

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 439 of 2014**

1. Smt. Rani Kenwat Wd/o Late Maitram Kenwat, aged about 32 years,
2. Kumari Durga Kenwat D/o Late Maitram Kenwat, aged about 14 years,
3. Smt. Bodhan Bai Kenwat Wd/o Ramadhin Kenwat, aged about 65 years,
Applicant No.02 minor through the mother (natural guardian)
appellant No.01 Smt. Rani Kenwat Wd/o Late Maitram Kenwat, all R/o Village Bohardeeh, Police Station Chakarbhata, Tahsil and Revenue and Civil District Bilaspur, Chhattisgarh.

---- Appellants**Versus**

1. Sugsagar Kaiwart S/o Arjunlal Kaiwart, R/o Village Manikpur (Dheka), Post Ghuma, Police Station- Torwa, Tahsil and District (Revenue and Civil) Bilaspur, Chhattisgarh
2. I.C.I.C.I. Lombard General Insurance Company Limited through Branch Manager, Branch Office Lalganga Shopping Mall Complex, G.I. Road Pandari Raipur, Police Station, Tashil, Revenue and Civil District, Raipur, Chhattisgarh

---- Respondents

For Appellants	: Shri Anand Kesharwani, Advocate
For Respondent No.1	: None
For Respondent No.2	: Shri Sourabh Sharma, 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****06.10.2020**

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 22.01.2014 passed by the Additional Motor Accident Claims Tribunal (F.T.C.) Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Accident Claim Case No.138 of 2013 whereby learned Claims

Tribunal allowed the claim application in part and awarded total sum of Rs.3,75,000/- as compensation in a death case.

2. Brief facts relevant for disposal of this appeal, are that, on 06.07.2011, Maitram Kenwat was travelling on a motorcycle bearing No.CG-10/EL/4585 (hereinafter referred to as 'offending vehicle'), driven by Sukhsagar/non-applicant No.1 as pillion rider. When they reached near Petrol Pump at Village Bailmundi Bypass Road Sakri, offending vehicle fell down and met with an accident due to rash and negligent driving by non-applicant No.1. In the said accident, Maitram Kenwat suffered grievous injuries over his head. He was taken to CIMS Hospital, Bilaspur, but looking to the grievousness of injuries suffered by him, he was referred to Dr. B.R. Ambedkar Memorial Hospital, Raipur where during the course of treatment, he died. The accident was reported to concerned Police Station, based on which, Crime No.138 of 2011 was registered against non-applicant No.1 for the offence punishable under Section 304A of IPC.
3. Appellants/claimants, who are widow, daughter and mother of deceased Maitram Kenwat filed an application under Section 166 of the M.V. Act seeking compensation of Rs.11,50,000/- mentioning therein that on the date of accident, deceased was aged about 35 years, working as Mason and earning Rs.300-500/- per day, on which, the appellants/claimants were dependent.

4. Non-applicant No.1/driver of offending vehicle even after service of notice, did not choose to appear before learned Claims Tribunal and was proceeded *ex parte*.
5. Non-applicant No.2/Insurance Company submitted reply to claim application, denied insurance of offending vehicle. It was pleaded that amount of compensation claimed is highly exaggerated; on the date of accident; driver of offending vehicle was not possessing valid and effective driving licence and thereby there was breach of conditions of insurance policy.
6. Learned Claims Tribunal based on the pleadings made on behalf of respective parties, formulated as many as four issues for consideration. On appreciation of evidence and material placed on record by the respective parties, learned Tribunal held that accident took place on account of rash and negligent driving of offending vehicle by non-applicant No.1, in which, Maitram Kenwat died; breach of conditions of insurance policy was not found to be proved and awarded a sum of Rs.3,75,000/- as total compensation to the appellants/claimants.
7. Shri Anand Kesharwani, learned counsel for the appellants/claimants submits that the accident took place on 06.07.2011 and claimants have very specifically pleaded in claim application as also given oral statement before learned Claims Tribunal that deceased was working as Mason and earning Rs.300-500/- per day, but even then, learned Claims Tribunal has assessed the income of deceased as Rs.3,000/-

per month i.e. Rs.36,000/- per annum, which is on the lower side. He further submits that learned Claims Tribunal has not awarded any amount towards future prospects; adding that, learned Claims Tribunal has awarded only Rs.15,000/- towards other conventional heads, which is contrary to the law laid down by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**. He points out that looking to the age of deceased as 35 years, there should be an addition of 40% of established income towards future prospects.

