

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 880 of 2014

1. Smt. Bhuri Bai, W/o Devi Singh Aged About 28 Years
2. Kumari Janki Bai D/o Devi Singh Aged About 6 Years
3. Kumari Kheero Bai D/o Devi Singh Aged About 2 Years
4. Jitendra Kumar S/o Devi Singh Aged About 4 Years
5. Samari Bai W/o Dhan Singh Aged About 60 Years

Appellants 2 to 4 are minors through legal representative, natural guardian mother Bhuri Bai, D/o Devi Singh

All R/o Bhikhapali, P.O. Pathla, District : Raipur, Chhattisgarh

---- Appellants/Claimants

Versus

1. Arun Kumar Singh, S/o Hirendra Singh Aged About 48 Years, Permanent R/o 48 Kosipur Road, Kolkata- 2 West Bengal, Presently- R/o Thru- M/s Pioneer Auto Sales Agency, 17 Gopal Mukharjee Road, B.T. Road, Parkpara, Calcutta-2, West Bengal (Driver of Truck No.WB 23-5138)
2. M/s Pioneer Auto Sales Agency, 17 Gopal Mukharjee Road, B.T. Road, Parkpara, Kolkata- 2 West Bengal (Owner of Truck No.WB 23-5138)
3. United India Insu.Co.Ltd. Thru- Divisional Manager, United India Insu.Co.Ltd., G.E. Road, Raipur, Tah. And Distt. Raipur District : Raipur, Chhattisgarh (Insurer of Truck No.WB 23-5138)

----Respondents

For Appellants	: Shri Amiyakant Tiwari, Advocate
For Respondents-1 and 2	: None appears
For Respondent-3	: Shri Dashrath Gupta, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
17.09.2020

1. Appellants/Claimants have filed this appeal under Section 173 of the Motor Vehicle Act, 1988 for enhancement of the impugned award dated 30.04.2014 passed by the Chief Motor Accident Claims Tribunal, Raipur (for short, 'Claims Tribunal') in claim case No.49 of 1997, whereby learned Claims Tribunal allowed the claim application in part and awarded total sum of Rs.7,75,000/- in a death case.

2. Facts relevant for disposal of this appeal are that on 18.03.1997 at about 4 pm one Truck bearing No.WB 23-5138 (hereafter referred to as 'offending vehicle') dashed Motorcycle near village Memra. In the said accident, Devi Singh and Ratanlal, occupants of Motorcycle died. Accident was reported to concerned Police Station, based upon which, crime was registered against NA1, driver of offending vehicle bearing Crime No.31 of 1997.

3. Claimants/appellants, who are widow, minor children and widow mother of deceased -Devi Singh filed an application under Section 166 of the Motor Vehicle Act, 1988 seeking compensation of Rs.8,81,000/-, pleading therein that the deceased was working as Tailor and earning Rs.5,000/- per month. Claimants/appellants are dependants upon him.

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

5. NA3/Insurance Company denied the entire contents of claim application and further raised an objection with regard to the jurisdiction of Claims Tribunal. It was also pleaded that there was contributory negligence on the part of Devi Singh. Amount of compensation is highly exaggerated.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record, initially dismissed the claim application which was challenged before this Court in MAC-151 of 1999 which came to be allowed and the case was remanded back to the Claims Tribunal for deciding it afresh, after affording opportunity of hearing to all the parties. Learned Claims Tribunal after receiving the case on remand, further considered the material and evidence available on record held that NA1 while driving the offending

vehicle rashly and negligently dashed Devi Singh and Ratanlal, who were on the Motorcycle-Rajdoot; Devi Singh died on account of motor accidental injuries; income of deceased from the work of Tailoring was found not to be proved and awarded total sum of Rs.7,50,000/- as compensation.

7. Shri Amiyakant Tiwari, learned counsel for the appellant erred in assessing the income of deceased on lower side. He points out that the Claims Tribunal assessed the income of deceased on lower side. He points out that the claimants have pleaded and proved the income of the deceased as Rs.5,000/- from the work of Tailoring and Rs.6,000/- from agriculture work, but learned Claims Tribunal, only on the basis of presumption and surmises, have assessed income of deceased on notional basis as Rs.3,000/- per month and Rs.36,000/- per annum, which requires to be enhanced as per the pleadings and evidence of the appellants. He further submitted that learned Claims Tribunal erred in not awarding any amount towards future prospects, even after recording the age of deceased as 31 years, which is less than 40 years and the appellants/claimants are entitled for addition of 40% of established income of deceased towards future prospects, as per law laid down by Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in (2017) 16 SCC 680. He further pointed out that learned Claims Tribunal awarded interest from 14.05.1997 till 29.11.1998 @ 6% and from 18.11.2011 till its realisation @ 9%, which is erroneous. Claimants are entitled for interest from the date of filing of claim application till its realisation @ 9%. Learned Claims Tribunal could not have applied different rate of interest for the different period.

8. Per contra, Shri Dashrath Gupta, learned counsel for the Insurance Company submits that learned Claims Tribunal has rightly not awarded interest after dismissal of claim application till the remittance order passed by this Court. He submits that liability fastened upon the Insurance Company is only after passing of award in favour of claimant and against the Insurance Company. He further pointed out that learned Claims Tribunal awarded excessive amount on other conventional heads to the tune of Rs.3,65,000/-, which is on higher side, in view of Hon'ble Supreme Court in case of **Pranay Sethi** (supra). Lastly he submitted that as per the post-mortem report, age of the deceased was shown as 31 years and also recorded by learned Claims Tribunal to be 31 years but even then, learned Claims Tribunal applied multiplier of 17 instead of 16, as held by Hon'ble Supreme Court in case of **Sarla Verma and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121.

9. We have heard learned counsel for the respective parties and perused the record of claim case. Policy and liability are not in dispute. Challenge in this appeal is only with regard to the quantum of amount of compensation awarded by learned Claims Tribunal.

10. So far as the 1st submission made by learned counsel for the appellants with regard to the income of deceased, they have pleaded in their claim application the income of deceased as Rs.5,000/- per month from the work of Tailoring and giving Rs.4,000/- per month for the family. The claimants in their application have not pleaded about the income from any other source. In evidence, appellant-1 Bhuri Bai was examined as AW1 in which she stated that deceased on the date of accident, was 30 years of age and doing business of

Tailoring at Basna, having six sewing machines and six workers working under him. The Tailoring shop was running in a rented shop owned by Kunjam Seth. In cross examination, this witness has shown his inability to name the workers employed with deceased Devi Singh. Apart from appellant-1, one Neel Prasad was examined as AW-2, who also stated that the deceased was doing business of tailoring, having six sewing machines and six workers on the job. One Ramesh Agrawal was examined as AW4, who in his evidence also stated that the deceased has opened a Tailoring Shop in his premises and he was charging Rs.1,000/- per month towards rent of the shop. Deceased Devi Singh was having six sewing machines in his shop and he has given the certificate with regard to payment of rent by Devi Singh of Rs.1,000/- towards the shop measuring 18 x 12 ft.

11. From the aforementioned evidence of the witnesses, the work and occupation of deceased doing the business of Tailoring is found to be proved and all these witnesses also stated that Devi Singh was having six sewing machines in his shop. Taking into consideration the pleadings and evidence placed on record by the appellants/claimants, in the opinion of this Court, learned Claims Tribunal erred in assessing the income of deceased Devi Singh to Rs.3,000/- per month. True, it is that the accident took place on 18.03.1997 and therefore, the income of deceased if not proved by cogent and admissible piece of evidence, then, it is required to be fixed on notional basis, but at the same time, occupation, nature of work in which the deceased was engaged prior to the accident is also to be kept in mind at the time of fixing of his/her income.

12. When the award is challenged seeking enhancement of compensation by the claimants, then, it is to be seen by the Courts/Tribunals that the amount of compensation awarded to the claimants to be just compensation and not a bonanza.

13. In the aforementioned facts and circumstances of the case, we find it appropriate to assess the income of deceased as Rs.3,500/- per month instead of Rs.3,000/- as assessed by learned Claims Tribunal.

14. Perusal of the impugned award reveals that the learned Claims Tribunal has not awarded any amount towards future prospects. Hon'ble Supreme Court while dealing with issue of grant of future prospects in case of **Pranay Sethi** (supra), has held 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. xxxxx”

15. In the case at hand, there is no dispute that on the date of accident, the deceased was 31 years of age, as mentioned in post-mortem report Ex.P6, and he was not in permanent employment, therefore, in view of above law laid down by the Supreme Court in **Pranay Sethi**(supra), the claimants/appellants are entitled for an additional amount of 40% of the monthly income of the deceased as future prospects.

16. We have also noticed that the Claims Tribunal while computing compensation, has wrongly applied multiplier of '17' instead of '16'. It has been held by Hon'ble Supreme Court in the matter of **Sarla Verma & ors Vs DTC & another** reported in (2009) 6 SCC 121 that for the age group of persons

between 31-35, multiplier of '16' is to be taken for the purpose of computation of loss of dependency. In case at hand, on the date of accident, the deceased was 31 years of age, as pleaded in claim application and as mentioned in post-mortem report Ex.P6. Therefore, the proper multiplier to be applied for assessing the loss of dependency would be '16' and not '17' as applied by the Claims Tribunal.

17. Learned Claims Tribunal has awarded Rs.3,65,000/- as compensation on other conventional heads, which is much on higher side in view of law laid down by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram & others** reported in (2018) 18 SCC 130.

18. For the aforementioned reasons, impugned award requires re-computation and re-calculation, which is as under:

- a) Income of the deceased is assessed as Rs.3,500/- per month and Rs.42,000/- per annum.
- b) By adding 40% to the established income of the deceased towards his future prospects, total yearly income of the deceased will come to Rs.58,800/- $\{42000 + (42000 \times 40/100)\}$.
- c) After deducting 1/4 towards his personal and living expenses from the yearly income of the deceased, yearly loss of dependency of the claimants comes to Rs.44,100/- $\{58800 - (58800 \times 1/4)\}$.
- d) By multiplying yearly loss of dependency with multiplier of 16, total loss of dependency will come to Rs.7,05,600/- (44100×16) .

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

19. Now, appellants/claimants are entitled for a sum of **Rs.8,55,600/-** (705600 + 40000 + 40000 + 40000 + 15000 + 15000) instead of Rs.7,50,000/- as awarded by the learned Claims Tribunal.

20. So far as the submission of learned counsel for the appellant with regard to the interest is concerned, Section 171 of the Act of 1988 envisages award of interest where any claim is allowed. The aforementioned provision prescribed for the award of interest but not earlier than making of the claim. In the instant case, after the date of accident, initially on 14.05.1997, the claimants have filed claim application but unfortunately, claim application of the deceased Devi Singh was dismissed, which was challenged before this Court by way of filing an appeal. The said appeal was allowed, impugned award therein was set aside and matter was remanded back to Claims Tribunal with a direction to decide the claim application afresh after affording opportunity of hearing to the parties. In view of direction issued by this Court in remand order, learned Claims Tribunal has drawn fresh proceeding and partly allowed the claim application by impugned order. Dismissal of claim application by the learned Claims Tribunal cannot be treated as any default on the part of the claimant, leading to non-award of interest during the period of pendency of the appeal before this Court, as held by learned Claims Tribunal. The claimants, who lost their sole bread winner on 18.03.1997 have immediately filed the application for grant of compensation before appropriate forum and have promptly

prosecuted their case. The delay, if any, occurred in deciding claim application may not be attributed to them, particularly in view of fact that the Act of 1998 under which claim application was filed is beneficial piece of legislation.

21. For the foregoing reasons, we are of the view that learned Claims Tribunal erred in not awarding interest on the amount of compensation for the period during which appeal remained pending before this Court. Hence, we find it appropriate to award interest to the claimants @ 6% per annum from the date of filing of claim application till its realisation.

22. Other conditions imposed by the learned Claims Tribunal will remain intact.

23. In the result, appeal filed by the claimants is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge