NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 879 of 2014

1. Kamla Bai, Wd/o Ratanlal Banjara Aged About 35 Years
2. Laxmi Prasad S/o Ratanlal Banjara Aged About 16 Years
3. Ku. Geeta D/o Ratanlal Banjara Aged About 14 Years
4. Ku. Meeta Bai D/o Ratanlal Banjara Aged About 12 Years
5. Mukteshwar S/o Ratanlal Banjara Aged About 9 Years

Appellants 2 to 5 are minor through legal representative, natural guardian Mother Smt. Kamla Bai, Wd/o Ratanlal Banjara

All are R/o Bhikhapali, P.O. Pathla, Civil and Revenue 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 District : Raipur, Chhattisgarh (Insurer of Truck No.WB 23-5138) **----Respondents/NA**

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 Section173 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.54 of 1997, whereby learned Claims Tribunal allowed the claim application in part and awarded total sum of Rs.7,50,000/- 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 and minor children of deceased -Ratanlal Banjara filed an application under Section 166 of the Motor Vehicle Act, 1988 pleading therein that deceased was an educated and able bodied person, aged about 37 years. He was Sarpanch of village Panchayat, earning Rs.6,000/- per month from the shop and agriculture fields ad-measuring ten acres, and sought compensation of Rs.9,29,000/-.

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 rider of Motorcycle and the amount of compensation is highly exaggerated.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence, held that accident of Ratanlal Banjare was on account of rash and negligent driving of offending vehicle by NA1; death of Ratanlal Banjara was on account of accidental injuries and awarded Rs.7,50,000/- as compensation.

7. Shri Amiyakant Tiwari, learned counsel for the appellants submits that learned Claims Tribunal erred in assessing income of the deceased on lower side. He submits that claimants have very specifically pleaded the occupation of deceased as Shop-keeper and also having agriculture land of ten acres, in their pleading. He further submits that Kamla Bai, appellant-1 was examined as AW1. In her evidence, she stated that her husband was aged about 36 years, running shop in village Bikapali and also doing agriculture work. When her husband was alive, he was able to produce paddy of 100 bags from four acres of land and in his absence, they are getting only 20 bags of paddy upon giving the agriculture land on lease. In cross-examination, she stated that her husband was engaged in selling jaggery, edible oil along with other items. There was no board of shop and he used to run the shop in his house only. Learned counsel further pointed out that Claims Tribunal has assessed income of deceased Ratanlal Banjara, only as Rs.3,000/-, which is on lower side. Claims Tribunal erred in not awarding any amount towards future prospects, even after recording the age of deceased as 37 years, which is less than 40 years. 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. 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 order passed by this Court of remitting the case back to Tribunal for deciding it afresh. He submits that liability fastened upon the Insurance Company will be only after passing of award in favour of claimants and against the Insurance Company. Learned Claims Tribunal awarded excessive amount on other conventional heads to the tune of Rs.3,00,000/-, which is on higher side, in view of dictum of Hon'ble Supreme Court in case of **Pranay Sethi** (supra).

9. Lastly he submitted that as per the post-mortem report, age of the deceased was shown as 36 years and Claims Tribunal recorded age of deceased to be 37 years but even then, learned Claims Tribunal applied multiplier of 16 instead of 15, 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.

10. 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.

11. So far as the 1st submission made by learned counsel for the appellants with regard to the income of deceased, we have gone through the pleadings and evidence of claimants/appellants. Claimants have examined Kamlabai, widow of deceased Ratanlal Banjara as AW1. In her evidence, except her oral submission, no other evidence or document has been placed on record of

source of income. In absence of any admissible piece of evidence, income pleaded and stated by AW1 in her evidence cannot be accepted as income of deceased for the purpose of calculating the compensation. In such a situation, income of deceased is to be assessed only on notional basis. Learned Claims Tribunal assessed income of deceased as Rs.3,000/- per month, taking into consideration date of accident, ie 18.03.1997, we do not find any reason to hold that income of deceased assessed by the Claims Tribunal is on lower side. We affirm the income assessed by the Claims Tribunal as Rs.3,000/- per month.

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

13. 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"

14. In the case at hand, there is no dispute that on the date of accident, the deceased was 36 years of age as mentioned in post-mortem report, 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 addition of amount of 40% of the established monthly income of the deceased as future prospects.

15. We have also noticed that the Claims Tribunal while computing compensation, has wrongly applied multiplier of '16' instead of '15'. Hon'ble Supreme Court in the matter of **Sarla Verma & ors Vs DTC & another** reported in (2009) 6 SCC 121 held that for the age group of persons **between 35-40, multiplier of '15'** 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 37 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 '15' and not '16' as applied by the Claims Tribunal.

16. Learned Claims Tribunal has awarded Rs.3,00,000/- 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.

17. 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.3,000/- per month and Rs.36,000/- 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.50,400/- {36000 + (36000 x 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.37,800/- {50400 — (50400x1/4)}.

d) By multiplying yearly loss of dependency with multiplier of 15, total loss of dependency will come to Rs.5,67,000/- (37800 x 15).

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

18. The calculated amount of compensation comes to **Rs.6,77,000/-** (567000 + 40000 + 40000 + 15000 + 15000). After re-calculation of amount of compensation, compensation to be paid to the claimants is Rs.6,77,000/-, which is less than the amount of compensation awarded by the Tribunal. As the award of compensation is not challenged by the Insurance Company by preferring an appeal, the amount of compensation awarded to the claimants cannot be reduced in an appeal filed by the claimants for enhancement of the impugned award.

19. For the aforementioned reason, we find it appropriate to hold that the claimants are entitled for the amount of compensation 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 Ratanlal Banjare 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. Appeal 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

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