NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 460 of 2015

1. Smt. Pushpa Mishra W/o Late Arvind Mishra Aged About 48 Years
2. Manish Mishra S/o Late Arvind Mishra Aged About 22 Years
3. Sandeep Mishra S/o Late Arvind Mishra Aged About 20 Years
4. Ku. Nilam Mishra D/o Late Arvind Mishra Aged About 19 Years
5. Koushal Mishra S/o Late Ram Sundar Aged About 70 Years
6. Smt. Ful Kumari Mishra W/o Koushal Mishra Aged About 65 Years

   All r/o House No. A-64, Ashok Vihar Colony, Ring Road No. 2, P.S. Khamtarai, Raipur, Chhattisgarh

---- Appellants/Claimants

Versus

1. Rajendra Singh, S/o Late Vilas Singh Aged About 45 Years R/o Near Chourasiya Kirana Store, Sarora, P.S. Urla, District Raipur, Chhattisgarh (Driver)
2. Rajesh Kumar Chourasiya, S/o Lal Babu Chourasiya, R/o Near Chourasiya Kirana Store, Sarora, P.S. Urla, District Raipur, Chhattisgarh (Owner)
3. Reliance General Insurance Company Limited Through Divisional Manager, Shop No. 412-413, 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur, District Raipur, Chhattisgarh (Insurer)

---- Respondents/Non-Applicants

For Appellants	:	Shri Raghavendra Pradhan, Advocate
For Respondent-2	:	Shri Shivendu Pandya, Advocate
For Respondent-3	:	Shri Nilesh Kumar Thakur, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

05.11.2020

1. Claimants have preferred this appeal under Section 173 of Motor Vehicle Act, 1988 challenging the impugned award dated 28.07.2014 passed by the Second Additional Motor Accidents Claims Tribunal, Raipur (For short, 'Claims Tribunal') in Claim Case No.110 of 2012 whereby learned Claims Tribunal allowed application under Section 166 of the Act of 1988 in part and awarded total sum of Rs.13,73,000/- as compensation in a fatal accident case.

2. Facts of the case in nutshell are that on 07.04.2012, near Bagga Temple, Police Station- Khamtarai NA1 while driving his vehicle rashly and negligently, dashed Arvind Mishra. In the said accident, Arvind Mishra suffered grievous injures over his person, he was taken to MEKAHARA Hospital, where he succumbed to injuries during the course of treatment. Accident was reported to concerned Police Station based upon which, Crime No.149 of 2012 was registered against NA1.

3. Claimants, appellants, who are widow, children and age old parents of late Arvind Mishra (henceforth, the deceased) have filed application under Section 166 seeking compensation of Rs.30,25,000/- on various heads.

4. NA2, Owner of offending vehicle submitted reply to the claim application, denying the pleadings made therein. It was pleaded that deceased himself was negligent in the accident. In alternate, it was also pleaded that the deceased was contributory negligent. NA1 was possessed with valid and effective driving license, hence, liability if any, to pay compensation would be upon Insurance Company.

5. NA3, Insurance Company submitted its reply to claim application, while denying the pleadings made therein, further pleaded that NA1 was not possessed with valid and effective driving license. Claim application itself is not maintainable as necessary parties were not impleaded in the claim application. Deceased met with the accident on account of his own negligence. Amount of compensation is highly exaggerated.

6. Upon appreciation of pleadings and evidence placed on record by the parties, learned Claims Tribunal 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 was not found to be proved and awarded Rs.13,73,000/- as compensation, fastening liability upon the Non-applicants jointly and severally.

7. Shri R Pradhan, learned counsel for the appellants submits that motor accidental death of the deceased, Insurance of the offending vehicle and liability to satisfy the amount of compensation awarded by learned Claims Tribunal upon non-applicants jointly and severally is not in dispute. Claimants filed appeal for enhancement of compensation on the ground that Tribunal has not awarded any amount towards future prospects, erroneously deducted 1/3rd instead of 1/6th towards personal and living expenses of the deceased, overlooking the number of claimants to be six in number. He further contended that the Tribunal has awarded meagre amount of compensation on other conventional heads, which is contrary to the ruling 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** reported in 2018 ACJ 2782.

