NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 57 of 2016

1. Chandrajeet Gedam, S/o S. B. Gedam, aged about 31 years.
2. Rajesh Gedam, S/o S. B. Gedam, aged about 29 years.

   Both R/o Qr. No.85/1, Nehru Nagar (East), Bhilai, Tahsil & District Durg (CG)

---- Appellants

Versus

1. Mukesh Netam, S/o R.P. Netam, R/o. Qr. No. 5/F/487, C.S.E.B. Colony, Korba (East) Korba (CG)
2. Branch Manager, The Oriental Insurance Company Limited, 16, R.S.S. Market Power House (Supela), Tahsil & District Durg (CG)

---- Respondents

For Appellants	:	Mr. PR Patankar, Advocate
For Respondent No.2	:	Mrs. Chitra Shrivastava, Advocate

Hon'ble Shri Parth Prateem Sahu, J

Order On Board

09/11/2020

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 learned 2nd Additional Motor Accident Claims Tribunal, Durg (for short 'the Claims Tribunal') vide award dated 14.8.2015 passed in Claim Case No.76/2014 by which the Claims Tribunal partly allowed application of claimants and awarded a total amount of Rs.5,14,000/- as compensation in a death case.

2. Facts of the case, in brief, are that on 21.12.2011 Pranay Gedam was going towards Railway Station, Durg on his motorcycle bearing registration number CG07-LM-0609, on the way, when he reached near a culvert, one another motorcycle bearing registration number CG07-LP-8839, driven by non-

applicant No.1 rashly and negligently, dashed motorcycle of Pranay Gedam from rear side, as a result Pranay Gedam fell down and suffered grievous injuries on his head, chest etc. Due to excessive bleeding, Pranay Gedam succumbed to injuries on the way to hospital.

3. Initially, parents of deceased have filed claim application under Section 166 of the Act of 1988 before the Claims Tribunal seeking compensation of Rs.45,00,000/- under various heads. However, during the pendency of claim case, parents of deceased died and their legal heirs i.e. brother of deceased, have been substituted as claimants. It was pleaded in the application that on the date of accident, the deceased was 25 years old and working as 'Junior Executive' with Mannapuram General Finance & Leasing Company, Raipur and earning Rs.9,847/- per month.

4. Non-applicant No.1 owner of offending motorcycle, did not appear before the Claims Tribunal, therefore, he was proceeded ex-parte.

5. Non-applicant No.2 Insurance Company submitted its reply to claim application denying the pleadings made therein including the fact of accident, employment and earning of the deceased. It was pleaded that offending motorcycle was driven by one Dharmendra Das, who, on the date of accident, was not having valid & effective driving license, as such, there was breach of condition of insurance policy. On the date of accident, deceased was driving his motorcycle with two more persons,

accident was head-on collusion between two motorcycles, as such, it was a case of contributory negligence on the part of drivers of both the motorcycles.

6. Upon appreciation of pleadings and evidence placed on record by the parties, the Claims Tribunal has held that deceased died on account of motor accidental injuries suffered by him in a road accident occurred due to rash and negligent driving of offending motorcycle by its driver, contributory negligence on the part of deceased and breach of policy condition of offending motorcycle was not found to be proved and awarded Rs.5,14,000/- as compensation.

7. Mr. PR Patankar, learned counsel appearing for claimants-appellants submits that the Claims Tribunal erred in not considering income of deceased as Rs.9,847/- per month, as pleaded in claim application and proved by appellants by placing on record Ex.P-14, which is 'Offer of Appointment' of deceased as 'Junior Assistant'. He further contended that the Claims Tribunal assessed income of deceased as Rs.3,000/- per month on notional basis in a very casual manner overlooking status of deceased on the date of accident i.e. 'Junior Assistant' in Mannapuram General Finance & Leasing Company. Referring to Para 59.8 of the decision of Hon'ble Supreme Court in case of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, he submits that amount of compensation on other conventional heads, as quantified by Hon'ble Supreme Court in Pranay Sethi's case

(supra), be enhanced by 10% as three years has already elapsed after passing of the judgment in Pranay Sethi's case (supra).

8. Per contra, Mrs. Chitra Shrivastava, learned counsel for respondent No.2 Insurance Company submits that claimants/appellants failed to prove income of deceased by placing cogent, clinching and admissible piece of evidence on record. The Offer of appointment (Ex.P-14) was not proved by examining its author or any of the employees of the finance company where deceased was said to be working as Junior Assistant. The Claims Tribunal taking into consideration the facts of case, documents and evidence placed on record, has awarded just and proper amount of compensation, which does not call for any interference. She further contended that Hon'ble Supreme Court after passing of the judgment in Pranay Sethi's case (supra) has not enhanced quantum of compensation assessed by Hon'ble Supreme Court on other conventional heads in any other subsequent judgment, hence the amount of compensation awarded under other conventional head may not be enhanced, as prayed by learned counsel for appellants.

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

10. So far as first submission of learned counsel for appellants with regard to assessment of income of deceased as Rs.3,000/- per month is concerned, perusal of the record of claim case would show that the claimants, apart from pleadings in claim

application with regard to employment and income of deceased, have also placed on record Ex.P-14, which is in the form of 'offer of appointment as Junior Assistant'. But, the appellants have not proved this document Ex.P-14 by examining its author or any other witness before the Claims Tribunal. Claimants in their evidence before the Claims Tribunal have only made oral statement in this regard by placing document i.e. offer of appointment. It is settled law that any document issued by any authority or company is to be proved in accordance with law by examining its author or any other person from that institution/company to prove that the said document is issued from their office. In the case at hand, no such witness was examined to prove Ex.P-14 i.e. offer of appointment of deceased as Junior Assistant. Appellant No.1 was examined as AW-1 before the Claims Tribunal and he has stated in his evidence that his father was working as Clerk in Bharat Sanchar Nigam Ltd., he and his brothers possessed degree in Bachelor of Arts.

11. Taking into consideration the aforementioned evidence of AW-1, it can safely be presumed that the deceased was an educated person and if the offer of appointment could not be proved by examining any witness from the office/employer, then also the deceased might have ability to work and get employment for earning his livelihood of the nature as mentioned in Ex.P-14. True it is that the claimants failed to prove income and employment of deceased with Mannapuram

General Finance & Leasing Company, Raipur as Junior Assistant, but at the same time taking into consideration the facts of case, particularly employment of father of deceased as Clerk in Bharat Sanchar Nigam Limited and education of deceased i.e. Bachelor in Arts (BA), the income of deceased can be assessed on notional basis. However, keeping in mind the background of deceased, even if income of deceased is not proved and it is to be assessed on notional basis, then it cannot be equated with the income of a manual labourer and it has to be assessed little more than that of a labourer. Considering the date of accident i.e. 21.12.2011, fact that father of deceased was employed as Clerk in BSNL, I find it appropriate to asses the income of deceased as Rs.5,000/- per month and Rs.60,000/- per annum.

12. As regards as future prospects is concerned, perusal of the impugned award would show that the Claims Tribunal has added 50% of the income towards future prospects. In the matter of **Pranay Sethi (supra)**, Hon'ble Supreme Court while dealing with 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 26 years of age, as mentioned in post-mortem report Ex.P-11A, 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 instead of 50% as awarded by the Claims Tribunal.

13. The Claims Tribunal has deducted one-half from the income of deceased towards the personal & living expense of deceased and applied multiplier of 17, which in the opinion of this Court, being in accordance with decision of Hon'ble Supreme Court the matter of **Sarla Verma vs. Delhi Transport Corporation** reported in **(2009) 6 SCC 121,** is just and proper. and does not require any interference.

14. As regards the amount awarded under other conventional head i.e. Rs.20,000/- for loss of love & affection, Rs.25,000/- for transportation and Rs.10,000/- for loss of estate. Amount of compensation to be awarded under other conventional head has also been quantified by Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** and the heads on which compensation under other conventional heads to be awarded were fixed. Hon'ble Supreme Court has held that compensation would be granted under three conventional heads only i.e. loss of consortium, loss of estate and funeral. Perusal of impugned award reveals that the Claims Tribunal has not only awarded

compensation under such conventional heads which are not even mentioned in Second Schedule of the Act of 1988, but the amount of compensation awarded under other conventional heads is also on higher side than what has been quantified by Hon'ble Supreme Court in **Pranay Sethi's case (supra)**. Hence, the same requires reconsideration.

15. For the foregoing reasons, I propose to recompute and recalculate the amount of compensation payable to claimants/ appellants to award just compensation.

16. The income of deceased is taken as Rs.5,000/- per month & Rs.60,000/- per annum. Since at the time of accident the deceased was below the age of 40 years i.e. 26 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.7,000/- (5000+2000). Accordingly, annual income of deceased for the purpose of calculating compensation comes to Rs.84,000/- (7000x12). Out of this amount, one-half is to be deducted towards personal & living expenses of the deceased and after deducting one-half, annual loss of dependency would come to Rs.42,000/- (84000-42000). By applying multiplier of 17, as applied by the Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.7,14,000/- (42000x17). Besides this, 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.7,44,000/-, instead of Rs.5,14,000/- as awarded by the Claims Tribunal. This amount of compensation shall carry simple interest @ 6% 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.

17. Though in the appeal before this Court appellants are real brothers of deceased, but it cannot be lost sight of the fact that initially claim application has been filed by parents of deceased, who died during the pendency of claim case, therefore, appellants herein are entitled for the amount of compensation against unfortunate & untimely demise of their young brother. Being so, appellants, who are real brothers of deceased, are entitled to succeed estate of deceased and their parents. Hence the amount of compensation is awarded to them by calculating the amount of compensation in the aforementioned terms.

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/-