civil District Raigarh (CG)

   (Owner of the offending vehicle)

3. United India Insurance Company Limited, Transport Nagar, Korba, District Korba (CG)

   (Insurer of the offending vehicle)

---- Respondents

For Appellant	:	Ms. Laxmin Kashyap, Adv. under the authority of Mr. P.K. Patel, Advocate
For Respondent No.3	:	Mr. HB Agrawal, Sr. Advocate assisted by Mr. Pankaj Agrawal, Advocate.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

12/03/2020

1. Appellants-claimants have challenged the award dated 01.10.2015 passed by the learned 1st Additional Motor Accident Claims Tribunal, Sakti, District Janjgir Champa (for short 'the

Claims Tribunal') in Claim Case No.39/15 whereby the Claims Tribunal partly allowed claim application of claimants and awarded a sum of Rs.3,44,000/- as compensation along with interest @ 6% p.a. from the date of filing of claim application, in a death case.

2. Facts relevant for disposal of this appeal, in brief, are that on 14.10.2014 at about 5.00 p.m. Balanand Jayaswal (since deceased) along with Miss Banita, was returning from Kharsiya on his Hero Honda Super Splendour motorcycle bearing registration No.CG11-A-9072. When they reached near Main Road, Chhuhipali (Dabhra), at that time one tractor-trolley bearing registration No.CG13-A--9251 & CG13-A-9252 respectively (henceforth 'the offending vehicle'), driven by respondent No.1 herein, dashed their motorcycle as a result of which Balanand Jayaswal sustained grievous injuries and died on the same day during the course of treatment. Accident was reported to concerned police station based on which Crime No.363/14 was registered against respondent No.1-driver for commission of offence under Sections 279, 337 & 304A of the Indian Penal Code.

3. Claimants/appellants herein, who are parents of deceased, have filed a claim application claiming compensation to the tune of Rs.51,45,000/- under various heads on the ground that on the date of accident, deceased was working as 'Driver' and getting Rs.10,000/- per month as salary.

4. Respondent No.1 & 2, owner & driver of offending vehicle, filed their reply to claim application denying averments made

therein. They have pleaded that the offending vehicle was not involved in the accident in question; accident took place due to sole negligence of driver of motorcycle and therefore respondent No.1 cannot be held liable for accident. It was further pleaded that as the insurance company of motorcycle has not been arrayed as party, therefore, claim application itself is not maintainable for non-joinder of necessary party. On the date of accident, the driver of offending vehicle was having valid & effective driving license and as the offending vehicle was fully insured with respondent No.3-insurance company, therefore, the insurance company is liable to indemnify the owner in case any compensation is awarded by the Claims Tribunal.

5. Respondent No.3- insurance company filed its separate reply and denied averments made in claim application. It was contended that accident in question occurred due to collusion between two vehicles, but insurance company of motorcycle has not been arrayed as party to the proceeding. There was contributory negligence on the part of deceased, who was driving motorcycle in a rash & negligent manner. Deceased was not possessing valid and effective driving license to drive motorcycle. On the date of accident the driver of offending vehicle was not having valid & effective driving license. On the aforesaid grounds, it was pleaded that insurance company is not liable to pay amount of compensation.

6. The Claims Tribunal after appreciating the pleadings and

evidence placed on record (oral and documentary both) by the respective parties has partly allowed claim application and awarded compensation of Rs.3,44,000/- along with interest @ 6% p.a. by taking monthly income of deceased as Rs.3,000/- on notional basis. The Claims Tribunal has arrived at a conclusion that accident was the result of rash and negligent driving by respondent No.1, driver of offending vehicle; there was no violation of any condition of insurance policy and held the non-applicants/respondents, jointly & severally, liable to pay amount of compensation.

7. Learned counsel for claimants/appellants submits that the claimants in their evidence have specifically stated that on the date of accident, deceased was earning Rs.10,000/- per month by working as 'Driver' under Narmada Prasad Yadav (AW-2), who has duly supported the version of claimants with respect to income of deceased. However, the Claims Tribunal has overlooked the said pleading and evidence on record and assessed the compensation on the basis of monthly notional income of deceased i.e. Rs.3,000/- per month, and thereby committed mistake. She further argued that the Claims Tribunal has not awarded any amount towards future prospects and even the amount awarded under other conventional heads are also on lower side. Learned counsel thus prayed for suitable enhancement of compensation awarded by the Claims Tribunal.

8. Per contra, learned counsel appearing on behalf of respondent No.3- Insurance Company submits that the Claims Tribunal has

rightly assessed income of the deceased as the claimants failed to prove income of deceased by adducing cogent and reliable piece of evidence. He further argued that the Claims Tribunal after considering overall facts, circumstances and evidence available on record, has rightly assessed compensation and the same does not call for any interference.

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

10. From the materials available on record it is clear that though the claimants have pleaded that deceased was earning Rs.10,000/- per month by doing work of 'Driver' but no documentary evidence (copy of driving license) in support thereof has been brought on record and in absence thereof, the Claims Tribunal has rightly assessed the compensation by taking income of deceased on notional basis. However, considering the minimum wage rate for a 'labour' prevailing at the relevant time in District Janjgir Champa, which could not be less than Rs.150/- per day, the Claims Tribunal ought to have taken Rs.4,500/- instead of Rs.3,000/- as monthly notional income of the deceased.

11. Further, the Claims Tribunal has not granted any compensation under the head of 'future prospects'. The hon'ble Supreme Court in catena of its decisions including in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** has held that in case the deceased, victim of motor accident, was self-employed and below age of

40 years, an addition of 40% of actual income of deceased towards future prospects should be made. Relevant paragraph of Pranay Sethi's case reads thus;-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

12. In the present case, the deceased, who was 22 years old, was not in permanent employment, but the Claims Tribunal while calculating compensation payable to claimants failed to add any amount to annual income of deceased towards future prospects and thereby committed serious error.

13. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to the claimants/ appellants.

14. As discussed above, income of deceased is taken as Rs.4,500/- per month and since at the time of accident the deceased was 22 years old and was not in permanent employment, therefore, in view of the law laid down in the matter of **Pranay Sethi's case** (supra), the income of deceased is required to be enhanced by 40% towards future prospects, which comes to Rs.6,300/- (1800+4500). Thus, annual income of deceased for the purpose of calculating

compensation comes to Rs.75,600/-(6300x12). The deceased was unmarried at the time of accident, therefore, out of this amount, half is to be deducted towards personal & living expenses of deceased. After deducting half, annual loss of dependency comes to Rs.37,800/- (75600-37800). By applying multiplier of 18, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency comes to Rs.6,80,400/- (37800x18). Besides this, claimants/ appellants are also entitled for a lump sum amount of Rs.30,000/- under other conventional heads. Thus, claimants/ appellants are now entitled to a total compensation of Rs.7,10,400/- (6,80,400+30,000), recoverable from the respondents jointly and severally. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of conditions mentioned in the impugned award shall remain intact.

15. Any amount already paid to claimants/appellants as compensation shall be adjusted from the total amount of compensation as calculated above.

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

Sd/-
(Part Prateem Sahu)
Judge

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