8. Per contra, Shri Shivendu Pandya, learned counsel for respondent-2 supported the award.

9. Shri NK Thakur, learned counsel for respondent-3/Insurance Company submits that learned Claims Tribunal while considering the children of deceased to be major, has rightly deducted 1/3rd towards personal and living expenses. He further submits that learned Claims Tribunal has awarded Rs.1,25,000/- on other conventional heads, the amount of compensation awarded to the appellants/claimants in the facts and circumstances of case is just and proper which does not call for any interference.

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

11. There is no dispute with regard to the income assessed by the Claims Tribunal, as it was not challenged by the respondents herein. So far as the submission raised by learned counsel for the appellants with regard to the award of future prospects, law in this regard is well settled now, by the Hon'ble Supreme Court in case of **Pranay Sethi** (supra), wherein, it is held that if a person above 40 years and below 50 years of age and not in permanent employment, there will be an addition of 25% of established income towards future prospects;

12. In the case at hand, age of the deceased as assessed by the Tribunal is 49 years and income assessed is Rs.12,000/- per month. There will be addition of 25% of established income towards future prospects for calculating total income of the deceased.

13. So far as the deduction applied by the Tribunal as 1/3 is concerned, learned Claims Tribunal has not assigned any reason for applying the

deduction of 1/3rd when the number of claimants shown in the Cause -title of the award is six, including widow, three children and age old parents of 70 years and 65 years. The children though attained age of majority by crossing 18 years of age, which itself is not sufficient to arrive at a conclusion that they have become self dependant and they are having their own income.

14. In the case at hand, elder son is shown to be 22 years of age and other two are aged about 20 and 19 years. In the aforementioned facts of the case and in absence of any proof on record of earning of children of deceased, in the considered opinion of this Court, claimants-2 to 4 were dependants upon the deceased. Total dependants upon the deceased were six in number and therefore, in view of guidelines issued by Hon'ble Supreme Court in case of **Sarla Verma and others Vs Delhi Transport Corporation and another reported in** (2009) 6 SCC 121, appropriate deduction is 1/4th, it is ordered accordingly.

15. Learned Claims Tribunal has awarded Rs.1 lakh towards loss of consortium and Rs.25,000/- towards funeral expenses, thereby awarded Rs.1,25,000/- on other conventional heads. The award on both the heads is on higher side, which is required to be scaled down, at the same time, amount of compensation on other conventional heads is also to be awarded to the claimants taking into consideration the ruling of Hon'ble Supreme Court in the cases of **Pranay Sethi** (supra) and **Magma** (supra).

16. The claimants are also entitled for award of Rs.40,000/- each towards spousal consortium, parental consortium and filial consortium;

and Rs.15,000/- each for loss of estate and funeral expenses. The amount of compensation fixed on other conventional heads is to be increased by 10% after every three years, as the date of pronouncement of above judgment by Hon'ble Supreme Court is of 31st October, 2017. Hence, there will be increase of 10% in the amount of compensation on other conventional heads, as fixed therein.

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.12,000/- per month and Rs.1,44,000/- per annum.

b) By adding 25% to the established income of the deceased, total yearly income of the deceased comes to Rs.1,80,000/- {144000 + (144000 x 25/100)}.

c) After deducting 1/4th towards personal and living expenses from the yearly income of the deceased, yearly loss of dependency comes to Rs.1,35,000/- {180000 – (180000x1/4)}.

d) By multiplying yearly loss of dependency with multiplier of 13, total loss of dependency comes to Rs.17,55,000/- (135000 x 13).

e) Apart from the above total loss of dependency, claimants are further entitled for Rs.44,000/- {40000 + (40000 x 10/100)} towards spousal consortium, Rs.44,000/- {40000 + (40000 x 10/100)} towards parental consortium, Rs.44,000/- {40000 + (40000 x 10/100)} towards filial consortium, Rs.16,500/- {15000 + (15000 x 10/100)} towards funeral expenses and Rs.16,500/- {15000 + (15000 x 10/100)} towards loss of estate.

18. Now, appellants/claimants are entitled for a total sum of **Rs.19,20,000/-** (1755000 + 44000 + 44000 + 44000 + 16500 + 16500)

instead of Rs.13,73,000/- 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 filed by the claimants for enhancement of compensation is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma