NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 573 of 2015

1. Smt Ramkali Devi, Wd/o Late Dullichand Goyal Aged About 70 Years
2. Vishnu Lal Goyal S/o Late Dullichand Goyal Aged About 54 Years Mentally Unfit, Represented Through Natural Guardian Mother Smt. Ramkali Devi, Wd/o Late Dullichand Goyal
3. Smt. Rekha Goyal Wd/o Late Shankar Lal Agrawal Aged About 44 Years
4. Ku. Shruti Goyal D/o Late Shankar Lal Agrawal Aged About 23 Years
5. Ku. Yukti Goyal D/o Late Shankar Lal Agrawal Aged About 21 Years
6. Swayam Goyal S/o Late Shankar Lal Agrawal Aged About 19 Years
7. Ku. Triksha Goyal Wrongly Mentioned In Impugned Award as Vinita Goyal, D/o Late Shankar Lal Agrawal, aged about 13 years, Minor, Through Natural Guardian Mother Smt. Rekha Goyal W/o Late Shankar Lal Agrawal

   All R/o Ketka Road Surajpur, P.S. And Tahsil Surajpur, District- Surajpur, Chhattisgarh

---- Appellants/Claimants

Versus

1. The Oriental Insurance Company Limited, Through Its Branch Manager, The Oriental Insurance Company Limited, Branch Office Ambedkar Chowk Ambikapur, Tahsil Ambikapur, District-Surguja, Chhattisgarh...... Insurer of vehicle
2. Keshwar Singh S/o Dharmjeet Singh R/o Village Dhaneshpur, Tehsil And District- Surajpur, Chhattisgarh....... Owner of vehicle
3. Manoj Kumar Vishwakarma, S/o Shobhai Vishwakarma, Aged About 35 Years, R/o Village Parri, Police Line Road, P.S. Surajpur, Tahsil And District- Surajpur, Chhattisgarh......Driver of vehicle

---- Respondents/Non-Applicants

For Appellants : Shri Ashish Surana, Advocate

For Respondent-1 : Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

09.11.2020

1. Appellants/claimants have preferred this appeal under Section 173 of Motor Vehicles Act, 1988 seeking enhancement of amount of compensation awarded by the Motor Accidents Claims Tribunal, Surajpur, District Surajpur (for short,'Claims Tribunal') vide award dated 11.02.2015

passed in Claim Case-54 of 2014, whereby learned Claims Tribunal allowed the application under Section 166 of the Act of 1988 and awarded total compensation of Rs.3,76,000/- in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 10.02.2014 at about 7.15 pm, Shankar Lal Agrawal was travelling on his Motorcycle from village Premnagar to Surajpur. When he reached near Manpur *Tiraha*, NA3 while driving his Tractor bearing No.CG15 A-8879 (hereafter, referred to as 'offending vehicle') rashly and negligently, dashed the Motorcycle of Shankar Lal Agrawal and caused accident. In the aforementioned accident, he suffered grievous injuries over his person,he was taken to the District Hospital, Ambikapur, where during the course of treatment, he died.

3. Claimants, who are widow, children, mother and brother of deceased, filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.42,25,000/-, pleading therein that on the date of accident, deceased was doing the work of petty Contractor (Centering of slab of new under construction building) and earning Rs.2,25,000/- per annum.

4. NA1/Insurance Company submitted reply to the claim application, denying the facts pleaded therein, occupation and income of the deceased were also denied. It was further pleaded that NA3, driver of offending vehicle, was not possessed with valid and effective driving license. There was breach of policy conditions and that the deceased was driving the Motorcycle without license.

5. NA2 and NA3, Owner and Driver of offending vehicle, submitted reply to the claim application. While denying the pleadings made therein, further pleaded that age of the deceased on the date of accident was 50 years, amount of compensation claimed is highly exaggerated. The accident was result of negligence on the part of deceased himself. On the date of accident, NA3 was possessed with valid and effective driving license, and the offending vehicle was insured with NA1.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence brought on record by the respective parties, has held that the deceased died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by NA3, breach of policy conditions was not found to be proved and awarded Rs.3,76,000/- as total compensation by assessing income of the deceased as Rs.3,000/- per month.

7. Shri Ashish Surana, learned counsel for the appellants submits that learned Claims Tribunal erred in assessing income of the deceased on lower side, overlooking the nature of occupation pleaded and stated in oral statement, age of the deceased, and his Income Tax Return filed for the year 2013-14 and 2014-15, which are marked as Ex.A9 and A10. He further contended that learned Claims Tribunal ought to have deducted 1/5th towards personal and living expenses instead of 1/4th and ought not to have applied multiplier of 13 as applied in the given facts of case. He further contended that learned Claims Tribunal has awarded consolidated amount of Rs.25,000/- only under other conventional heads, which is less in view of the rulings of Hon'ble Supreme Court in case 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 @ Chuhru Ram and others** reported in (2018) 18 SCC 130. Tribunal has also not awarded any amount towards future prospects.

