

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1210 of 2015**

1. Geetanjali Patel W/o Late Shri Dr. Mahendra Patel, aged about 49 years
2. Aniket Patel S/o Late Shri Dr. Mahendra Patel, aged about 23 years, both R/o Village- Kotmi, P.S. and Tahsil, Dabhra, Civil and Revenue District Janjgir Champa C.G.

----Appellants/Claimants**VERSUS**

1. Jagdish Ram Yadav, S/o Shri Avtar Ram Yadav, aged about 26 years, Occupation- Vehicle Driver R/o Dhondhi Aara, P.S. Tapkara, District Jashpur, at present R/o Jagatpur, near Shyam Petrol Pump Raigarh, Tahsil- Raigarh, Civil and Revenue District- Raigarh C.G.

-----Driver

2. Medni Prasad Negi S/o Shri Heeralal Negi, aged about 40 years, Occupation- Owner of the Vehicle R/o Kosamnara, Tahsil- Raigarh, Civil and Revenue District- Raigarh C.G.

-----Owner

3. United India Insurance Company Limited, Division Office Korba, Tahsil and District- Korba, C.G.

-----Insurer**-----Respondents/Non-applicants**

For Appellants	: Mr. Abhishek Saraf, Advocate
For respondent No. 3	: Mr. H.B. Agrawal, Senior Advocate with Ms. Richa Dwivedi, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Judgement on Board****30/01/2020**

1. The appellants-claimants have filed this appeal challenging the impugned award dated 29-06-2015 in Claim Case No. 31/2013 passed by learned 2nd Additional Motor Accident Claims Tribunal, Sakti, District Janjgir Champa C.G., wherein learned Claims Tribunal awarded a sum of Rs. 50,30,219/- as total compensation in a death case as well as injury case. In the total amount of compensation, compensation towards injuries suffered by appellant No. 2 has been awarded Rs. 73,771/- only.
2. Facts of the case are, that on 20-08-2012 at about 2:30 A.M. when Dr.

Mahendra Patel (now deceased) and his son appellant No. 2- Aniket Patel were traveling in Government Ambulance/ Mahtari Express bearing No. C.G.02.4172. When they reached near Patelpali village on National Highway in between Chandrapur-Raigarh, a trailer bearing No. C.G.13-D-3931 (hereinafter "offending vehicle") dashed the ambulance. In the aforementioned accident, Dr. Mahendra Patel suffered grievous injuries over his head, face and other parts of body, driver of Ambulance also suffered injuries over his person and appellant No. 2 suffered fracture injury over his left hand. Dr. Mahendra Patel succumbed to injuries whereas appellant No. 2 took treatment at Jindal Hospital, Raigarh. Accident was reported to concerned police station based on which, crime No. 607/12 was registered for offence punishable under Section 279, 337, 304A of the I.P.C. against non-applicant No. 1/respondent No. 1-Driver of offending vehicle.

3. The claimants/ appellants who are widow and son of the deceased filed claim application before the competent Claims Tribunal claiming a total sum of Rs. 1,35,39,200/- as compensation from respondents.
4. Respondents No. 1 & 2/ non-applicants No. 1 & 2 submitted their reply to the claim application and denied the pleadings made in the claim application against them and further pleaded that government vehicle was being used for their personal work, on the date of accident, Non-applicant No. 1/ respondent No. 1 was possessing valid and effective driving license and there was no negligence on the part of non-applicant No. 1/ respondent No. 1. Other legal heirs of the deceased have not been impleaded in the party array, therefore, the claim application against them is liable to be rejected as not maintainable.
5. Respondent No. 3/ non-applicant No. 3-Insurance Company submitted its reply to the claim application and while denying adverse pleadings made in the claim

application has further pleaded that as the accident occurred on account of collision of two vehicles where the owner and driver of government vehicle have not impleaded in the party array, therefore, the claim application is not maintainable. It is further pleaded that, on the date of accident, respondent No. 1/ non-applicant No. 1 was not possessing valid and effective driving licence, there was violation of conditions of insurance policy.

