

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 63 of 2015**

- Suresh Singh S/o Nandu Singh, aged about 26 years, R/o Village- Agirama, P.S. Jainagar, Tahsil & District Surajpur C.G.

---- Appellant**Versus**

1. Durga Singh @ Chotu, S/o Bhaiyalal, aged about 20 years, R/o Village- Gumgara (Junapara), P.S. & Tahsil Lakhanpur, Distt. Surguja CG, Present Address- Keshavnagar, P.S. Bishrampur, Tahsil & Distt. Surajpur (CG)
2. Smt. Pushpa Devi, W/o Shanker Prasad Agarwal, occupation- Owner, R/o Village- Shanti Nagar, Shivnandanpur (Bishrampur), Tahsil & District Surajpur C.G.
3. The Oriental Insurance Company Limited, Rama Trade Center, 1st Floor, Near Bus Stand, In Front of Rajeev Plaza, Bilaspur, P.S. & Tahsil Bilaspur, Distt. Bilaspur C.G.

---- Respondents

For Appellant	:	Mr. A.N. Pandey, Advocate
For Respondent No.2	:	Mrs. C. Shrivastava, Advocate.

SB: Hon'ble Shri Justice Parth Prateem Sahu**Order On Board****28/10/2020**

1. Appellant-claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by the learned Additional Motor Accident Claims Tribunal, Surajpur, District Surajpur (for short 'the Claims Tribunal') vide award dated 25.9.2014 passed in Claim Case No.46/2011 whereby the Claims Tribunal has partly allowed application of claimant filed under Section 166 of the Act of 1988 and awarded Rs.2,02,006/- as compensation, which includes an amount of Rs.1,51,006/- incurred on medical treatment.

2. Facts of the case, in brief, are that on 20.9.2010 when Somaar Sai was returning home after grazing his cattle, at that time one Mini Truck (407) bearing registration number CG15-A-9582, driving by non-applicant No.1 rashly and negligently, knocked down him and caused accident. In the aforementioned accident, Somaar Sai suffered grievous injuries over his right leg, head and other parts of the body. He was taken to the District Hospital, Ambikapur from where he was referred to a hospital at Raipur. Somaar Sai took treatment as in-patient at MMI Hospital, Raipur. He was thereafter shifted to Mission Hospital, Ambikapur where he took treatment from 13.10.2010 to 25.10.2010. Somaar Sai was discharged from hospital on 25.10.2010 and during the course of treatment he died in his house on 29.10.2010.
3. Claimant, who is nephew of Late Somaar Sai, filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking compensation of Rs.6,49,754/- under various heads. It was pleaded in the application that he had incurred an amount of Rs.1,49,754/- on treatment of deceased Somaar Sai; Rs.15,000/- on conveyance for his treatment and Rs.10,000/- towards his special diet. It was further pleaded that on the date of accident, deceased was aged about 55 years, he was doing work of agriculture as Labourer and earning Rs.3,000/- per month.
4. Non-applicant No.1-driver of offending vehicle, did not appear before the Claims Tribunal and he was proceeded ex-parte.

5. Non-applicant No.2, owner of offending vehicle, filed his reply to claim application pleading therein that false report has been lodged against driver of offending vehicle. Death of Somaar Sai was not on account of accidental injuries suffered by him but on account of some old medical ailment. Claimant has not placed on record the entire medical documents to prove death of Somaar Sai on account of motor accidental injuries. Claimant was not dependent upon the deceased. Offending vehicle was insured with non-applicant No.3 Insurance Company and at the time of accident, non-applicant No.1-driver was having valid and effective driving license to drive offending vehicle. It was further pleaded that claimant has not filed any application for grant of succession nor placed any material to prove his relationship with the deceased.
6. Non-applicant No.3 Insurance Company also filed its reply to application and denied the pleadings made therein. It was pleaded that amount of compensation claimed towards medical expenses is highly exaggerated. Legal heirs of deceased have not been arrayed as party to claim application, hence claim application is not maintainable for want of necessary parties. Death of Somaar Sai was not on account of motor accidental injuries suffered by him. Deceased Somaar Sai was issue-less, he was not having any source of income, he was simply a cattle-grazer and only means of his livelihood was grazing cattle. Neither the driver of offending vehicle was having valid and effective driving license nor was there any permit and fitness of offending vehicle, amounting to breach of essential

conditions of insurance policy.

7. Upon appreciation of pleadings and evidence placed on record by the respective parties, the Claims Tribunal held that non-applicant No.1 while driving offending vehicle rashly and negligently knocked down Somaar Sai and caused accident. Somaar Sai died on account of motor accidental injuries suffered by him. Income of Somaar Sai was assessed as Rs.3,000/- per month and breach of any of the conditions of insurance policy has not been found proved. Consequently, an amount of Rs.2,02,006/- has been awarded as compensation.
8. Mr. A.N. Pandey, learned counsel representing claimant/appellant submits that the Claims Tribunal erred in not awarding any amount towards loss of dependency. Claimant is nephew of deceased, who was residing with him being issue-less. Deceased was earning Rs.3,000/- per month and being so, after deducting the amount which deceased would have expended on himself and after applying multiplier applicable in the given facts of case, the Claims Tribunal ought to have awarded compensation under the head 'loss of dependency'. However, the Claims Tribunal has only awarded Rs.6,000/- towards loss of estate, Rs.20,000/- for loss of love & affection, Rs.25,000/- for funeral expenses and Rs.1,51,006/- towards expenses incurred on treatment, conveyance & special diet of deceased, which is erroneous and not sustainable in the eyes of law. He submits that appellant-claimant looking to his age, may not be fully dependent on the deceased, but he being

nephew of deceased is entitled for estate of the deceased. In support of his submission, learned counsel places his reliance on the decision of Hon'ble Supreme Court in case of **National Insurance Company Ltd. Vs. Birendra & ors** reported in **AIR 2020 SC 434**. He further submits that relationship between appellant and deceased cannot be doubted, particularly when appellant has incurred huge amount of Rs.1,51,006/- on his treatment, transportation and special diet.

9. Per contra, Mrs. Chitra Shrivastava, learned counsel for respondent No.3 submits that the Claims Tribunal has awarded entire expenses incurred by appellant on treatment of deceased. The Claims Tribunal also awarded amount on other heads like transportation and special diet also. She submits that claimant/appellant is aged about 26 years and he belongs to a different family, hence, the Claims Tribunal has rightly held that appellant-claimant was not dependent on the deceased. She submits that taking into consideration the fact that the claimant being a relative had suffered some loss, the Claims Tribunal awarded amount under the heads loss of estate, loss of love & affection, funeral expenses, which is just and proper. She submits that amount of compensation awarded by the Claims Tribunal is just and reasonable and it does not call for any interference.

10. I have heard learned counsel for parties and perused the record of the Claims Tribunal.

11. Appellant-claimant has placed on record the documents

showing treatment taken by the deceased in different hospital at different points of time continuously from the date of accident. Deceased took treatment at Ambikapur, thereafter at Raipur and then again at Mission Hospital, Ambikapur. Address of appellant and deceased is one and the same i.e. village Ajirma, Police Station Jainagar, Tahsil & District Surajpur. Appellant has taken Somaar Sai for his treatment to MMI Hospital, Raipur, which is situated at a distance of about 300 km from his place of residence. Deceased took treatment at MMI Hospital, Raipur for about more than 15 days continuously i.e. from 25.9.2010 to 12.10.2010. Medical bills placed on record as Ex.A-9 to Ex.A-66, would show that appellant-claimant being close relative of deceased had taken due care of deceased and provided him best possible treatment. As per Ex.A-85, an amount of Rs.79,060/- was incurred on the treatment of deceased in MMI Hospital, Raipur, whereas Rs.16740/- was incurred at Holy Cross Christian Hospital. Appellant-claimant in support of his case has filed ration card issued on 18.12.2001 in which appellant and deceased Somaar Sai have been shown to be the members of one family. This clearly goes to show that on the date of accident, Somaar Sai was residing with appellant-claimant. Total amount of expenses incurred by appellant claimant on the treatment of Somaar Sai clearly shows that appellant-claimant was taken proper care of deceased by providing him medical treatment in which he had incurred expenses of Rs.1,49,360/-. This itself is sufficient to accept the pleading of relationship

between deceased and claimant.

12. The issue with regard to dependency of income on father by married son has been considered by Hon'ble Supreme Court in case of **Birendra (supra)** and held as under:-

“15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/ and Rs.1,50,000/ per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”

13. In case at hand also, from the ration card (Ex.A-92) issued in the year 2001 it is apparent that deceased and appellant, who is nephew of deceased, were residing together as a family member. This apart, appellant-claimant has taken all pains to provide best possible treatment to deceased in order to save his life, which could be done only by a person who is in close relation with anyone. In these circumstances, I am of the opinion that the Claims Tribunal erred in not awarding any amount towards loss of dependency.

14. The deceased during his lifetime was residing with appellant-claimant. On the date of accident, deceased was aged about 55 years, whereas appellant-claimant was aged about 26 years. Looking to the relationship between claimant and deceased, appellant-claimant cannot be said to be fully

dependent on deceased. However, taking into consideration nature of relationship, fact that deceased was residing with appellant, as is evident from ration card (Ex.A-92) issued by village panchayat, this Court is of the view that appellant-claimant is entitled for estate of deceased. The Claims Tribunal found the deceased to be of 55 years on the date of accident, a presumption can be drawn that deceased was earning something on the date of accident, therefore, after effecting deduction from his income towards personal & living expenses which the deceased would have incurred towards maintaining himself, balance income of deceased can be treated as estate of deceased for which appellant-claimant is entitled for in the facts and circumstances of case.

15. Income of deceased has been assessed by the Claims Tribunal at Rs.3,000/- p.m. It is settled position in law that in absence of any prove with regard to income of deceased, the same is to be assessed on notional basis taking into consideration nature of employment, price index and wage structure prevailing at the relevant point of time. Taking into consideration overall aspects of the present case, particularly date of accident i.e. 20.9.2010, I find it appropriate to assess monthly income of deceased as Rs.4,000/- and annual income at Rs.48,000/-.

16. For the foregoing reasons, this Court proposes to recompute the amount of compensation payable to claimant/appellant to award just compensation.

17. The income of deceased is taken as Rs.4,000/- per month and

since the deceased was 55 years of age at the time of accident, as per decision of Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi** reported in (2017) **16 SCC 680**, there will be an addition of 10% of his established income towards future prospects for computing total income. After adding 10%, the total income of deceased comes to Rs.4,400/- (4000 +10% of 4000) and annual income comes to Rs.52,800/-. Out of this amount, half (50%) is to be deducted towards personal & living expenses of the deceased and after deducting half, annual loss of dependency comes to Rs.26,400/- (52800-26400). As the deceased was in the age group of 56-60 years, multiplier of '9' will be applicable to annual loss of dependency, as per decision of Hon'ble Supreme Court in case of **Sarla Verma vs. Delhi Transport Corporation & anr** reported in (2009) **6 SCC 121**. By applying multiplier of '9' to annual loss of dependency, total loss of dependency would come to Rs.2,37,600/- (26400x9). Besides this, claimant-appellant will be entitled for Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses. An amount of Rs.10,000/- towards conveyance and Rs.10,000/- towards pain and suffering of claimant during the period of treatment is also awarded. Appellant-claimant will also be entitled for Rs.1,51,006/- for medical expenses, as awarded by the Claims Tribunal. Thus, claimant/appellant is now entitled for a total sum of **Rs.4,38,606/-**, instead of Rs.2,02,006/- as awarded by the Claims Tribunal. This amount of compensation shall carry simple interest @ **9% 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/-
(Parth Prateem Sahu)
Judge

roshan/-