NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 834 of 2015

1. Smt. Krishna Devi, W/o Sumamal Shadija, Aged About 63 Years
2. Ku. Dali Shadija, D/o Shri Sumamal Shadija Aged About 22 Years

   Both R/o Rajkumar Oil Mill, Near Punjab Gali, Ramsagar Para, P.S. Azad Chowk, Tehsil And District- Raipur, Chhattisgarh

---- Appellants/Claimants

Versus

1. Jaikumar Arya, S/o Late Ladharam Arya Aged About 48 Years, Driver of offending vehicle No.CG19C-1999
2. Vaishali Arya, W/o Jaikumar Arya Aged About 46 Years, Owner of offending vehicle No.CG19C-1999

   Both R/o Through Jai Stores Guru Nanak Chowk, Raipur, Chhattisgarh
3. Branch Manager, Bharti Axa General Insurance Company Limited, Near Commercial Building, Devendra Nagar, P.S.- Govind Nagar, Tehsil And District- Raipur, Chhattisgarh (Insurer of offending vehicle No.CG19C-1999) **---- Respondents**

For Appellants	:	Shri R Pradhan, Advocate
For Respondent- 3	:	Shri DL Dewangan, Advocate on behalf of Shri Abhishek Sinha, Advocate

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Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

28.10.2020

1. Claimants have preferred this appeal under Section 173 of the Act, 1988 seeking enhancement of the amount of compensation challenging the impugned award dated 17.04.2015 passed by the Second Additional Motor Accident Claims Tribunal, Raipur (for short, 'Claims Tribunal') in Claim Case-132 of 2012, whereby learned Claims Tribunal allowed the application under Section 166 of the Act of 1988 in part and awarded Rs.1,50,000/- as compensation.

2. Facts relevant for disposal of this appeal are that on 11.12.2011, Sumamal Shadija was going to Kanha Kisli from Raipur along with his

friends, namely, Jaykumar Arya, Kanhaiyalal Hinduja, and Ramchandra Sachdev on Car bearing No.CG19C 1999 (for short, 'offending vehicle'). On the way, when they reached near Village Bindora Saja Marg, NA1 drove the Car rashly and negligently and caused accident. In the said accident, Sumamal Shadija suffered grievous injuries over his person, on account of which he died. Other co-occupants of the offending vehicle Ramchandra Sachdev, Kanhaiyalal Hinduja and driver Jaykumar Arya suffered grievous injuries over their person. Accident was reported to concerned Police Station, based upon which, Crime No.252 of 2011 was registered.

3. Appellants/Claimants filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.22,50,500/- pleading therein that the deceased was a Business Man, being Proprietor of M/s Rajkumar Oil Ramsagarpara, Raipur, he was earning Rs.30,000/- per month from the business and the claimants were dependants upon his income.

4. NA1 and 2, driver and owner respectively, of the offending vehicle submitted their reply jointly to the claim application, denied the pleadings made therein. It was further pleaded that the deceased jumped out from the running vehicle. On the date of accident, while the offending vehicle was running on the road, suddenly one dog jumped on the road, to save the dog NA1 took the car to the side of road, but as there was slope on the road side, it went into the agriculture fields and turned turtle. The other persons have suffered injuries. Upon mechanical examination of offending vehicle, it was reported that tyre of driver side was in burst condition.

5. NA3/Insurance Company submitted reply to the claim application and denied the pleadings made therein. It was further pleaded that on the date of accident, driver of offending vehicle was not possessed with valid and effective driving license. Offending vehicle was not having valid permit and fitness, there was breach of policy conditions hence Insurance Company is not liable for any amount of compensation. Information of accident was not forwarded to the Insurance Company. There was breach of policy conditions.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record, held that the deceased died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by NA1. Breach of Policy conditions were not found to be proved and awarded Rs.1,50,000/- as compensation.

7. Shri R Pradhan, learned counsel for the appellants submits that the claimants in the claim application have very specifically pleaded that the deceased being husband of appellant-1 and father of appellant-2 was doing business in the name of M/s Rajkumar Oil Ramsagarpara, Raipur. He was earning Rs.30,000/- per month, for which the claimants have placed on record Income Tax Return of assessment year 2011-2012 submitted before the Income Tax Department, which shows his total income as Rs.2,47,869/-. He submits that after death of the Sumamal, business run by him was closed and the claimants/appellants were deprived off the income of the deceased. He contended that learned Claims Tribunal erred in arriving at a finding that business of deceased is not closed, but it is continuing, based on the Income Tax Return placed on

record for the assessment year 2012-13, showing gross income of the deceased as Rs.3,47,869/-. Learned Claims Tribunal has not awarded any amount towards loss of dependency/loss of income, by recording a finding that the claimants failed to prove that business run by the deceased was totally closed. Income which the deceased was earning has not been affected and the family members of the deceased can very well run/manage the business, whereas, the claimants have very specifically pleaded that business of the deceased was closed and they are deprived off income on which they were dependant. It is further contended that learned Claims Tribunal in Paragraph-28 of impugned award have erred in assessing loss of income as Rs.3,000/- per month and calculating the amount of compensation towards loss of dependency.

8. Per contra, Shri DL Dewangan, counsel for the Insurance company submits that impugned award passed by learned Claims Tribunal is just and proper. It is further contended that appellants/claimants have not placed on record any documentary evidence to show that the business like Oil Mill has been closed after the death of the deceased, who was its proprietor. In absence of any proof of closure of the business, it will be presumed that the business is running and the claimants are receiving income from the said business, even after the death of its proprietor. He submits that learned Claims Tribunal has awarded just amount of compensation in the facts and circumstances of the case, which does not call for any interference.

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

10. Motor accidental death, Insurance of offending vehicle and the liability to satisfy the amount of compensation upon the Insurance Company being insurer of the offending vehicle, are not in dispute. The only point for consideration of this Court is whether the amount of compensation awarded by the Claims Tribunal is just or not.

11. The claimants to prove income of the deceased, have placed on record Income Tax Return submitted by the deceased. Perusal of the said document would show that return has been shown to be submitted as individual. The PAN number mentioned in the document placed on record as Ex 11C would show the same PAN number as mentioned in the ITR, Ex.A.14C, which is issued in the name of the deceased, ie AJ GPS3585H. The name of Assessee is shown as Sumamal Nanakram Shadija and the Income Tax Return was submitted on 30.09.2011 for the assessment year 2011–12. Gross total income has been shown to be Rs.3,28,028/-. Income Tax Return which has been taken note of by the learned Claims Tribunal for arriving at a conclusion that Oil Mill was running is of the Assessment year 2012-13. Upon perusal of the document, at page 46 of the record would show that said return was submitted on 20.03.2013. The Income Tax return for Assessment year 2011-12 has been filed mentioning the period of assessment till his death only. Income shown for the Assessment year 2012-13 shows raise in the income of the deceased in the subsequent year, which has been submitted after death of Assessee. It will be appropriate to take the income Tax Return showing the income for the assessment year 2011-12 showing gross total income of Rs.3,28,028/-. Age of the deceased has been shown as 65 years.

12. The claimants have failed to prove that the entire business of oil mill has been closed after death of deceased, through admissible evidence. Appellant-2, daughter of the deceased was examined as AW1 before the Claims Tribunal. In her cross examination she stated that she is not aware about the person, who is running the business of M/s Raj Kumar Oil Mill, which was in proprietorship of her father. She further admitted that she has not initiated any proceeding nor made any application regarding disconnection of electricity connection, installed for running of the oil mill.

13. In view of aforementioned evidence of appellant-2, who is aged about 23 years, on the date of her examination appears that the appellant has not stated the correct fact about the status of M/s Raj Kumar Oil Mill, which was said to be run by her father, prior to his death.

14. Even if it is presumed that the Oil Mill business run by her father prior to his death is running after death of Sumamal, then also, there will be requirement of a person to manage the affairs of business as substitute of the deceased. For managing the business of oil mill it requires a person to be employed, who is having good educational qualification, experience and skill of running the business. In the facts of the case, where the claimants failed to prove that the entire business has been closed, there cannot be any loss of entire income of the deceased.

15. Hon'ble Supreme Court in case of **State of Haryana and another Vs Jasbir Kaur and others** reported in (2003) 7 SCC 484 has considered the loss of income in case of death of a person who was earning income from agriculture fields and observed that the land possessed by the

deceased still remains with the claimants/Lrs as they are his legal heirs and there is every possibility of earning by the claimants from the said agriculture fields and held thus :

> “8. It is clear on a bare reading of the Tribunal's decision as affirmed by the High Court that no material was placed before the former to prove as to what was the income. As rightly contended by the learned counsel for the appellants, there was not even any material adduced to show the type of land which the deceased possessed. The matter can be approached from a different angle. The land possessed by the deceased still remains with the claimants as his legal heirs. There is, however, a possibility that the claimants may be required to engage persons to look after the agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. …........”

16. Taking support of aforementioned ruling of Hon'ble Supreme Court, I find it appropriate to assess loss of income suffered by the claimants /appellants on account of engaging a person for managing the business as substitute of deceased, to be Rs.10,000/- per month. Definitely, there would be loss of income for which the claimants are required to pay the employee for running the business in absence of the deceased.

17. Age of the deceased has been shown to be 65 years, and therefore, appropriate multiplier would be 7 as held by Hon'ble Supreme Court in case of **Sarla Verma (Smt) and Others Vs Delhi Transport Corporation and Another** reported in **(2009) 6 Supreme Court Cases 121**.

18. In the above facts of the case, this Court finds it appropriate to re-compute amount of compensation as under:

a) Loss of income due to death of deceased is Rs.10,000/- per month and Rs.1,20,000/- per annum.

b) Upon deducting 1/3rd towards personal and living expenses of the deceased, yearly loss of dependency comes to Rs.80,000/- (120000 — (120000 x 1/3).

c) By applying multiplier of 7 to the yearly loss of dependency, total loss of income suffered by the claimants comes to Rs.5,60,000/- (80000 x 7).

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

19. Now, appellants will be entitled for a total sum of **Rs.6,70,000**/- (560000 + 40000 + 40000 + 15000 + 15000) instead of Rs.1,50,000/- as awarded by the Tribunal.

20. Aforementioned amount of compensation shall carry interest @ 6% from the date of filing of claim application till its realisation. Other conditions imposed upon by learned Claims Tribunal shall remain intact.

21. Appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma