NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 155 of 2015

1. Smt. Mumtaj Bee, W/o Late Sarif Khan Aged About 30 Years
2. Amin Khan S/o Late Sarif Khan, Aged About 8 Years
3. Ku. Sahir D/o Late Sarif Khan Aged About 2 Years
4. Samim Khan S/o Late Sarif Khan Aged About 2 Years
5. Smt. Madina Bee W/o Hameed, aged about 55 years
6. Aslam Khan S/o Hameed Aged About 27 Years R

Appellant No.2, 3 & 4 are minor, through natural guardian appelant No.1 Smt. Mumtaj Bee

All R/o Musalman Mohalla, Rajpur, P.O. Udiyakhurd, P.S. & Tahsil, Lohara, Civil & Rev. District Kabirdham (CG)

---- Appellants

Versus

1. Shyamlal Jaiswal S/o Shri Jaikishan Jaiswal R/o Daihandeeh Udiyakhurd Tah. Lohara Civil & Rev. Distt. Kabirdham C.G.
2. Kamlesh Kumar Patel, S/o Shri B.R. Patel, R/o Daihandeeh Udiyakhurd Tah. Lohara Civil & Rev. Distt. Kabirdham C.G.
3. Branch Manager, through: The Oriental Insurance Co. Ltd. Near L.I.C. Office, Railway Station, Rajnandgaon, Civil and Revenue Distt. Rajnandgaon C.G.
4. Mohammed Siddiqui S/o Shri Abdul Majid, R/o Village House No.100 of Takiyapar, Beside House of Parshad Gani Bhai, Durg, P.S. Durg, Civil & Rev. Distt. Durg C.G.
5. Rakesh Singh, S/o Late Gyan Singh, R/o J.G. Nagar, in front of Shiv Mandir, Shravan Kirana Store, Ward No. 22, Camp-2 P.S. Bhilai (Chawani), Civil and Rev. Distt. Durg C.G.

---- Respondents

For Appellants	:	Mr. Keshav Dewangan, Advocate
For Respondent No.3	:	Mrs. Chitra Shrivastava, Advocate

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

01/09/2020

1. Claimants/appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement in the compensation awarded by the Additional Motor Accident Claims Tribunal, Kabirdham (for short 'the Claims Tribunal') vide award dated 15.10.2014 passed in Claim Case No.70/2014 by which learned Claims Tribunal partly allowed application of claimants and awarded a total amount of Rs.7,78,000/- as compensation in a death case.

2. Facts of the case, in brief, are that on 27.05.2012 after attending the seminar (group meeting) of Sapphire Multitrade Pvt. Ltd. in Raipur, Sharif Khan & others were returning to their village Rajpur in Tata Spacio Sumo bearing registration CG09-5105 (for short 'the offending vehicle'). On the way, non-applicant No.2 drove the offending vehicle in such a rash and negligent manner that it gave a dash from behind to the stationary truck bearing registration No.CG04-G-7546, resultantly said Sharif Khan suffered grievous injuries and died.

3. Claimants, who are widow, children, mother & brother of deceased Sharif Khan, have filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking compensation of Rs.35,20,000/- under various heads. It was

pleaded in the application that on the date of accident, the deceased was engaged in the business of poultry farming and thereby earning Rs.15,000 to 18,000/- per month. The deceased was the only breadwinner in the family and on account of his untimely death in a motor vehicular accident, loss of income has occasioned to them, therefore, they are entitled to the compensation as claimed by them.

4. Non-applicant Nos.1 & 2 have jointly filed their reply to the application and denied the pleadings made therein by claimants. It was pleaded by them that non-applicant No.2 was driving the offending vehicle carefully and cautiously on his own side and the accident had resulted owing to the negligence in parking the truck/ dumper in the middle of road at night by its driver without any safeguards. Offence under Sections 283, 337, 338, 304A of IPC was registered against the driver of said dumper/ truck and not against the driver of offending Jeep. It was also pleaded that on the date of accident, the offending vehicle was insured with non-applicant No.3 and it was not plied in breach of any of the conditions mentioned in the policy, hence, in case of award of any amount of compensation by the Claims Tribunal, non-applicant No.3-Insurance Company is liable to indemnify the insured.