8. Shri Pankaj Agrawal, learned counsel for the respondent/Insurance Company controverting submissions made by learned counsel for the appellants, submits that learned Claims Tribunal taking into consideration the entire facts and circumstances of the case, has awarded just amount of compensation which does not call for any interference. He further submitted that the claimants though pleaded income of deceased as Rs.2,25,000/- per annum, but failed to prove the same by placing admissible piece of evidence on record. The ITRs for the year 2013-14, 2014-15 to prove income of the deceased were filed with the Income Tax Department only after death of Shankar Lal Agrawal, which could not be considered for assessing income of the deceased.

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

10. Motor accidental death and liability fastened upon the Insurance Company are not in dispute. Appellants/claimants have preferred this appeal seeking enhancement of amount of compensation on the aforementioned grounds. To appreciate the submissions made by learned counsel for the appellants with regard to income of the deceased, I have perused copy of ITRs placed on record as Ex.A9 and A10. From perusal of these documents, it is clear that both these documents appear to have

been filed on 04.07.2014 at Surajpur, whereas, the date of accident as per pleadings, is 10.02.2014. ITR in the name of the deceased has been submitted after about more than four months of his death, hence, for the purpose of calculating amount of compensation, income mentioned in the ITR cannot be taken into consideration.

11. In view of above discussion, the finding recorded by the Tribunal that appellants failed to prove income of the deceased cannot be said to be erroneous and I hereby affirm the said finding that appellants failed to prove income of the deceased on the date of accident. In absence of any admissible piece of evidence with regard to income, it is bounden duty of the Court and Tribunal to assess the income of a person, on notional basis keeping in mind nature of occupation, date of accident, price index and other such relevant factors. Learned Claims Tribunal has not taken into consideration above factors and assessed income of the deceased as Rs.3,000/- per month only on presumption, which in the opinion of this Court, is erroneous. The claimants in their claim application, have very specifically pleaded the occupation of deceased to be a petty Contractor of civil work ie centring the slab of buildings under construction, and in support of their pleadings, they examined Rekha Goel, widow of deceased as AW1, Vinod Kumar Agrawal as AW2, eyewitness to the accident, Ankit Goel AW3, Chartered Accountant, who submitted the ITR. Taking into consideration age of the deceased to be 45 years on the date of accident, I find it appropriate to assess income of the deceased as Rs.6,000/- per month and Rs.72,000/- (6000 x 12) per annum.

12. Learned Claims Tribunal has not awarded any amount towards future prospects. The issue with regard to award of future prospects has been considered by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and 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. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

In case at hand, the deceased was not in any permanent employment and was above 50 years of age (date of birth mentioned in Ex.A9 is 11.06.1963), hence there will be addition of 10% of his established income towards future prospects.

13. Learned Claims Tribunal awarded consolidated amount of Rs.25,000/- on other conventional heads which is also on lower side and deserves to be enhanced in view of the dictum of Hon'ble Supreme Court in cases of **Pranay Sethi** (supra) and **Magma** (supra).

14. Deceased was survived by his mother, wife, three children and brother. Total seven persons have filed the application claiming themselves to be dependants upon the deceased. Brother of the deceased who is aged about 54 years cannot be treated as dependent upon the deceased, hence, total number of dependants in the facts of case are six. The application of deduction has been considered by Hon'ble Supreme Court in case of **Sarla Verma and others Vs Delhi**

Transport Corporation and another reported in (2009) 6 SCC 121 wherein it has been held that where number of dependants is 4 to 6, 1/4th is to be deducted towards personal and living expenses. In view of aforementioned ruling, Tribunal has not committed any error in deducting 1/4th towards personal and living expenses.

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

a) Income of the deceased is assessed at Rs.6,000/- per month and Rs.72,000/- per annum, as held above.

b) By adding 10% of the established income towards future prospects, total yearly income comes to Rs.79,200/- {72000 + (72000 x 10/100)}.

c) After deducting 1/4th of total yearly income towards personal and living expenses of the deceased, yearly loss of dependency comes to Rs.59,400/- {79200 — (79200 x ¼)}.

d) Upon applying multiplier of 13 to the yearly loss of dependency, total loss of dependency comes to Rs.7,72,200/- (59400 x 13).

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

16. Now, appellants/claimants are entitled for a total sum of **Rs.9,22,200/-** (772200 + 40000 + 40000 + 40000 + 15000 + 15000) instead of Rs.3,76,000/- as awarded by the learned Claims Tribunal.

17. Liability to satisfy the amount of compensation will be upon the respondents/non-applicants jointly and severally.

18. The amount of compensation shall carry interest @ 8% per annum from the date of filing of claim application till its realisation. Other conditions imposed by the Claims Tribunal shall 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