NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 966 of 2015

1. Smt. Chameli Wd/o Late Suresh Sahu Aged About 30 Years.
2. Kumari Soniya D/o Late Suresh Sahu Aged About 7 Years.
3. Sandeep S/o Late Suresh Sahu Aged About 4 Years.

   Appellant Nos.2 & 3 are Minor Through Represented By Their Natural Guardian Mother Smt. Chameli Wd/o Late Suresh Sahu. All are R/o Village Tikari, Police Station Masturi, District- Bilaspur, Chhattisgarh. (That appellant No. 4 ie Rambharosh not impleaded as a Party in the memo of appeal as he Died).

---- Appellants/claimants

Versus

1. The Oriental Insurance Company Limited, Through Divisional Manager, Divisional Office, In-front Of Rajeev Plaza, Near Bus Stand, Bilaspur, Tahsil and District- Bilaspur, Chhattisgarh.
2. Awadh Narayan Tiwari S/o Bhagwati Prasad Tiwari R/o Shanker Nagar, Behind Gudakhu Factory, Police Station Torwa, Tahsil and District- Bilaspur, Chhattisgarh. (Owner).
3. Santosh Kumar Satnami S/o Nankiram Satnami, R/o Matwaripara Darrighat, Police Station Masturi, District- Bilaspur, Chhattisgarh. (Driver).

--- Respondents

For Appellants	:	Mr. Samir Singh, Advocate.
For Respondent No.1	:	Mr. Deepak Gupta, Advocate.
For Respondent No.2 & 3	:	None.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

04/11/2020

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of amount of compensation awarded by learned Motor Accident Claims Tribunal, Bilaspur, (CG) (for short, 'the Tribunal) vide impugned award dated 15.05.2015 passed in Claim Case No.255/2013, whereby the Tribunal partly allowed application filed by the claimants under Section 166 of the Act of 1988 and awarded Rs.11,12,260/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 22.07.2013, after attending marriage ceremony, deceased -Suresh Kumar Sahu alongwith Sugreem @ Chotu Yadav were returning from village -Tikri on Mahindra Bolero bearing registration No.CG10/F/7651. When they reached near village -Kahraoud, one Truck bearing Registration No. CG04/G/5566 (for short 'offending vehicle') driven by non-applicant No.3 rashly and negligently came on wrong side of road and dashed Bolero vehicle. In the aforesaid accident, Suresh Kumar Sahu suffered grievous injuries. He was taken to Community Health Centre, Masturi, from where he was referred to CIIMS, Hospital. Looking to his critical condition, he was brought to Dr. Bhim Rao Ambedkar Hospital, Raipur where he took treatment for considerable period. Thereafter, he was admitted in Shri Ram Care Hospital, Bilaspur, where during the course of treatment he died on 13.08.2013.

3. Claimants, who are widow, children & father of deceased, filed an application under Section 166 of the Act of 1988 before the Tribunal seeking compensation of Rs.30,00,000/- on different heads including Rs.6,00,000/- towards expenses incurred in medical treatment of deceased.

4. Non-applicant No.1/Insurance Company submitted its reply to application, while denying the pleadings made therein further pleaded that accident was head on collision between two motor vehicles, which attracts contributory negligence on the part of deceased. He further submits that deceased was an 'ordinary labourer' and earing only Rs.42 - 45 per day only. On the date of accident, neither driver of Mahindra Bolera ie Sugreem @ Chotu Yadav nor driver of offending vehicle ie Non-applicant

No.3, was possessed with valid and effective driving licence, there was no valid permit and fitness certificate in respect of offending vehicle. There was breach of policy condition, hence, Insurance Company is not liable to indemnify the insured

5. Non-applicant Nos.2 & 3, owner and driver of offending vehicle, submitted their reply to application and denied the pleadings made therein. It was further pleaded that on the date of accident, non-applicant No.3 was possessing valid and effective driving license, there was valid and effective policy issued by non-applicant No.1/Insurance Company, hence, liability if any to satisfy the amount of compensation would be of Insurance Company.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Suresh Kumar Sahu died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.3. There was no contributory negligence. Breach of policy condition was also not found to be proved. Tribunal allowed application in part, awarded a sum of Rs.11,12,260/- as compensation along with interest @ 6% p.a, fastened liability to pay the amount of compensation upon Non-applicants, jointly and severally.

7. Learned counsel for the appellants/claimants submits that the Tribunal erred in assessing income of deceased as Rs.4,500/- per month overlooking the pleadings and evidence placed on record by the claimants, where they have very specifically pleaded that on the date of accident, deceased was working as 'driver' as well as 'agriculturist' thereby earning Rs.80,000/- to Rs. 90,000/- per annum. He further

submits that the Tribunal erred in applying deduction of 1/3rd towards personal & living expenses, multiplier of 16 and not adding any amount towards future prospects. Deceased took treatment as in-patient continuously from the date of accident till his death in Dr. B. R. Ambedkar, Hospital, Raipur and thereafter, Shriram Care, Hospital, Bilaspur, but the Tribunal has not awarded any amount towards pain & sufferings and attendant. The Tribunal has awarded a total sum of Rs.65,000/- under other conventional heads, which is on lower side.

8. Learned counsel for the respondent No.1/Insurance Company opposes the prayer made by the learned counsel for the appellants/claimants and submits that claimants have failed to place on record any material or document to prove occupation and income of deceased. In absence of any admissible piece of evidence, Tribunal is justified in assessing income of deceased as Rs.4,500/- per month on notional basis. Claims Tribunal after taking into consideration medical documents placed on record by the claimants has awarded Rs.4,71,260/- towards medical expenses. Hence, amount of compensation awarded by the Tribunal to claimants cannot be said to be on lower side, rather it is just and proper in the given facts and circumstances of the case and does not call for any interference.

9. I have heard learned counsel for the respective parties and perused the record of claim case.

10. Policy covering risk of deceased and finding recorded by the Tribunal with regard to fastening of liability upon non-applicants to satisfy the amount of compensation is not in dispute. It is also not in dispute that on the date of accident, deceased was in the age group of 30 to 35 years.

Appellants/claimants have filed this appeal only for enhancement of amount of compensation.

11. So far as first submission made by learned counsel for the appellants/claimants with regard to income of deceased is concerned, perusal of record would show that claimants have not placed on record any specific document in this regard, therefore, in absence of any admissible piece of evidence, the Tribunal taking into consideration the date of accident, which is 22.07.2013, has rightly assessed income of deceased as Rs.4,500/- per month on notional basis, which in the considered opinion of this Court cannot be said to be on lower side. Hence, submission of learned counsel for appellants that income is not properly assessed is not sustainable and it is hereby repelled.

12. Coming to next submission made by learned counsel for appellants that the Tribunal erred in not awarding any amount towards future prospects. Issue with regard to award of future prospects has been considered by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**[1] and it was held that in case the deceased, victim of motor accident, was not in permanent employment and below age of 40 years, an addition of 40% of establish income of deceased towards future prospects should be made. Relevant portion is extracted below :-

> "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

1 (2017) 16 SCC 680

established income means the income minus the tax component.”

13. Indisputably, in case at hand, on the date of accident, deceased was in the age group of 30 - 35 years and not in permanent employment, therefore, this Court is of the considered opinion that claimants are entitled for an addition of 40% of established income of deceased towards future prospect.

14. As number of claimants is shown to be '4' including old age father of 70 years, in the aforementioned facts of the case, there are total 4 dependants upon deceased, hence, there will be deduction of 1/4th instead of 1/3rd towards personal and living expenses, as per decision of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**[2]. It is ordered accordingly. Multiplier applied by the Tribunal is inconsonance with the ruling of Hon'ble Supreme Court in case of **Sarla Verma (Smt.)** (supra), therefore, the same is hereby affirmed.

15. Tribunal has awarded Rs.65,000/- towards other conventional heads ie Rs.20,000/- towards loss of consortium to wife; Rs.30,000/-, ie Rs.10,00/- each to children and father of deceased; Rs.10,000/- towards transportation; Rs.5,000/- towards funeral expenses. The Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhuru Ram**[3] have considered the issue with regard to award of amount of compensation under other conventional heads. The heads have been ascertained and amount of compensation to be awarded on these heads are also fixed ie Rs.40,000/- towards consortium; Rs.15,000/- towards loss of estate & Rs.15,000/-

2 (2009) 6 SCC 121
3 2018 18 SCC 130

towards funeral expenses. Types of consortium has been explained in case of **Nanu Ram Alias Chuhuru Ram** (supra) like loss of consortium to spouse, loss of parental consortium to children, loss of filial consortium to parents.

16. For the foregoing reasons, we propose to recompute the amount of compensation awarded by the Tribunal.

17. Income of deceased assessed by the Tribunal as Rs.4,500/- per month, there will be addition of 40% towards future prospects, which comes to Rs.1800/- (40% of 4500). Total monthly income of deceased is assessed at Rs.6,300/- (4500 + 1800) and accordingly yearly income of deceased comes to Rs.75,600/- (63,00 X 12). After deducting ¼th towards personal and living expenses annual loss of dependency comes to Rs.56,700/- (75,600 – ¼th of Rs.75,600/-). By applying multiplier of 16, total loss of dependency will come to Rs.9,07,200/- (56700 X16).

18. Apart from this, claimants are also entitled for a sum of Rs.40,000/- towards spousal consortium; Rs.40,000/- towards loss of parental consortium; Rs.40,000/- towards filial consortium; Rs.15,000/- towards loss of estate; Rs.15,000/- towards funeral expenses; Rs.4,71,260/- towards medical expenses; Rs.10,000/- towards transportation; Rs.10,000/- towards pain and sufferings to the family members of deceased.

19. Now, claimants is entitled for a total compensation of **Rs.15,48,460/-** **(**9,07,200 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000 + 4,71,260 + 10,000 + 10,000) instead of **Rs.11,12,260/-** as awarded by the Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date

of application till its realization. Rest of the conditions of impugned award shall remain intact.

20. In the result, appeal is allowed in part and the impugned award stands modified to the extent as indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-