NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.1006 of 2014

Smt. Sheetal Bali Wd/o Late Rishi Dutta Aged About 25 Years R/o Geetanjali City Phase O, Sarkanda, P.S. Sarkanda, Tah & Distt. Bilaspur C.G.

---- Appellant/claimant

Versus

1. Belsingh Gond S/o Lakhan Singh Gond R/o Kargiroad Kota, Tah & P.S-Kota, Distt. Bilaspur C.G. (Driver).
2. Mahavir Singh S/o Dalvej Singh R/o 27 Kholi, Opposite Gurunanak Dwar, P.S. Civil Line, Tah & Distt. Bilaspur C.G, Another Address- Rajendra Nagar, Raipur, Tah & Distt. Raipur C.G. (Owner).
3. Shri Ram General Insu. Co. Ltd. Thru- Chief Manager Head Office E/8 Epip Ricko Industrial Area, Seetapur, Distt - Jaipur, (Rajasthan). Pin 302022.
4. Bal Vinod Dutta S/o Seetaram Dutta Aged About 64 Years R/o Rajkishore Nagar Phase I Near Tulsi Awash, P.S. Sarkanda, Tah & Distt. Bilaspur C.G. (Claimant).
5. Smt. Shashi Dutta W/o Bal Vinod Dutta Aged About 58 Years R/o A-20 Phase I Near Tulsi Awash Rajkishore Nagar, Bilaspur C.G. (Claimant).

--- Respondents

For Appellants	:	Mr. Pravin Kumar Tulsiyan, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Mr. Deepak Gupta, Advocate.
For Respondent No.4 & 5	:	Mr. Abhisjeet Sarkar, Advocate.

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

Order on Board

Per Parth Prateem Sahu, J
22/09/2020

1. Appellant/claimant has filed 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 3rd Additional Member to 1st

Additional Motor Accident Claims Tribunal, Bilaspur (CG) vide award dated 21.07.2014 passed in Claim Case No.10/2012.

2. Facts relevant for disposal of this appeal are that on 26.12.2011, Rishi Datta -husband of claimant, after taking dinner at his friend's house in Nehru Nagar, was returning to his house situated at Rajkishore Nagar on motorcycle. When he reached near Ashok Nagar Chowk, one Truck bearing registration No.CG07-JB-3769, (for short, 'offending vehicle'), driven by respondent No.1/Belsing Gond, dashed against the motorcycle as a result of which Rishi Datta suffered grievous injuries over his person and died on spot. Accident was reported to Police Station – Sarkanda, Bilaspur, based on which crime was registered against driver of offending vehicle for the offence under Sections 304-A of the Indian Penal Code.

3. Claimant, who is wife of deceased, filed an application under Section 166 of the Act of 1988 before the Tribunal seeking total compensation of Rs. 29,50,000/- under various heads, on the ground that on the date of accident, deceased-Rishi Datt was working as 'Supervisor' in Arihant Industry, Sirgitti, Bilaspur and getting salary of Rs.15,000/- per month.

4. Non-applicant Nos.1 & 2, driver & owner of offending vehicle, even after service of notice did not appear before the Tribunal and were proceeded ex -parte.

5. Non- applicant Nos.4 & 5, parents of deceased, have not filed their reply to claim application.

6. Non-applicant No.3/Insurance Company filed its reply and denied the employment and income of deceased as pleaded by claimant in application. It was also denied that accident occurred due to rash and

negligent driving of offending vehicle by non-applicant No.1-driver. The offending vehicle was plied in breach of condition of insurance policy as at the time of accident, driver of offending vehicle was not possessed with a valid and effective driving license, there was no valid permit and fitness certificate with offending vehicle.

7. On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal held that driver of offending vehicle was driving his vehicle in rash and negligent manner, dashed the motorcycle of deceased, in which, deceased suffered grievous injuries, succumb to injuries on spot; Insurance Company failed to prove breach of any condition of Insurance Policy. Allowed claim application in part, awarded a sum of Rs.4,04,000/- as compensation along with interest @ 6% p.a and fastened liability upon non-applicants, jointly and severally.

8. Learned counsel for the claimant/appellant submits that the Tribunal erred in assessing income of deceased only as Rs.3,000/- per month, ignoring the evidence (oral and documentary) placed on record by claimant with respect to employment and income of deceased. By overlooking the oral statement of AW-2/Sunil K Verma (Accountant in Arihant Industry) disbelieved the documents available on record ie Ex.A-7 salary certificate issued by the Arihant Industry, Ex.A-8 ledger account of Arihant Industry & Ex.A-9 appointment order issued by the Authorised Signatory of Arihant Industry in favour of deceased -Rishi Datta only on presumption and surmises. He submits that the Tribunal committed error in not awarding any amount towards future prospects and the amount awarded under other conventional heads are also on lower side, looking to the age of wife of deceased ie only 25 years, amount of

compensation could not have been apportioned between the appellant -wife and parents of deceased ie respondents No.4 & 5 equally. He further submits that parents cannot said to be dependants and, therefore, they will only be entitled for loss of filial consortium.

9. Per contra, learned counsel for respondent No.3/Insurance Company submits that perusal of Paragraph No.2 of the impugned award shows that offending vehicle was insured with TATA AIG General Insurance Company whereas Shri Ram General Insurance Company Limited has been impleaded as Non-applicant. He further submits that the Tribunal after considering the materials available on record, particularly the fact that the claimant has not been able to prove income of deceased by placing any reliable piece of documentary evidence, has rightly assessed monthly income of deceased as Rs.3,000/- on notional basis and awarded just and proper amount of compensation to the claimants, which does not call for any interference.

10. Learned counsel for respondent Nos.4 & 5 supporting the arguments advanced by the learned counsel for the appellant/claimant with regard to enhancement of amount of compensation, submits that respondents/claimants have also filed cross-appeal/objection challenging the impugned award alongwith application under Order 41 Rule 27 of CPC for producing the copy of educational testimonials of deceased to meet out one of the reasons assigned by the Tribunal that the educational testimonials/qualifications of deceased have not been placed on record. He further submits that copy of mark-sheets of High School certificate, Higher Secondary School certificate & B.Com Part III and mark-sheet of MBA, pursued by the deceased from Dr. CV Raman

University, kota, Bilaspur, (CG) is placed on record. He opposes the submission made by the learned counsel for the appellant that parents of deceased ie respondents No.4 & 5 are not entitled for any amount of compensation and submits that respondents No.4 & 5 are age old parents of deceased and they were dependants upon their son.

11. We have heard learned counsel for the parties and also perused the records.

12. So for as first argument raised by learned counsel for appellant/claimant with regard to employment and income of deceased is concerned, appellant in support of her claim placed documents on record ie Ex.A-7 salary certificate, Ex.A-8 ledger account & Ex.A-9 appointment order issued by Arihant Industry, Sirgitti. On perusal of Ex.A-7 & Ex-A-9, it would show that deceased was appointed on 15.11.2005 as 'Supervisor' at the monthly salary of Rs.5,000/- and on the date of accident, his monthly salary including prerequisite was Rs.15,000/-. It is apparent from Ex.A-8 ledger account that a cheque dated 30.01.2012 drawn on SBI, amounting Rs.15,000/- in favor of appellant herein, has been deposited towards full and final payment. To prove the said documents, appellant has examined S.K Verma as AW-2, Accountant of Arihant Industry, who in his evidence has stated that deceased was working as 'Supervisor' in Arihant Industry and getting salary of Rs.15,000/- per month. Respondent Nos.4 & 5/parents of deceased also placed on record the educational qualification certificates of deceased ie Mark-sheets of 10th, 12th, B.Com & MBA, in support of claim. The Tribunal has taken a ground that since the date of appointment deceased worked for long period without increase in salary for not considering the

income which is contrary to evidence. Deceased entered in service on salary of Rs.5,000/- per month and on the date of accident, he was receiving Rs.15,000/- per month. The salary paid on date of accident was proved by AW-2 Accountant.

13. Taking into consideration entire facts, documents and evidence available on record, we are of the view that the finding with regard of income of deceased is based on erroneous evaluation of evidence. The finding with regard to income is not sustainable and is hereby repelled. Considering over all facts of the case and evidence, we hold that on the date of accident, deceased was employed under Arihant Industry and getting salary of Rs.15,000/- per month.

14. Application filed by respondents/claimants under Order 41 Rule 27 of CPC was not replied by the learned counsel for respondent No.3/Insurance Company. The documents sought to be taken as additional evidence are educational makrsheets of deceased. Looking to the nature of document, application is allowed.