6. The learned Claims Tribunal, on appreciation of pleadings and evidence placed on record by the respective parties, arrived at a finding that the accident took place due to rash and negligent driving of offending vehicle by respondent No. 1/ non-applicant No. 1, there was no violation of conditions of insurance policy, the income of deceased was Rs. 56,160/- per month and awarded total compensation of Rs. 50,30,219/-. In the aforementioned award of compensation, learned Claims Tribunal also awarded a sum of Rs. 73,771/- to appellant No. 2 towards injuries suffered by him in the motor accident.
7. Learned counsel for the appellant submits that the learned Claims Tribunal committed error in awarding only Rs. 84,480/- towards loss of future prospects ignoring the law laid down by the Supreme Court in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** wherein the Hon'ble Supreme Court has held that the government servants who are in permanent service and between the age of 50-60 years, are entitled for additional 15% of the established income towards future prospects in their income. He submits that in view of the law laid down by the Supreme Court in the case of **Pranay Sethi** (supra), the amount of loss of future prospects is to be added and compensation to be enhanced suitably. He further contended that learned Claims Tribunal committed error in awarding meagre amount of compensation towards other conventional heads and further that though the Claims Tribunal awarded a sum of Rs. 73,771/- to appellant No. 2 in an injury case but that amount is only with

respect to the medical expenses incurred by appellant No. 2 and not awarded any compensation towards other heads for which the appellant No. 2 is entitled for.

8. Per contra learned senior counsel appearing for respondent No. 3-Insurance Company submits that the Claims Tribunal after taking into consideration the income and age of the deceased has awarded just and proper amount of compensation on account of death of Dr. Mahendra Patel and further the Claims Tribunal has also awarded sufficient amount of compensation as claimed by the appellants-claimants in an injury case. He further submits that the impugned order is just and proper and do not call for any interference.
9. I have heard learned counsel for the parties and perused the record.
10. Three grounds for enhancement of the amount of compensation as awarded by learned Claims Tribunal have been raised by the learned counsel for the appellant-
 - a) meagre amount awarded towards loss of future income of the deceased;
 - b) meagre amount of only Rs. 20,000/- awarded on other conventional heads and;
 - c) except the medical expenses, no further amount of compensation has been awarded to the appellant No. 2 towards pains and sufferings, diet etc.
11. So far as the first ground raised by the learned counsel for the appellant that the Claims Tribunal has awarded a very nominal amount towards loss of future prospects under the head of loss of income to the appellants is concerned. The law is well settled in this regard by the Hon'ble Supreme Court in the matter of **Pranay Sethi (supra)**, wherein the Supreme Court has laid down a law for award of loss of future prospects in death cases and held as under:

“59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased

towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax”

In view of the above law laid down by the Supreme Court and looking to the age of the deceased on the date of accident as 52 years and working as Block Medical Officer at Community Health Centre, Pusaur, district Raigarh, the appellants-claimants will be entitled for additional 15% of established income towards loss of future prospects.

12. Sofar as, the other submissions made by learned counsel for the appellant that the learned Claims Tribunal committed error in awarding meagre amount of Rs. 20,000/- towards other conventional heads is also settled by the Supreme Court in the matter of **Pranay Sethi (Supra)** and held that in a death case where widow is claimant, the claimants are to be entitled for additional sum of Rs. 70,000/- towards other conventional head; last ground as raised by the learned counsel for the appellant that the claim made by appellant No. 2 for the injuries suffered by him, the documents annexed as Exh. P-13 with the records shows that appellant No. 2 took treatment as in-patient at Jindal Hospital at Raigarh, from 20-08-2012 to 31-08-2012. Perusal of Exh. P-13 would show that amount of Rs. 16,100/- has been shown for packages/ surgery/ procedure and treatment of dislocation over hip, knee, shoulder and elbow. Looking to the nature of injuries suffered by appellant No. 2 as well as period of treatment as in-patient in Jindal Hospital, he will also be entitled for sum of Rs. 10,000/- towards pains and suffering.
13. In view of the above, award passed by the Claims Tribunal requires reconsideration and recalculation of the amount of compensation which this Court calculates as under.

