

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 875 of 2015**

1. Santosh Kumar Yadav S/o Rameshwer Yadav Aged About 40 Years
 2. Chandrakali W/o Santosh Kumar Yadav Aged About 38 Years
- Both R/o Village Chorchadevri, P.S.- Ratanpur, Tahsil Kota And District- Bilaspur, Chhattisgarh

---- Appellants/Claimants**Versus**

1. Ashis Kumar S/o Durgashankar R/o Village Sarvan Devri, Ratanpur, District- Bilaspur, Chhattisgarh (Driver of Vehicle No.CG10EN-3039)
2. Kushal Ram Induva S/o Bhikhul Ram Induva, R/o Village Bharvadih, P.S. Ratanpur, District- Bilaspur, Chhattisgarh (Owner of Vehicle No.CG10EN-3039)
3. ICICI Lumbered General Insurance Com. Ltd. Through Branch Manager, Branch Lalganga Shopping Complex, G.E. Road, District- Raipur Bilaspur, C.G. **Current Address** ICICI Lumbered General Insurance Company Ltd. Through Branch Manager, Branch Office, Near HDFC, Gnd Floor, Vanijya Bhawan, Devendra Nagar Rd, Sector-3, Devendra Nagar, Raipur, P.S. Devendra Nagar, Chhattisgarh 4920041 (Insurer of Vehicle No.CG10EN-3039)

---- Respondents

For Appellants	: Shri Vivek Kumar Agrawal, Advocate
For Respondent-3	: Shri P Acharya, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****06.11.2020**

1. Appellants/claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 seeking enhancement of the amount of compensation awarded by the 7th Additional Motor Accidents Claims Tribunal, Bilaspur (for short, 'Claims Tribunal') in claim case-217 of 2014 vide award dated 31.3.2015 whereby learned Claims Tribunal allowed the application under Section 163A in part and awarded Rs.3,29,000/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal or that on 24.10.2012 Rajesh Kumar Yadav while returning from Mahamaya Temple Ratanpur reached near Lakra Madanpur Road, NA1 driving his two wheeler bearing No.CG10EN-3039 (offending vehicle) rashly and negligently dashed motorcycle of Rajesh Kumar Yadav. In the said accident Rajesh Kumar & Chandrika Bai who were occupants of the motorcycle suffered grievous injuries over their person, Rajesh Kumar Yadav died.

3. Appellants / Claimants filed application under section 163A of 1988 seeking compensation of Rs.7,71,544/- pleading therein that on the date of accident deceased was aged about 32 years and was earning Rs.3,300/- per month from his work in a private company.

4. NA1 driver of the offending vehicle did not appear before the Claims Tribunal and was proceeded *ex-parte*.

5. NA2 owner of the offending vehicle submitted reply to the claim application denying the facts pleaded therein. It was further pleaded that deceased was traveling on motor cycle along with two other persons, was not possessed with driving license. The motorcycle driven by the deceased was not insured, accident was a result of negligence on the part of deceased himself, amount of compensation claimed is highly exaggerated.

6. NA-3 Insurance Company submitted its reply, while denying the contents of the claim application, further pleaded that deceased was driving the motorcycle under influence of liquor, he was not possessed

with driving license and accident was result of his own negligence. There was contributory negligence on the part of deceased also.

7. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record held that deceased died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by NA1; contributory negligence on the part of deceased was not found to be proved; there was no breach of policy conditions, while awarding amount of Rs.3,29,000/- as compensation, fastened liability on NA3 Insurance Company.

8. Learned Counsel for the appellants submits that the Claims Tribunal erred in awarding meager amount of compensation. Income of deceased Rs.3,300/- per month pleaded by the claimants has not been taken into consideration and assessed income of deceased as Rs.3,000/- per month only on conjectures and surmises. He further contended that Tribunal has not awarded any amount towards future prospects and less amount is awarded towards loss of estate and funeral expenses, which is contrary to the ruling of Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in (2017) 16 SCC 680.

9. Per contra Shri P Acharya, learned counsel for the Insurance Company supports the impugned award. He submits that learned Claims Tribunal based upon the pleadings and material placed on record has rightly assessed amount of compensation which does not call for any interference. He further submits that application filed by the claimants is

under Section 163A of the Act of 1988, hence, amount of compensation to be awarded under this proceeding is to be strictly in accordance with the Second Schedule appended to the Act of 1988. He submits that the Tribunal erred in applying multiplier of 18 instead of 17 as provided under Second Schedule of the Act of 1988.

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

11. Claimants have filed application under Section 163A of the Act of 1988 for seeking compensation on account of unfortunate death of their son. Claimants have pleaded income of the deceased as Rs.3,300/- per month but have not placed on record any documentary evidence in support of their pleadings with regard to the income of the deceased. Learned Claims Tribunal in absence of any documentary evidence assessed income of the deceased as Rs.3,000/-. True, it is that in absence of any proof with regard to the income of the deceased pleaded in the claim application, it cannot be accepted as it is without considering the other relevant facts. If the claimants failed to produce admissible piece of evidence with regard to income, then it is the duty of the Tribunal and Courts to consider whether the income pleaded in the claim application keeping in view date of accident, wage structure prevailing, cost of living is just and proper or on higher side.

12. In the case at hand date of accident is on 24.10.2012. Taking into consideration date of accident, and other factors, income pleaded by the claimants in the claim application of Rs.3,300/- per month could not be

said to be on higher side. A ordinary manual labour could have earned more.

13. In view of above I find it appropriate to assess income of the deceased as Rs.3,300/- per month.

14. So far as the other submission made by the learned counsel for the appellants with regard to non-award of any amount of compensation towards future prospects and awarding less amount on other conventional heads is concerned, the amount of compensation to be awarded to the claimants is under the provision of 163A of the Act of 1988. In the proceeding of 163A of the Act of 1988 amount of compensation is to be calculated strictly in accordance with the Second Schedule.

15. Under the Second Schedule, there is no provision for awarding any amount towards future prospects and further, amount of compensation for loss of estate, loss of consortium and funeral expenses is fixed as Rs.2,500/- Rs.5000/- and Rs.2,000/- respectively. Loss of consortium is to be awarded to the spouse. In the case at hand, claimants are parents of the deceased, hence there will be no award under the head of loss of consortium.

16. Learned Claims Tribunal has deducted 50% of income ($\frac{1}{2}$) towards personal and living expenses taking into consideration of case law of Hon'ble Supreme Court in the matter of **Sarla Verma (Smt) and Others Vs Delhi Transport Corporation and Another** reported in (2009) 6 Supreme Court Cases 121. The application of deduction and multiplier as guided by Hon'ble Supreme Court in the above case is with regard to

application for compensation filed under Section 166 of the Act of 1988. Under the Second Schedule the standard deduction has been shown to be $\frac{1}{3}$ hence, the deductions towards personal and living expenses would be $\frac{1}{3}^{\text{rd}}$ instead of $\frac{1}{2}$.

17. Learned counsel for the respondent/ Insurance Company has raised a ground that Tribunal applied multiplier of 18 which is erroneous as multiplier of 17 is provided under the Second Schedule for a person who is between 20 to 25 years. In the case at hand as per the claimants, age of the deceased was 22 years hence the submission made by learned counsel for the respondent also requires consideration as this Court is recomputing the amount of compensation to be awarded to the claimants.

18. For the forgoing reasons, amount of compensation to be awarded to the claimants requires reconsideration and re-computation which is as under.

- a) Income of the deceased as assessed by this court is Rs.3,300/- per month and Rs.39,600/- per annum.
- b) After deducting $\frac{1}{3}^{\text{rd}}$ towards personal and living expenses, yearly loss of dependency comes to Rs.26,400/- {39600 — (39600 x $\frac{1}{3}$)}.
- c) Upon applying multiplier of 17 total loss of dependency comes to Rs.4,48,800/- (26400 x 17)
- d) Apart from the above total loss of dependency, claimants are further entitled for Rs.2,000/- for funeral expenses and Rs.2,500/- towards loss of estate.

19. Now appellants / claimants will be entitled for a total sum of **Rs.4,53,300/-**, instead of Rs.3,29,000/- as awarded by learned Claims Tribunal.

20. Aforementioned total amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realization.

21. In the result, appeal is allowed in part and the amount awarded is modified to the extent as indicted above.

Sd/-
(Parth Prateem Sahu)
JUDGE