15. Coming to the next argument advanced by learned counsel for appellant/ claimant that the Tribunal erred in not awarding any amount towards future prospects. The Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi[1],** has held that in case the deceased, victim of motor accident, was not in permanent employment and below the age of 40 years, an addition of 40% of establish income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus :-

1 (2017) 16 SCC 680

> "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."

16. Indisputably, in case at hand, on the date of accident, deceased was aged about 32 years, which was also accepted by the Tribunal based on post mortem report, and was not in permanent employment, therefore, this Court is of the considered opinion that appellant/claimant is entitled for an addition of 40% of established income of deceased towards future prospect.
17. The Tribunal has awarded a total sum of Rs.20,000/- under other conventional heads, which in the opinion of this Court is on lower side and the same is required to be enhanced in view of the decision of Supreme Court in the case of Pranay Sethi (supra) and **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhuru Ram**[2].
18. For the foregoing reasons, we propose to recompute the amount of compensation awarded by the Tribunal.
19. **I**ncome of deceased is taken as Rs.15,000/- per month as held above, and by adding 40% of income towards future prospects, which comes to Rs.6,000/- (40% of 15000). Total monthly income of deceased is assessed at Rs.21,000/- (15000+6000) and accordingly yearly income of deceased comes to Rs.2,52,000/- (21000X12).

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2 2018 18 SCC 130

20. As per income tax rates/slabs applicable for assessment year 2010-11, no tax was payable upto Rs.1,60,000/-, income tax @ 10% was payable on income from Rs.1,50,000/- to 3,00,000/-. So, first Rs.1,60,000/- is not taxable income of deceased and remaining income of deceased ie Rs.92,000/- (2,52,000 -160000) is taxable. As per income tax slab rate prevailing in assessment year 2010-11, income tax @ 10% is payable ie Rs.9,200/- (10% of 92000). Accordingly, after deduction of Rs.9,200/- towards income tax from gross income of deceased, net annual income of deceased comes to Rs.2,42,800/- (252000-9200).

21. Number of claimants on the date of accident were '3', therefore, there will be deduction of 1/3rd amount towards personal and living expenses as per decision of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**[3]. After deducting 1/3rd towards personal & living expenses from total annual net income of deceased i.e Rs.80,933/- (1/3 of Rs.242800), yearly loss of dependency would come to Rs.1,61,867/- (Rs.242800 - 80933). By applying multiplier of 16, total loss of dependency will come to Rs.25,89,872/- (161867X16). Apart from this, appellant & respondents No.4 & 5 are also entitled for a sum of Rs.40,000/- towards spousal consortium, Rs.40,000/- towards filial consortium, Rs,15,000/- towards funeral expenses & Rs.15,000/- towards loss of estate.

22. Now the appellant & respondents No.4 & 5 will be entitled for a total compensation of **Rs.26,99,872/-**(2589872+40000+40000+15000+15000) instead **of Rs.4,04,000/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

3 (2009) 6 SCC 121

23. Now we will consider the submission made by the learned counsel for the appellant that the Tribunal erred in apportioning the amount of compensation equally between the widow & parents of deceased, except Rs.50,000/- awarded to respondent No.4/father of deceased.

24. The submission of learned counsel for the appellant that respondent No.4 & 5 cannot be treated as dependant upon the deceased son is not appealing to us. Father of deceased ie respondent No.4 may not be treated as dependant upon the deceased son, but so far as the respondent No.5 who is mother of deceased is always having the dependency upon her son particularly looking to her age on the date of filing of application ie 58 years.

25. We find force in the submission made by the learned counsel for the appellant that the Tribunal was not justified in apportioning the amount of compensation equally between widow and mother of deceased, particularly in the given facts of the case where the widow of deceased is aged about 25 years only, she has to live her whole life without her husband, whereas respondent No.5, who is mother of deceased aged about 58 years is living in the company of her husband. But, respondent No.5 being mother of deceased, has to be awarded some amount of compensation, therefore, we find it appropriate to apportion the amount of compensation in the ratio of 70:30, that is to say, appellant will be entitled for 70% of total amount of compensation and respondent Nos.4 & 5 will be entitled remaining 30% of compensation as calculated and awarded above by this Court.

26. From the share of compensation of appellant, the Tribunal shall make 40% of amount of compensation in fixed deposit with any Nationalized Bank for a period of five years.

27. For the foregoing reasons, appeal filed by the appellant & cross appeal/objection filed by respondents No.4 & 5 both are allowed in part and the impugned award stands modified to the extent as indicated above.

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

Jamal/-