8. Per contra, Shri Sourabh Sharma, learned counsel for respondent No.2/Insurance Company submits that claimants have failed to prove the income of deceased by placing cogent and reliable piece of evidence on record. He further submits that learned Claims Tribunal based on the age of deceased mentioned in postmortem report, has mentioned the age of deceased as 40 years, therefore, in the facts and circumstances of the case, loss of future prospects if to be awarded to the claimants may be only 25%. It is contended that amount of compensation awarded by learned Claims Tribunal is just and proper, which does not call for any interference.
9. We have heard learned counsel for the respective parties and perused the record carefully.

10. The claimants in claim application have specifically pleaded about the nature of occupation of deceased. Though formal denial with regard to occupation of deceased has been raised in reply mentioning therein that there was no documentary evidence in this regard. Looking to the nature of occupation of deceased as Mason, there cannot be any documentary evidence in this regard as he is not an employee of any Institution or working for any person/contractor. In view of aforementioned facts, we accept the pleading that deceased was working as Mason, which comes within the category of 'skilled labour'. The income of deceased assessed by learned Claims Tribunal as Rs.3,000/- per month is much less because on the date of accident i.e. 06.07.2011 even the person doing manual work, could have earned more than the amount assessed by learned Claims Tribunal. In the facts of the case, we find it appropriate to assess the income of deceased as Rs.4,500/- per month.
11. So far as award of future prospects is concerned, the Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has fixed the percentage of established income to be awarded as future prospects for the particular age groups. The claimants in claim application have pleaded the age of deceased as 35 years, claimant No.1 who is widow of deceased has shown herself to be 32 years and age of daughter has been shown as 14 years; the claimants are villagers resident of Village Bohardeeh and not much educated persons; they belonged to lower strata of

society, hence, looking to the age of daughter as 14 years and age of widow as 32 years. Age mentioned in postmortem report (Ex.A/4) is only on the basis of appearance of dead body or mentioned by any person accompanied with dead body on his assumption. The age mentioned of dead body is not on the basis of any scientific assessment made by doctor who conducted postmortem, therefore, in the facts of the case where there is no documentary evidence with regard to age and there is no age determination by doctor, the age mentioned in postmortem report (Ex.A/4) cannot be treated as proved age to be 40 years in the facts of the case. In our considered opinion, the age of deceased is taken as in between 35-40 years for the purpose of calculating the amount of compensation, hence, there will be an addition of 40% of the established income towards future prospects as per dictum of Hon'ble Supreme Court in case of **Pranay Sethi** (supra).

12. The multiplier of 15 and deduction of 1/3rd applied by learned Claims Tribunal is in consonance with the law laid down by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) v. Delhi Transportation Corporation** reported in **(2009) 6 SCC 121**. The amount of Rs.15,000/- has been awarded towards other conventional heads i.e. Rs.5,000/- towards funeral expenses, Rs.5,000/- towards loss of estate and Rs.5,000/- towards loss of consortium, is on the lower side in view of dictum of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited** (supra).

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

On the date of accident, income of the deceased as assessed by this Court is taken as Rs.4,500/- per month and Rs.54,000/- per annum. By adding 40% of the income towards future prospects, the total annual income of deceased will come to Rs.75,600/- ($54,000 \times 40\% = 21,600$ and $54,000 + 21,600$). On the date of accident, the deceased was survived by three dependents, therefore, in view of dictum of Supreme Court in **Sarla Verma** (supra), appropriate deduction would be 1/3rd. After deducting 1/3rd towards his personal and living expenses of the deceased, yearly loss of dependency of the claimants will come to Rs.50,400/- ($75,600 / 3$ and $75,600 - 25,200$). By applying the multiplier of 15, the amount of dependency comes to Rs.7,56,000/- ($50,400 \times 15$). Apart from above, the claimants will be further entitled for a sum of Rs.40,000/- towards spousal consortium to the wife (payable to the spouse because of the death of partner), Rs.40,000/- towards parental consortium to the daughter (payable to children because of the death of parents), Rs.40,000/- towards filial consortium to the mother (payable to the parents because of the death of son), Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

14. Now, the appellants/claimants are entitled for total compensation of Rs.9,06,000/- (7,56,000 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.3,75,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.
15. In the result, the appeal is allowed in part and impugned award is modified to the extent indicated herein-above.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh