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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 670 of 2014

- Sri Ram General Insurance Company Limited, Maruti Business park Amanaka Chauk G.E. Road, Raipur C.G.

-----Appellant

VERSUS

1. Bisahin Bai Pal aged about 40 years W/o late Shiv Chatan Pal
2. Smt. Asamati Bai aged about 65 years W/o late Shamaru Pal
3. Melau aged about 20 years S/o late Shiv Charan
4. Millan Pal aged about 18 S/o late Shiv Charan
5. Sharashwati Pal, aged about 14 years D/o late Shiv Charan
6. Bhagawat Pal aged about 12 years S/o late Shiv Charan
7. Ku. Deviki Pal aged about 10 years D/o late Shiv Charan

--------Claimants

(through mother of 3 minor daughters Bisahin Bai)

All Resident-Gram Paragaon, Post Paragaon, Thana and Tahsil Arang Dist. Raipur C.G.

8. Jaspal Sharma S/o Janak Raj Sharma aged about 47 years resident-Lodhioara Chauk pandri, Thana Pandari,Dist Raipur C.G. **–----Driver**
9. Harpal Singh S/o Gayani Mohan Singh Resident Gram Ghoradi, near Gurudura Thana, Tahsil and Distt. Mahasamund C.G. **–----Owner**

----Respondents

WITH

MAC No. 1056 of 2014

1. Smt. Bisahin Bai Pal, W/o Late Shivcharan Pal, aged about 40 years
2. Smt. Aasmati Bai Pal, W/o Late Samaru Pal, aged about 65 years
3. Milau Pal, S/o late Shivcharan Pal, aged about 20 years
4. Milan Pal, S/o Late Shivcharan Pal, aged about 18 years
5. Minor Ku. Sarswati Pal, D/o late Shivcharan Pal, aged about 14 years
6. Minor Bhagwat Pal, S/o late Shivcharan Pal, aged about 10 years
7. Minor Ku. Devki Pal, D/o late Shivcharan Pal, aged about 10 years

[Appellants 5 to 7 being minor on behalf of through their legal guardina mohter Smt. Bisahin Bai Pal]

All R/o village- Paragaon, Post office- Paragaon, Police Station and Tahsil Arang, District Raipur C.G.

---- Appellant

Versus

1. Jaspal Sharma S/o Janakraj Sharma, aged about 47 years, R/o Lodhipara Chowk, Pandri, Post Office- Raipur, Police Station-Pandri, District Raipur C.G.

2. Harpal Singh S/o Gyani Mohan singh R/o Village Ghodari, near Gurudwara, Post Office, Police Station, Tahsil and District-Mahasamund CG.
3. The Shriram General Insurance Company Limited, through Branch Manager, Branch Office, Maruti Business Park, Amanaka, G.E. Road, Post Office-Raipur, Police Station- Amanaka, Raipur, Tahsil & District-Raipur C.G.

---- Respondents

For Appellant/Insurance Company	:	Mr. Deepak Gupta, Advocate
For Respondent/Claimants	:	Mr. Shivendu Pandya, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J.

19/10/2020

1. Both the appeals have been filed under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the common award dated 30-01-2014 passed in claim case no. 79/2013 by Motor Accident Claims Tribunal, Mahasamund, whereby learned Claims Tribunal allowed the application filed under Section 166 read with Section 140 of the Act of 1988, in part and awarded Rs. 9,73,800/- as compensation.

2. MAC No. 670/2014 is filed by the Insurance Company challenging the quantum of the amount of compensation awarded to the claimants/ Respondents 1 to 7 in this appeal.

3. MAC No. 1056/2014 is filed by the claimants challenging the impugned award seeking enhancement of the amount of compensation on the grounds mentioned therein.

4. Facts relevant for disposal of these appeals are that on 23-04-2013 at about 5:00 in the morning when Shivcharan was going towards petrol pump at village Birkoni for having a cup of tea, at that relevant time, one truck

bearing registration no. CG 05D 0141 (hereinafter referred to as "offending truck") driven by Respondent 8/ Non-applicant 1, knocked down Shivcharan on N.H. 53 road. In the aforementioned accident, Shivcharan died on spot.

5. Claimants who are widow, mother and children of the deceased Shivcharan, filed an application under Section 166 of the Act of 1988 seeking Rs. 18,96,000/- as compensation on account of untimely motor accidental death of Shivcharan, pleading therein that on the date of accident, deceased was aged about 45 years and earning Rs. 200/- per day from the work of *Hamal* (Loader).

6. Respondent 8 and 9/ Non-applicant 1 and 2 who are driver and owner of the offending vehicle submitted reply to the claim application pleading therein that the amount of compensation sought for is highly exaggerated. Offending vehicle was insured with Non-applicant 3, truck was plied in accordance with the conditions of the insurance policy and hence, the liability, if any, for payment of amount of compensation would be upon the Insurance Company.

7. Non-applicant 3/ appellant-Insurance Company submitted reply to the claim application and denied all adverse pleadings made therein. Initially complaint was lodged against an unknown vehicle. Offending vehicle has been implicated falsely in-collision with Non-applicant 1 and 2/ Respondent 8 and 9 driver and owner of the offending truck. Truck was seized only after 36 days. Accident with offending truck was denied, driver of the offending truck was not possessed with valid and effective driving licence and the offending truck was being plied without any valid permit. There was breach of policy conditions. In alternate, plea of contributory negligence on the part of the deceased was also raised.

8. Learned Claims Tribunal, on appreciation of pleadings and evidence placed on record by the respective parties, has held that Respondent 8/ Non-

applicant 1 while driving the offending truck rashly and negligently caused accident and in the said accident Shivcharan died; assessing the income of the deceased as Rs. 6,000/- per month awarded Rs. 9,73,800/- as compensation.

9. Mr. Deepak Gupta, learned counsel for the appellant-Insurance Company in MAC No. 670/2014 submits that the Claims Tribunal erred in assessing the income of the deceased as Rs. 6,000/- per month without there being any admissible piece of evidence on record. It is contended that except claimant no. 1, no other witnesses was examined by the claimants to prove the income of the deceased and facts of the claim application. He further contended that the Claims Tribunal erred in awarding total sum of Rs. 2,25,000/- on other conventional heads i.e. under the head of mental agony, loss of consortium, loss of love and affection and towards funeral expenses which is much on higher side. He submits that the amount of compensation awarded to the claimants be suitably scaled down.

10. Per contra, Mr. Shivendu Pandya, learned counsel for the Respondents-claimants in appeal filed by the Insurance Company submits that the Claims Tribunal, based on the oral evidence placed on record and the certificate issued by the employer under whom the deceased was working, has rightly assessed the income of the deceased as Rs. 6,000/- per month. The income pleaded and proved by the claimants, looking to the date of accident (23-04-2013), cannot be said to be on higher side, hence, it does not call for any interference. He further contended that looking to the relationship of the claimants with the deceased and further the age of the children on the date of accident, two of them are minor, Tribunal was justified in awarding the amount of Rs. 2,25,000/- on other conventional heads. The claimants have also filed separate appeal (MAC No. 1056/2014) seeking enhancement of compensation in which the claimants have specifically taken ground that the Claims Tribunal has not awarded

any amount of compensation on future prospects for which they are entitled for in view of the law laid down by the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680**, Claims Tribunal erred in applying the multiplier of 13 even after taking into consideration the age of the deceased to 45 years, the appropriate multiplier, in the facts of the case and in view of the dictum of the Hon'ble Supreme Court in ***Sarla Verma & others v. Delhi Transport Corp. & anr*** reported in ***(2009) 6 SCC 121*****,** would be 14. He further submits that the Claims Tribunal has applied deduction of 1/5th overlooking the fact that the number of the claimants/ dependents on the deceased were 7 (seven) for which the appropriate deduction would be 1/6th and not 1/5th.

11. We have heard learned counsel for the respective parties and also perused the record of the claim case.

12. So far as, the appeal filed by the Insurance company challenging the quantum of the amount of compensation to the claimants is concerned. Learned Claims Tribunal has reckoned the income of the deceased as Rs. 6,000/- per month i.e. Rs. 200/- per day, considering the liability to maintain seven dependents apart from his own. Claims Tribunal has further recorded that the certificate issued by the proprietor of R.K. Traders, Aarang, Raipur with regard to the payment of wages of Rs. 200/- per day not to be on higher side in view of the price index. The claimants to prove the income of the deceased have not examined any other witnesses before the Claims Tribunal but for the evidence of Bisahin Bai, widow of deceased and one Santosh Sahu was examined as witness to the accident. The claimants have not examined the employer of the deceased to prove that he was paying Rs. 200/- per day and his engagement as *Hamal* (Loader) on fixed wages as pleaded in the claim application and stated by AW-1 in her evidence.

13. In absence of any admissible piece of evidence by examining the employer under whom the deceased was working and getting salary, the income pleaded as Rs. 200/- per day towards wages from work of deceased as *Hamal (*Loader) at R.K. Traders cannot be accepted as clinching piece of evidence. It is not in dispute that the deceased was able-bodied person, he might be doing some labour work to manage his family, merely the number of dependents of the deceased will not itself is sufficient to draw an inference with regard to the income of certain amount as assessed by Tribunal. However, the income of the deceased is to be assessed on notional basis taking into consideration the date of accident, nature of occupation in which the deceased was working, price index and cost of living.

14. As per the case of the claimants itself, deceased was working as *Hamal* and, therefore, we find it appropriate to assess the income of the deceased as Rs. 4,500/- per month instead of Rs. 6,000/- per month. We set aside the finding recorded by the Claims Tribunal with regard to earning/ income of the deceased as Rs. 6,000/- per month.

15. The second ground raised by the learned counsel for the appellant-Insurance Company that the Claims Tribunal erred in awarding Rs. 2,25,000/- on other conventional heads to be on higher side. The law in this regard has been well settled by the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)**, ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in ***(2018) 18 SCC 130****,* as the Supreme Court has fixed the heads on which the amount of compensation under other conventional heads are to be awarded and also fixed the amount of compensation on those heads. The Supreme Court in the aforementioned judgment has held that Rs. 40,000/- to be awarded towards spousal consortium to widow, Rs. 40,000/- towards parental consortium to the children and Rs. 40,000/- towards filial consortium to the

parents of the deceased. The Supreme Court has further fixed the amount of Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses. The maximum total amount of compensation on other conventional heads, if can be awarded as held by the Supreme Court, is Rs. 1,50,000/-. But in the case at hand, the Claims Tribunal awarded Rs. 2,25,000/- as compensation. Hence the award of amount of compensation on other conventional heads as Rs. 2,25,000/- is set aside and the award of compensation on other conventional heads is computed as Rs. 1,50,000/- because claimants are widow, children and mother of deceased.

16. Now, we will deal with the appeal filed by the claimants for enhancement of the amount of compensation in MAC No. 1056/2014. We have assessed the income of the deceased as Rs. 4,500/- per month. It is not in dispute that the deceased, on the date of accident, was held to be 45 years of age based on the age mentioned in the post mortem report. The claimants in their application under Section 166 of the Act of 1988 have also pleaded age of the deceased to be 45 years. No document(s) showing the age of the deceased has been placed on record. Age mentioned in the post mortem report is not based on any medical determination but on the basis of general assessment based on appearance of the body or upon information given by any person accompanied. The claimants, as appearing from the pleadings, belong to the lower strata of the family. Claimant 1, widow of the deceased, has been shown as 40 years of age on the date of filing of claim application.

17. Taking into consideration the aforementioned discussion, we are of the view that the deceased on the date of accident to be in the age group of 40-45 years. The Hon'ble Supreme Court has already considered the issue with regard to the award of future prospects in **Sarla Verma case (supra)** and in **Pranay Sethi case (supra)**. In the case of **Pranay Sethi (supra)** a Constitutional Bench judgment, Supreme Court has held that if the person

is not in permanent employment, less than 40 years of age, there will be addition of 40% of the established income and if the person is above 40 years and less than 50 years of age then there will be addition of 25% towards the future prospects to the established income of the deceased.

18. In the case at hand, as we have held the age of the deceased was in between 40-45 years, there will be an addition of 25% of the established income of the deceased towards future prospects. As per the judgment passed by Supreme Court in the case of **Sarla Verma (supra)**, appropriate multiplier for a person or deceased in age group of 41-45 years is shown to be 14, hence, the multiplier to be applied in the case at hand is of 14 and not 13 as applied by the Claims Tribunal. So far as, the submission made by the learned counsel for the appellants-claimants i.e. looking to the number of dependents as seven, appropriate deduction towards personal and living expenses to be 1/6th is not acceptable in view of the judgment passed by the Supreme Court in the case of **Sarla Verma (supra)**. Hon'ble Supreme Court while considering the deductions to be made towards personal and living expenses of the deceased from his income in very categoric terms has held that the deduction of 1/5th, if the number of dependents exceeds from 6 (six).

19. In view of the facts and circumstances of the case and the law laid down by the Supreme Court, deduction towards personal and living expenses would be 1/5th only and not 1/6th as submitted by the learned counsel for the appellants-claimants.

20. For the foregoing reasons, the amount of compensation to be awarded to the claimants requires re-computation which is as under:

21. Income of the deceased assessed by this Court as Rs. 4,500/- per month i.e. Rs. 54,000/- p.a. By adding 25% of the established income towards future prospects, the total yearly income of the deceased will come to

Rs. 67,500/-. Upon deducting 1/5th towards personal and living expenses, yearly loss of dependency will come to Rs. 54,000/- (Rs.67500-1/5th of Rs.67500). Upon multiplying the yearly loss of dependency with 14, the actual loss of dependency will come to Rs. 7,56,000/-. Apart from the above loss of dependency, claimants will be entitled for Rs. 40,000/- towards loss of spousal consortium, Rs. 40,000/- towards parental consortium, Rs. 40,000/- towards filial consortium, Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses.

22. Now, the appellants-claimants are entitled for total sum of **Rs. 9,06,000/-** [Rs. 7,56,000+Rs.40,000+Rs.40,000+Rs.40,000+Rs.15,000+Rs.15,000] as compensation instead of Rs. 9,73,800/- as awarded by the Claims Tribunal. The aforementioned amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions imposed by the Claims Tribunal will remain intact.

23. In the result:-

(i) MAC No. 670/2014 filed by the Insurance Company is allowed in part.

(ii) MAC No. 1056/2014 filed by the Claimants for enhancement of amount of compensation is also allowed in part.

Impugned award passed by the Claims Tribunal is hereby modified to the extent as indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
Judge

Pawan