

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 857 of 2015**

1. Smt. Kunwariya Bai @ Kodaiya Bai, W/o Late Shri Ramchand, aged about 45 years.
2. Nagesh, S/o Late Shri Ramchand, aged about 25 years.
3. Kumesh, S/o Late Shri Ramchand, aged about 21 years.

All are by caste-Sonkar, residence of Village Sarangpuri, Thana- Arjuni, Tahsil- Dhamtari, Civil & Revenue District- Dhamtari (CG)

---- Appellants**Versus**

1. Gautam Kumar S/o Hemlal Nishad, aged about 24 years, R/o Village Bharari, Post-Kharenga, Thana-Arjuni, Tahsil- Dhamtari, Civil & Revenue District- Dhamtari (CG)
2. Divisional Manager, I.C.I.C.I. Lombard General Insurance Company Limited, Commercial Bhawan, Devendra Nagar Road Raipur, District- Raipur (CG)

---- Respondents

For Appellants	:	Mr. Sunil Sahu, Advocate
For Respondent No.2	:	Mr. Saurabh Sharma, Advocate

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

1. Appellants-claimants have 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, Dhamtari (for short 'the Claims Tribunal') vide award dated 24.6.2015 passed in Claim Case No.24/15 whereby the Claims Tribunal

has partly allowed application of claimants filed under Section 166 of the Act of 1988 and awarded Rs.3,37,000/- as compensation in a death case.

2. Facts of the case, in brief, are that on 1.1.2015 Ramchand, resident of village Sarangpuri, had gone to village Kharengar to sell vegetables in the market. After selling vegetables Ramchand was returning his home on foot and when he reached near Mango grooves of village Sarangpur, one motorcycle bearing registration number CG05-V-2396 (for short 'the offending vehicle'), driven by non-applicant No.1 in a rash and negligent manner, came on the side of Ramchand and hit him, as a result, he sustained grievous injuries and died after some time of accident. Accident was reported in the Police Station Arjuni based on which crime bearing No.1/15 was registered against non-applicant-driver of offending vehicle for commission of offence punishable under Sections 279, 304A of the IPC. On completion of investigation, the Police filed charge sheet against non-applicant-driver before the jurisdictional Magistrate.
3. Claimants, who are widow and children of deceased, have filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking compensation of Rs.33,00,000/- under various heads. It was pleaded in the application that the deceased was selling vegetables produced by him and after purchasing from other nearby farmers and earning Rs.500-600/- per day. The deceased was

only breadwinner in the family and on account of his untimely death in a road accident, loss of income has occasioned to them.

4. Non-applicants did not appear before the Claims Tribunal, therefore, they were proceeded ex-parte.
5. Upon appreciation of pleadings and evidence placed on record by the respective parties, Claims Tribunal held that the Ramchand died due to motor accidental injuries suffered by him in an accident occurred due to rash and negligent driving by its driver i.e. non-applicant No.1. Income of deceased was assessed at Rs.3,000/- p.m. and an amount of Rs.3,37,000/- was awarded as compensation.
6. Mr. Sunil Sahu, learned counsel representing claimants/appellants submits that the Claims Tribunal erred in fixing monthly income of deceased at Rs.3,000/- overlooking the pleadings and evidence placed on record as well as year of accident i.e. 2015. He submits that in the year 2015 income of a manual labourer might be more than the income of deceased as fixed by the Claims Tribunal. The deceased was not a manual labourer, he was engaged in the work of selling vegetables produced by himself and after purchasing from nearby farmers. He also submits that the Claims Tribunal has not awarded any amount towards future prospects. The amount awarded under other conventional heads like, Rs.5000/- for funeral expenses; Rs.5000/- for loss of estate; Rs.5,000/- for loss of consortium; Rs.10,000/- for loss of love

& affection, is not in consonance with the decision of Hon'ble Supreme Court in the matters of **National Insurance Company Ltd. vs. Pranay Sethi & ors** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130**. He submits that the amount of compensation be enhanced suitably.

7. On the other hand, Mr. Saurabh Sharma, learned counsel for respondent No.2- Insurance Company opposes the submissions made by learned counsel for appellants-claimants. He submits that the claimants have not placed on record any documentary evidence establishing the fact that deceased was in possession of agriculture field. No document has been placed on record showing engagement of deceased in the work of selling vegetables and in absence thereof, the Claims Tribunal was justified in fixing monthly income of deceased at Rs.3,000/-. He submits that the award passed by the Claims Tribunal is just and proper and it does not call for any interference.
8. I have heard learned counsel for appellant and perused the record of Claims Tribunal.
9. Date of accident i.e. 1.1.2015, is not in dispute. The deceased was an able bodied 50 years old person having wife and two children. True it is that the claimants have not produced any document showing the deceased to be in possession of any agriculture land or in profession of vegetable selling. Even

otherwise there cannot be any documentary proof showing engagement of a person in the business of vegetables selling. However, a practical approach should be adopted while considering occupation of a poor person engaged in small business like vegetable selling etc. In case at hand, admittedly, on the date of accident the deceased was aged 50 years and maintaining himself, his wife and two children, which suggests that he might be earning something to feed his family, otherwise it was not possible for him to maintain family of four persons including himself. Considering the year of accident i.e. 2015, wage structure and price index prevailing at the relevant point of time, this Court is of the view that during that period income of a manual labourer would have been much more than Rs.3,000/-. Monthly income of deceased fixed by the Claims Tribunal i.e. Rs.3,000/-, is on lower side and deserves to be enhanced. Accordingly, this Court deem it appropriate to fix monthly income of deceased as Rs.5,000/- for the purpose of assessing compensation.

10. 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 at hand, on the date of accident deceased was in age group of 50 to 60 years, as in post-mortem report Ex.A-7 deceased was shown to be 50 years of age, and 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 10% of the monthly income of the deceased as future prospects.

11. As regards the amount awarded under other conventional head i.e. Rs.5,000/- for funeral expenses; Rs.5,000/- for loss of estate; Rs.5,000/- for loss of consortium; Rs.10,000/- for loss of love & affection. In the opinion of this Court, the amount awarded under other conventional heads are on lower side and deserve to be enhanced as per dictum of Hon'ble Supreme Court in **Pranay Sethi's case (supra)** and **Magma General Insurance Co. Ltd.'s case (supra)**.

12. For the foregoing reasons, this Court proposes to recompute the amount of compensation payable to claimants/appellants to award just compensation.

13. The income of deceased is taken as Rs.5,000/- per month, as fixed above, and since at the time of accident the deceased was in the age group of 50 to 60 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 10% towards future prospects, which comes to Rs.5,500/- (5000+500). Accordingly, annual income

of deceased for the purpose of calculating compensation comes to Rs.66,000/- (5500x12). Out of this amount, one-third is to be deducted towards personal & living expenses of the deceased. After deducting one-third from yearly income, annual loss of dependency would come to Rs.44,000/- (66000-22000). By applying multiplier of 13, as applied by the Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.5,72,000/- (44000x13). Besides this, appellant No.1, widow of deceased, is entitled for a sum of Rs.40,000/- towards spousal consortium and appellant Nos.2 & 3, children of deceased, are entitled for a sum of Rs.40,000/- towards parental 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 now entitled for a total sum of **Rs.6,82,000/- (572000+ 40000+ 40000 + 15000 + 15000)**, instead of Rs.3,37,000/- 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.

14. 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/-