NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 1111 of 2014

(Arising out of award dated 22/08/2014 passed in Motor Accident Claim Case No.294 of 2011 by the First Additional Motor Accident Claims Tribunal, Surajpur, District Surajpur, Chhattisgarh)

1. Kismant Bai, W/o Late Gopal Singh, aged about 38 years (Widow)
2. Bijendra Kumar, S/o Late Gopal Singh, aged about 13 years (Son)
3. Suresh Kumar S/o Late Gopal Singh, aged about 12 years (Son)
4. Surendra Kumar S/o Late Gopal Singh, aged about 9 years (son)
5. Mahendra Kumar S/o Late Gopal Singh, aged about 6 years (Son)
6. Jyoti D/o Late Gopal Singh, aged about 4 years (Daughter)
7. Shani D/o Late Gopal Singh, aged about 01 years (Daughter).

   Note;- All Cost Goand Appellant No. 2 to 7, legal guardian of the Mother appellant No. 1 Kismat Bai W/o Late Gopal Singh.

   All R/o Village Chhatrang Thana and Tahsil Odgi Distt. Surajpur (C.G.).

---- Appellants

Versus

1. Indra Bhan Singh, S/o Raghunath Singh, aged about 46 years Occupation Teacher, R/o village Palkewara Thana Odgi, District Surguja (C.G.).
2. Bhgwat, @ Bhagat Singh S/o Raju Singh, aged about 25 years Occupation Vehicle Driver, R/o village Radhe Nagar (Patelpara) Thana Manendragarh, District Koriya (C.G.).
3. The Oriental Insurance Company Limited, Through Branch Manager, Ambedkar Chouk Ambikapur Distt. Sarguja (C.G.).

---- Respondents

M. A. (C) No. 550 of 2015

1. Indra Bhan Singh, S/o Raghunath Singh, aged about 46 years, Occupation Teacher, R/o village Palkewara, Thana Odgi, District Surguja C.G.

2. Bhgwat, @ Bhagat Singh S/o Raju Singh, aged about 25 years, Occupation Vehicle Driver, R/o village Radhe Nagar (Patelpara), Thana Manendragarh, District Koriya (C.G.).

---- Appellants

Versus

1. Kismant Bai, W/o Late Gopal Singh, aged about 38 years (Widow)
2. Bijendra Kumar, S/o Late Gopal Singh, aged about 13 years,
3. Surensh Kumar S/o Late Gopal Singh, aged about 12 years
4. Surendra Kumar S/o Late Gopal Singh, aged about 9 years
5. Mahendra Kumar S/o Late Gopal Singh, aged about 6 years
6. Jyoti D/o Late Gopal Singh, aged about 4 years
7. Shani D/o Late Gopal Singh, aged about 1 years

   The respondents No. 2 to 7 being minor through their natural guardian mother Smt. Kismat Bai widow of Late Gopal Singh, All are resident of village Chhatrang, Police Station & Tahsil Odgi, District Surajpur C.G..
8. The Oriental Insurance Company Ltd. Through Branch Manager Ambedkar Chouk Ambikapur, District Surguja (C.G.).

---- Respondents

MAC No.1111 of 2014

For Appellants	: Shri Vikash Pandey, Advocate
For Respondents No.1 & 2	: Shri Rakesh Pandey, Advocate
For Respondent No.3	: Shri Anumeh Shrivastava, Advocate

MAC No.550 of 2015

For Appellants	: Shri Rakesh Pandey, Advocate
For Respondents No.1 to 7	: Shri Vikash Pandey, Advocate
For Respondent No.8	: Shri Anumeh Shrivastava, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

17/08/2020

1. As both the appeals are arising out of award dated 22/08/2014 passed by First Additional Motor Accident Claims Tribunal,

Surajpur District Surajpur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.294 of 2011, therefore, they are being disposed of by this common judgment.

2. MAC No.1111 of 2014 is filed by the claimants seeking enhancement of amount of compensation awarded by learned Claims Tribunal, whereas MAC No.550 of 2015 is filed by owner and driver of Tractor bearing No.CG-15A/2459 (hereinafter referred to as 'offending Tractor') challenging exoneration of Insurance Company from its liability and fastening liability to pay the amount of compensation.

3. Facts relevant for disposal of these appeals, are that, on 25/03/2011, Gopal Singh was working in a road construction work under Pradhan Mantri Gram Sadak Yojna, while so, non-applicant No.2/driver of the offending Tractor, while driving the offending Tractor rashly and negligently, dashed Gopal Singh and ran over. In the aforementioned accident, Gopal Singh suffered grievous injuries over his person. He was taken to the Hospital at Baikunthpur, where he succumbed to the injuries during course of his treatment. The accident was reported to concerned Police Station, based upon which, crime bearing No. 23 of 2011 was registered against non-applicant No.2 for the offences punishable under Section 304-A of the IPC and under Sections 03/181, 05/181 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act').

4. Claimants, who are widow and children of late Gopal Singh filed claim application under Section 166 of the M.V. Act before learned Claims Tribunal seeking compensation of Rs.35,14,000/- against the untimely motor accidental death of late Gopal Singh mentioning therein that they were dependent upon the income of deceased.

5. Non-applicants No.1 and 2, who are owner and driver of offending Tractor submitted reply to claim application and denied the pleadings made in claim application. They have further pleaded that deceased was engaged in labour work and only doing very nominal agricultural work. It was further pleaded that deceased was resident of village Chhatrang, which is a backward village, where the income/wages of labour is only Rs.50-60/-, thereby, income of the deceased can be taken as Rs.1,500/- per month only. Offending Tractor was engaged by a contractor along with driver engaged by them namely Sapan for the purpose of transporting water through Tanker attached with offending Tractor; it is the driver engaged by contractor driving the Tractor namely Sapan and not non-applicant No.2, who caused the accident. It was lastly pleaded that non-applicant No.2 was driving the Tractor/vehicle since last about 8-10 years, but the licence was issued only after three months from the date of accident and prayed for dismissal of the claim application.

6. Non-applicant No.3/Insurance company submitted reply to claim application and pleaded that on the date of accident, driver of

offending Tractor was not possessing valid and effective driving licence, for which, offence under Sections 03/181 and 05/181 of the M.V. Act was registered against the driver of offending Tractor by the Police. It was further pleaded that offending Tractor was insured for agricultural purpose, but at the time of accident, it was being used for other than agricultural purposes; there was breach of conditions of insurance policy and prayed that Insurance Company may be exonerated from its liability to pay the amount of compensation.

7. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as four issues for consideration. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.4,93,200/- as compensation, while exonerating the Insurance Company from its liability, fastened the liability to satisfy the amount of compensation upon non-applicants No.1 and 2 i.e. owner and driver of the offending Tractor. Issued direction to Insurance Company to first pay the amount of compensation and thereafter, to recover the amount of compensation, so deposited by it, from driver and owner of offending Tractor.

8. Shri Vikash Pandey, learned counsel for the appellants/claimants in MAC No.1111 of 2014 submits that learned Claims Tribunal has erred in assessing the income of deceased as Rs.3,000/- per month instead of Rs.4,000/- per month looking to the date of

accident; non-granting of interest under Section 171 of the M.V. Act on the amount of compensation awarded; not awarding any amount towards future prospects and awarding very meager amount of compensation on other conventional heads. He further submits that amount of compensation awarded by learned Claims Tribunal is on the lower side and prays that amount of compensation may be suitably enhanced. He places his reliance in the matters of **Santosh Devi v. National Insurance Company Limited and Others**[1], **Subulaxmi v. Managing Director, Tamil Nadu State Transport Corporation and Another**[2] and **Kaushnuma Begum (Smt.) and others v. New India Assurance Co. Ltd. and others**[3] to buttress his submissions.

9. Per contra, Shri Rakesh Pandey, learned counsel for respondents No. 1 and 2/driver and owner of offending Tractor submits that driver and owner of the offending Tractor have also filed appeal challenging the same award passed by learned Claims Tribunal firstly on the ground of exoneration of Insurance Company by not accepting the evidence of witnesses examined before learned Claims Tribunal, wherein they have very specifically stated that on the date of accident, offending Tractor was driven by one Sapan, driver engaged by contractor and not by non-applicant No. 2 and further that, learned Claims Tribunal had not considered the entire evidence available on record and arrived at a wrong finding. He

1 **(2012) 6 SCC 421**
2 **(2012) 10 SCC 177**
3 **(2001) 2 SCC 9**

further submits that the income assessed by learned Claims Tribunal is on higher side; the deceased was resident of interior village of forest area, where the wages for labour at the time of accident was not more than Rs.60/- per day. It is contended that apart from the assessment of income of deceased which is higher side, learned Claims Tribunal has applied deduction and multiplier correctly and awarded appropriater amount of compensation on other conventional heads.

10. Shri Anumeh Shrivastava, learned counsel for respondent No.3/ Insurance Company submits that learned Claims Tribunal has rightly taken into consideration the evidence and other materials placed on record including the documents of Police investigation available on record, wherein non-applicant No.2 has been shown to be driver of offending Tractor at the first instance immediately after the accident. He further contended that on the date of accident, non-applicant No.2 was not possessing valid and effective driving licence as pleadings made in reply to claim application; non-applicants No.1 and 2 themselves pleaded that licence was issued in the name of non-applicant No. 2 after three months from the date of accident. It is contended that impugned award passed by learned Claims Tribunal is strictly is in accordance with law and does not call for any interference.

11. We have heard learned counsel for the respective parties and perused the record carefully.

12. We will take up MAC No.1111 of 2014 first, which is an appeal for enhancement of the impugned award filed by the claimants.

13. Learned Claims Tribunal has assessed the income of deceased Gopal Singh as Rs.3,000/- per month on notional basis. Admittedly, in the instant case, income could not be proved by the claimants by placing any documentary evidence and in absence of any admissible and reliable piece of evidence to prove the income of deceased, the income is to be assessed on notional basis, for which, it is required to consider the date of death of deceased, nature of his employment/engagement as also the price index and wage structure prevailing within the Districts. In the case at hand, the date of accident is 25/03/2011, deceased was engaged as labour in a construction of road under Pradhan Mantri Gram Sadak Yojana and as per statement of claimant, he was also doing some agricultural work; deceased was survived by seven legal representatives (one widow and six children), in these circumstances, we find it appropriate to assess the income of deceased as Rs.4,000/- per month and Rs.48,000/- per annum.

14. Learned Claims Tribunal has not awarded any amount of compensation towards future prospects. The Constitutional Bench of Hon'ble Apex Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**[4]**,** has held that even a person who is not engaged in permanent employment or self-employed, is entitled for amount towards loss of future

4 **(2017) 16 SCC 680**

prospects and have categorized under three age groups i.e. less than 40 years, above 40 years but less than 50 years and 50-60 years. The learned Claims Tribunal has considered the age of deceased as 45 years, which is also mentioned in postmortem report (Ex.P/6), therefore, accepting the age of deceased as mentioned in postmortem report as 45 years, the age of deceased is taken as 45 years, for which, there will be addition of 25% of the established income towards future prospects for calculating the monthly/yearly income of the deceased.

15. Learned Claims Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses, Rs.25,000/- towards loss of consortium to wife, Rs.50,000/- towards love and affection to children and parents and Rs.10,000/- towards loss of estate, which in the opinion of this Court, is on the lower side in view of the dictum of Hon'ble Supreme Court in the matters of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others**[5]**.**

16. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the appellants/claimants requires re-consideration and re-computation, which is as under :

As discussed above, the income of deceased is assessed by this Court as Rs.4,000/- per month i.e. Rs.48,000/- per annum. On the date of accident, deceased was shown to be 45 years of

5 **(2018) 18 SCC 130**

age, therefore, in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra), there will be an addition of 25% of the income towards future prospects. By adding 25% of the income towards future prospects, the total annual income of deceased will come to Rs. 60,000/- (48,000 x 25% = 12,000 and 48,000 + 12,000). On the date of accident, the deceased was survived by seven claimants, therefore, in view of dictum of Hon'ble Supreme Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[6], appropriate deduction would be 1/5th. After deducting 1/5th towards his personal and living expenses of the deceased, yearly loss of dependency of the claimants will come to Rs.48,000/- (60,000 / 5 and 60,000 – 12,000). As it is held the age of the deceased to be 45 years, the appropriate multiplier would be 14. By applying the multiplier of 14, the loss of dependency of the claimants will come to **Rs.6,72,000/-** (95,407 x 9). Apart from above, the claimants will be further entitled for a sum of **Rs.40,000/-** towards spousal consortium to the wife (payable to the spouse because of the death of partner), **Rs.40,000/-** towards parental consortium to the children (payable to children because of the death of parents), **Rs.15,000/-** towards loss of estate, **Rs.15,000/-** towards funeral expenses.

17. Now, the appellants/claimants are entitled for total compensation of **Rs.7,82,000/-** (6,72,000 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.4,93,200/- as awarded by learned Claims Tribunal.

6 **(2009) 6 SCC 121**

This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

18. Now, we will deal with MAC No.550 of 2015 filed by driver and owner of offending Tractor.

19. Shri Rakesh Pandey, learned counsel for the appellants/driver and owner of offending Tractor submitted that learned Claims Tribunal has not considered the evidence of witnesses examined before learned Claims Tribunal in its entirety and also the reply submitted by the driver and owner of offending vehicle, wherein they have very specifically pleaded that one driver engaged by contractor, namely Sapan, was driving the offending Tractor at the time of accident, but learned Claims Tribunal has considered that it is non-applicant No.2/appellant No.2, who was driving offending Tractor at the time of accident, which is erroneous. He further submitted that deduction of 1/5th towards personal and living expenses is erroneous and the correct deduction will be 1/3rd only.

20. To appreciate the submission made by learned counsel for the driver and owner of the offending vehicle, in claim application, claimants have very specifically pleaded that accident was caused by non-applicant No.2/appellant No.2; the Police registered criminal case against non-applicant No. 2 and non-applicant No.1 stating that non-applicant No.2 caused accident while he was

driving the offending tractor. Perusal of copy of First Information Report (Ex.P/1) would show that accident took place on 25/03/2011 at about 3.00 p.m. and First Information Report was lodged on 26/03/2011 at 14.15 O'clock i.e. 4.15 p.m. The First Information Report has been lodged promptly by the Sarpanch of the village. There is no pleading, evidence or submission made by the learned counsel for the appellants of the reason for false implication of non-applicant No.2 in criminal case mentioning that he was driving the offending Tractor on the date and time of accident. It is not argued on behalf of the appellants/driver and owner that they have initiated any proceedings against the registration of First Information Report showing the non-applicant No. 2 to be accused as driver of offending Tractor.

21. In absence of any action taken or any proceeding drawn against registration of First Information Report showing the non-applicant No.2 to be accused, the submission of the learned counsel for the appellants cannot be accepted and hence, it is rejected.

22. So far as the other submission made by learned counsel for the appellants with regard to deduction towards personal and living expenses, the issue in this regard is now well settled by Hon'ble Supreme Court in the matter of **Sarla Verma** (supra), wherein Hon'ble Supreme Court has held that the deduction for three claimants/legal representatives would be $1/3^{rd}$, where the claimants/legal representatives are 4 to 6, appropriate deduction would be $1/4^{th}$ and where the claimants/legal representatives are

above six, the deduction would be 1/5th. In the case at hand, there are seven claimants/legal representatives of the deceased and hence, learned Claims Tribunal has rightly applied the deduction of 1/5th, which is inconformity with the law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma** (supra).

23. In view of above, second submission made by lanterned counsel for the appellants/driver and owner is also not sustainable and is hereby rejected.

24. In the result:-

(i) MAC No.1111 of 2014 filed by the claimants is allowed in part and the impugned award is modified to the extent indicated herein above. Now the claimants are entitled for a sum of **Rs.7,82,000/-** along with interest at the rate of 6% per annum from the date of application till its realization. The respondent/Insurance Company will first deposit the entire amount of compensation and thereafter to recover the amount so deposited by it from owner and driver of the offending Tractor.

(ii) MAC No.550 of 2015 filed by the owner and driver of the offending Tractor is dismissed.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh