NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 77 of 2016

1. Badakha Ram S/o Late Sithraj, Aged About 60 Years
2. Smt. Tirajo W/o Late Piyar Sai, Aged About 28 Years, Occupation-house wife
3. Manita S/o Late Piyar Sai, Aged About 6 Years
4. Kailash S/o Late Piyar Sai, Aged About 3 Years

   Appellants 3 and 4 are Minors Through Natural Guardian Mother Smt. Tijaro Appellant No. 2

   All R/o Village Lichirama, P. S. And Tahsil Sitapur, District Surguja Chhattisgarh

---- Appellants/Claimants

Versus

1. Bhojraj Yadav S/o Shri Prasad Ram, Aged About 30 Years Occupation Driver, R/o Village Khadgaowankala, P. S. And Tahsil Ambikapur, District Surguja, Chhattisgarh
2. Nurul Haque S/o Abdul Haque, Occupation Owner, R/o Nagar Kharsiyanaka Ambikapur P. S. And Tahsil Ambikapur, District Surguja Chhattisgarh
3. Branch Manager, Reliance General Insurance Company Ltd. Branch Office G. E. Road, Raipur Chhattisgarh

---- Respondents/Non-Applicants

For Appellants : Shri AN Pandey, Advocate

For Respondent-3 : Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

09.11.2020

1. Appellants / Claimants have preferred this appeal under Section 173 MV Act, 1988 seeking enhancement of the amount of compensation awarded by Motor Accidents Claims Tribunal, Surajpur (for short, 'Claims Tribunal') in Claim Case-126 of 2010 vide impugned award dated 19.07.2013 wherein learned Claims Tribunal allowed the claim application in part and awarded Rs.3,93,000/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 02.03.2010 at about 4.30 pm Piyar Sai was travelling on motorcycle and returning from his place of work from Ashok Rice Mill, Pakrikhand to his own house at village Lichhirama. On the way, one bus bearing No.CG15A-6111 (hereafter, referred to as 'offending vehicle') driven by NA-1 rashly and negligently, dashed the motorcycle of Piyar Sai. In the aforementioned accident, Piyar Sai suffered grievous injuries and died on the spot.

3. Claimants who are father, mother, widow and children of deceased filed an application under Section 166 seeking Rs.21,76,000/- as compensation pleading therein that on the date of accident deceased was able bodied person working in Ashok Rice Mill and earning Rs.4500/- per month.

4. NA-1 driver of the offending vehicle did not appear and he was proceeded *ex-parte*.

5. NA-2 owner of the offending vehicle submitted reply to the claim application while denying the pleadings made therein, further pleaded that the accident was result of negligence of deceased himself. He drove his motorcycle rashly and negligently and lost control over it. Income of the deceased pleaded in claim application is not correct but he was a person living below poverty line. Owner and Insurance company of the motorcycle are necessary parties, in their absence, claim application is not maintainable. It was further pleaded that there was contributory negligence on the part of deceased and if the claimants are entitled for

any amount of compensation, liability would be upon the Insurance Company.

6. NA-3 Insurance Company submitted reply to the claim application while denying the pleadings made therein, further pleaded that there was head on collusion between the motorcycle of the deceased and offending vehicle, therefore, owner and Insurance Company of the motorcycle were also necessary party. There was no valid permit and fitness with the offending vehicle, there was no valid and effective driving license with NA-1, as such there was breach of policy conditions.

7. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by respective parties held that late Piyar Sai died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by NA-1. Contributory negligence on the part of the deceased, driver of motor cycle and beach of policy condition of offending vehicle was not found to be proved and awarded Rs.3,93,000/- as compensation.

8. Sh.A.N.Pandey, learned counsel for the appellants submits that the Tribunal erred in awarding meagre amount of compensation overlooking the age of the deceased, his occupation and employment with Rice Mill and earning Rs.4500/- per month. Tribunal disbelieved income of the deceased as Rs.4500/- per month without any basis / reason. Tribunal also erred in not awarding any amount of compensation towards future prospects even after recording the age of deceased as 33 years. He

further argued that the Tribunal not awarded appropriate sum of compensation on other conventional heads. He places his reliance in rulings of Hon'ble Supreme Court in cases of **National Insurance Company Limited Vs Pranay Sethi and others** reported in (2017) 16 SCC 680 and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others** reported in (2018) 18 SCC 130.

9. Shri Sourabh Sharma, learned counsel for respondent-3 Insurance Company submits that except pleadings and oral submissions, the claimants / appellants have not placed on record any clinching and admissible piece of evidence with regard to income of the deceased, hence, in the facts and circumstances of the case. Tribunal is justified in assessing the income on notional basis. He further contended that amount of compensation awarded by learned Claims Tribunal is just and proper which does not call for any interference.

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

11. Liability fastened upon NA3/Insurance Company is not challenged or disputed. This appeal is only with regard to enhancement of amount of compensation awarded by the Claims Tribunal fastening liability upon the non-applicants jointly and severally.

12. So far as the first submission made by learned counsel for the appellants with regard to income of the deceased assessed by Claims Tribunal, the claimants in application under Section 166 of the Act of 1988,

have pleaded that deceased was working as rice-mill Operator and earning Rs.150/- per day and Rs.4,500/- per month. Claimants/appellants have not placed on record any document or certificate of the employer to prove the employment and earning of the deceased as rice-mill Operator. Appellants/claimants have examined widow of deceased as AW1 and Anirudh Das as AW2 in support of their case. AW1 in her evidence stated that the deceased was working in rice-mill as labourer and earning Rs.4,500/- per month. In cross-examination, she admitted that she has not placed on record any document showing income of the deceased. Other witness AW2 in his evidence in chief filed an affidavit under Order 18 Rule 4 of the CPC, stating that deceased was working in rice-mill of Ashok Agrawal at village Pakrikhand. This witness also stated that deceased was working as labourer in rice-mill and earning Rs.4,500/- per month.

13. Perusal of pleadings in claim application and evidence does not correlate with each other. Claimants have pleaded that deceased was working as rice-mill Operator, whereas, in their evidence, it is stated that deceased was working as labourer. Looking to the contradiction in the pleadings and evidence, the submission made by learned counsel for the appellants that the Tribunal should have taken the income of deceased as Rs.4,500/- per month, considering occupation of deceased as Rice Mill Operator is not appealing to this Court. Tribunal, justified in not accepting the income as pleaded in claim application. But then, income of the deceased ought to have been assessed by taking into consideration the

wage structure, price index prevailing on the date of accident. Upon taking into consideration aforementioned factors, in the opinion of this Court, Tribunal erred in assessing income of deceased as Rs.3,000/-per month, which is on lower side and not sustainable. I find it appropriate to assess income of the deceased as Rs.4,000/- per month.

14. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that there shall be an addition of established income of the deceased towards future prospects considering their age on the date of accident and held as under:

> "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 ge 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."

15. In the case at hand looking to the age of deceased as shown in the post-mortem report as 42 years, in absence of clinching and admissible piece of evidence proving the age of deceased, I do not find any error holding age of deceased to be above 40 years. Hence, there will be addition of 25% of established income towards future prospects for calculating total income of the deceased.

16. Supreme Court in case of **Pranay Sethi** (supra) has considered what are the heads under which compensation to be awarded as other conventional heads and also quantified the compensation on those heads.

In case of **Nanu Ram** (supra) Supreme Court has explained the types of loss of consortium. Upon going through the award, in the opinion of this Court, Tribunal has not awarded appropriate amount of compensation on those heads.

17. For the foregoing reasons, I propose to re-calculate/recompute the compensation as under:

a) Income of the deceased as assessed by the Tribunal is Rs.4,000/- per month and Rs.48,000/- per annum.

b) By adding 25% to the established income of the deceased for future prospects, total yearly income of the deceased comes to Rs.60,000/- {48000 + (48000 x 25/100)}.

c) After deducting 1/4th from the yearly income towards his personal and living expenses, yearly loss of dependency comes to Rs.45,000/- {60000 – (60000x1/4)}.

d) As the deceased on the date of accident was 42 years of age, appropriate multiplier would be 14. By multiplying yearly loss of dependency with multiplier of 14, total loss of dependency comes to Rs.6,30,000/- (45000 x 14).

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

18. Now, claimants are entitled for a total sum of **Rs.7,80,000/-** (630000 + 40000 + 40000 + 40000 + 15000 + 15000) instead of Rs.3,93,000/- as awarded by the learned Claims Tribunal. This amount of compensation

shall carry interest @ 6% per annum from the date of filing of claim application till its realisation. Other conditions imposed by the Claims Tribunal will remain intact.

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

Sd/-
(Parth Prateem Sahu)
JUDGE

padma