14. Income of the deceased as assessed by the Claims Tribunal after deducting income tax is Rs. 55,136/- is not disputed by the learned counsel for the respondents. By adding 15% of the established income, the monthly income of the deceased comes to Rs. 63,406.40 /- and yearly income comes to Rs. 7,60,876.80/- [Rs. 63406.4 x 12]. After deducting 1/3rd towards personal and living expenses of the deceased himself, the yearly loss of dependency of the appellants-claimants will come to Rs. 5,07,251.20 /- [Rs. 7,60,876.80 - one-third of Rs. 7,60,876.80]. As on the date of accident, deceased was 52 years, appropriate multiplier will be of 11 which makes the loss of dependency of the appellants-claimants as Rs. 55,79,763.20 /- [Rs. 5,07,251.20x11]. Apart from the loss the dependency as calculated above, the appellants-claimants will further be entitled for Rs. 70,000/- towards other conventional heads. Appellant No. 2 will also be entitled for Rs. 10,000/- towards pains and sufferings, in addition to the amount of Rs. 73,771/- awarded by learned Claims Tribunal towards medical expenses. Now the appellants-claimants will be entitled for a total sum of Rs. 57,53,534.2/- [Rs. 55,79,763.20 + Rs. 10,000+ Rs.70,000+ Rs.73,771], which is rounded off to Rs. 57,53,534/- instead of Rs. 50,30,219/- as awarded by the Claims Tribunal. The aforementioned total amount of compensation will carry interest @ 7% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal will remain intact.
15. Consequently, the appeal is allowed in part and the impugned award stands modified to the extent indicated herein-above.

Sd/-
(Parth Prateem Sahu)
 Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 354 of 2020

- United India Insurance Company Limited, Division Office Korba, Tahsil And District Korba

---- Applicant

Versus

1. Geetanjali Patel W/o Late Shri Dr. Mahendra Aged About 49 Years
2. Aniket Patel S/o Late Shri Dr. Mahendra Patel Aged About 23 Years
Both r/o village Kotmi, PS and Tahsil Dabhra, Civil and Revenue District Janjgir-Champa (CG)
3. Jagdish Ram Yadav S/o Shri Avtar Ram Yadav, Aged About 26 Years, Occupation- Vehicle Driver, R/o Dhondhi Aara, PS- Tapkara, District- Jashpur, At Present R/o Jagatpur, Near Shyam Petrol Pump Raigarh, Tahsil- Raigarh, Civil And Revenue District- Raigarh, Chhattisgarh
4. Medni Prasad Negi S/o Shri Heeralal Negi Aged About 40 Years Occupation- Owner Of The Vehicle, R/o Kosamnara, Tahsil- Raigarh, Civil And Revenue District- Raigarh, Chhattisgarh

---- Respondents

For Applicant : Shri HB Agrawal, Senior Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

25.08.2020

1. Shri HB Agrawal, learned Senior Advocate appearing for the applicant has filed this MCC for correction of calculation mistake occurred in paragraph- 14 of the impugned order dated 30.01.2020, passed in MAC-1210 of 2015.
2. Learned Senior counsel submits that upon adding the total amount awarded to the claimants on different heads, the total amount of compensation will come to Rs.57,33,534/-, whereas, in 6th line from the bottom in paragraph- 14, it is mentioned as Rs.57,53,534.2/- and likewise, in 5th line from the bottom of same paragraph also, same amount has been mentioned due to calculation mistake. He submits that correction may be made with regard to the total amount awarded to the claimants as **Rs.57,33,534/-**.

3. Heard learned counsel for the applicant and perused the impugned order.
4. Upon totalling of amount awarded to the claimants on different heads, total amount comes to **Rs.57,33,534/-** (5579763 + 10000 + 70000 + 73771) and it appears that due to some inadvertent clerical calculation mistake it is mentioned as Rs.57,53,534/-.
5. It is directed that the total amount awarded to the claimants to be corrected as **Rs.57,33,534/-** in place of Rs.57,53,534/-, in paragraph-14 of the impugned order.
6. The order passed in this MCC shall also be made part of record of the MAC-1210 of 2015.
7. Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
JUDGE