5. Non-applicant No.3 Insurance Company also submitted its reply to claimants' application denying the pleadings made therein. It was pleaded that there was breach of condition of insurance policy; the burden was upon non-applicant No.1 to prove the fact

that non-applicant No.2, under his employment, had driven the offending vehicle as per conditions of insurance policy; on the date of accident, there was no valid and effective driving license with non-applicant No.2. It was also pleaded that on the date of accident, as many as nine passengers were travelling in the offending vehicle, whereas the offending vehicle is a private vehicle insured under a private package policy.

6. Non-applicant Nos.4 & 5, driver and owner of truck in question, have also filed their reply pleading therein that due to mechanical failure, the truck/dumper was parked beside the road with indicators on. Non-applicant No.5 had gone to Durg for bringing truck mechanic. It is non-applicant No.2 who drove his vehicle in rash and negligent manner and dashed the truck from its rear side.

7. On appreciation of pleadings and evidence placed on record by the parties, the Claims Tribunal vide impugned award reached to the conclusion that non-applicant No.2 by driving the offending vehicle in a rash and negligent manner, dashed the stationary truck from backside as a result of which Sharif Khan suffered grievous injuries and died. Neither the driver of truck/dumper was negligent in parking the truck/dumper nor was there any breach of condition of insurance policy in plying the offending vehicle. Consequently, the Claims Tribunal awarded a total sum of Rs.7,78,000/-, along with interest @ 8% p.a., as compensation.

8. Mr. Keshav Dewangan, learned counsel representing claimants-

appellants submits that the Claims Tribunal erred in assessing monthly income of deceased at Rs.5,000/- at the rate of Rs.200/- by taking only 25 working days in a month. He submits that claimants/appellants have very specifically pleaded that on the date of accident, the deceased was engaged in the business of sale of chicken, eggs, grocery items and thereby earning Rs.15,000 to 18,000/- per month and in support thereof also produced cash memos showing purchase of chicken, eggs by the deceased, but the same has not been taken into consideration by the Claims Tribunal. He further submits that the Claims Tribunal has not awarded any amount towards future prospects, as per decision of Hon'ble Supreme Court in the matter of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680** wherein it was held that in case deceased, victim of motor accident, was below 40 years of age and in self-employment, an addition of 40% of established salary of deceased towards future prospects should be made. He also submits that the amount awarded under other conventional heads are also on lower side and deserves to be increased. On the aforementioned grounds, learned counsel seeks to enhance the amount of compensation suitably.

9. Mrs. Shrivastava, learned counsel appearing on behalf of respondent No.3-Insurance Company has supported the impugned award and submitted that the claimants failed to prove the fact of income of deceased by bringing cogent and clinching documentary evidence on record before the Claims

Tribunal, hence, the compensation awarded by the Claims Tribunal is just and proper and the same is not required to be enhanced at all.

10. We have heard learned counsel for both sides and perused the records of the Claims Tribunal.

11. As regards the income of deceased, it is true that the claimants/ appellants have pleaded in their application and stated in their statements that the deceased used to earn Rs.15,000/- to Rs.18,000/- per month from selling chicken, eggs etc., but no cogent and reliable documentary evidence was produced before the Claims Tribunal to establish the income of deceased to the extent of Rs.15,000 to 18,000/- per month. The only available documents to prove income of the deceased are the cash memos of Raj Poultry Traders (Ex.A-15 to Ex.A-17) issued in the name of deceased showing purchase of chicken & eggs. However, these cash memos have not been proved in the manner known to law i.e. by examining its author/signatory. Except this, no other document has been produced by the deceased for proving the income. In the absence of any admissible documentary evidence with regard to income of deceased, we are of the view that the Claims Tribunal has not committed any mistake in discarding the evidence of appellants about the income of the deceased and fixing his monthly income at the rate of Rs.200/- per day. However, at the same time, the Claims Tribunal was not justified in calculating monthly income of deceased on the assumption that the deceased would work

for 25 days only in a month. The deceased was engaged in the business of selling chicken, egg etc., he was not a labourer, who would not get work on holidays or Sundays. The consumption of chicken, mutton on holidays or Sundays is always much more than normal week days. Furthermore, the shop of deceased was not a big shop covered under the Shop and Establishment Act and required to be compulsorily closed once in a week or the deceased was not working under any government or other institutions having a weekly off. Therefore, monthly income of the deceased has to be calculated by taking 30 days in a month and not 25 days, as has been done by the Claims Tribunal. Accordingly, we fix the monthly income of deceased as Rs.6000/- per month (200x30).

12. As far as non-grant of future prospects is concerned, in the matter of Pranay Sethi (supra), Hon'ble Supreme Court while dealing with the issue of grant of future prospects 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. 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 the case hand, there is no dispute that on the date of accident, the deceased was 34 years of age, as mentioned in post-mortem report Ex.A-4, he was not in permanent employment, therefore, in view of law laid down by the Apex Court in Pranay Sethi's case (supra), the claimants/appellants are entitled for an additional amount of 40% of the monthly income of the deceased as future prospects.

13. So far as deduction towards personal expenses of deceased is concerned, the Claims Tribunal while computing loss of dependency has deducted 'one-fifth' from the income of deceased towards his personal & living expenses. In the matter of **Sarla Verma & ors Vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 121** Hon'ble Supreme Court while dealing with the issue of deduction towards personal & living expenses of the deceased, has held that where number of dependent family members are 4 to 6, one-fourth is to be deducted towards personal expenses. In case at hand, the total number of dependent family members are shown to be '6', but appellant No.6, who is brother of deceased and aged about 27 years, cannot be treated as 'dependent' on the income of deceased. Therefore, the number of dependent family members are only '5' and in such a situation, the deduction towards personal and living expenses of the deceased should be 'one-fourth' and not 'one-firth', as has been done by the Claims Tribunal. The Claims Tribunal erred in assessing compensation by deducting one-fifth from the income of the deceased. We hold that one-fourth of the income of the deceased is required to be deducted towards his personal and living expenses.

14. Multiplier of '16' applied by the Claims Tribunal is in consonance with the guidelines laid down by Hon'ble Supreme in Sarla Verma's case (supra), therefore, the same is hereby affirmed.

15. As regards the amount awarded under other conventional head i.e. Rs.2,000/- for funeral expenses, Rs.5,000/- for loss of consortium and Rs.2,500/- for loss of estate. In the opinion of this Court, the amount awarded under other conventional heads are on lower side and deserve to be enhanced as per decision of Hon'ble Supreme Court in Pranay Sethi's case (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130**.

16. For the foregoing reasons, we propose to recompute the amount of compensation payable to claimants/appellants to award just compensation.

17. The income of deceased is taken as Rs.6,000/- per month at the rate of Rs.200/- per day and since at the time of accident the deceased was below the age of 40 years and was not in permanent employment, in view of law laid down in the matter of **Pranay Sethi** (supra), the income of deceased is required to be increased by 40% towards future prospects, which comes to Rs.8,400/- (6000+2400). Accordingly, annual income of deceased for the purpose of calculating compensation comes to Rs.1,00,800/- (8400x12). Out of this amount, one-fourth is to be deducted towards personal & living expenses of the deceased and after deducting one-fourth, annual loss of dependency would come to Rs.75,600/- (100800-25200). By applying multiplier of 16, as applied by the Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.12,09,600/- (75600x16). Besides this, appellant No.1, widow

of deceased, is entitled for a sum of Rs.40,000/- towards spousal consortium and appellant Nos.2 to 5, minor children of deceased, are entitled for a sum of Rs.40,000/- towards parental consortium and respondent No.5 is entitled for Rs.40,000/- towards filial consortium, as held by Hon'ble Supreme Court in the matters of Pranay Sethi (supra) and Magma General Insurance Company Limited (supra). In addition to aforesaid amount, the appellants are also entitled to get a sum of Rs.15,000/- for funeral expenses; Rs.15,000/- for loss of estate. Thus, claimants/appellants are entitled for a total sum of Rs.13,59,600/-, instead of Rs.7,78,000/- as awarded by the Claims Tribunal. This amount of compensation shall carry simple interest @ 8% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants/appellants as compensation shall be adjusted from the total amount of compensation as calculated above.

18. In the result, the appeal stands allowed in part and the impugned award stands modified to the extent indicated above.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	(Parth Prateem Sahu)
Chief Justice	Judge

roshan/-