NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 1508 of 2015

1. Smt. Manju Baid W/o Late Shri Ashok Baid, Aged About 48 Years
2. Ku. Smita Baid D/o Late Shri Ashok Baid, Aged About 25 Years
3. Akshay Bai SD/o Late Shri Ashok Baid, Aged About 23 Years
4. Ku. Mohita @ Meenu Baid D/o Late Shri Ashok Baid, Aged About 21 Years
5. Smt. Vimla Bai W/o Late Shri Pukhraj Baid, Aged About 65 Years

   All are residence of Sadar Bajar Dhamtari, Thana & Tahsil- Dhamtari, Civil & Revenue Distt.- Dhamtari, (C.G.) ....Claimants

---- Appellants

Versus

1. Gangaram S/o Beniram, By Caste- Dhruv, aged about 45 years, R/o Near Girls School Mandirhasoud, Post and Thana- Mandirhasoud Tahsil-Raipur, Civil & Revenue Distt.- Raipur, (C.G.)

   (Driver of the Vehicle No. C.G.-04-J B-4459)
2. Branch Manager, Hora Transport Company Private Limited R/o Fafadih Road Raipur, Thana, Tahsil and Distt.- Raipur, (C.G.)

   (Owner of the Vehicle No. C.G.-04-J B-4459)
3. Divisional Manager, United India Insurance Company Limited, LIC Road Pandari Raipur, Distt.- Raipur, (C.G.)

   (Insurer of the Vehicle No. C.G.-04-J B-4459)

---- Respondents

For Appellants	: Mr. Sunil Sahu, Advocate
For Respondents No. 1 & 2	: Ms. Shivali Dubey Advocate on behalf of Mr. Shailendra Dubey, Advocate
For Respondent No. 3	: Mr. Dashrath Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

13/03/2020

1. Appellants/claimants have filed this appeal under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 14/08/2015 passed by Additional Motor Accident Claims Tribunal (F.T.C.), Dhamtari, District Dhamtari (C.G.), (hereinafter referred to as 'Claims Tribunal') in

Claim Case No.153 of 2013, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.9,53,670.50 in a death case along with interest at the rate of 6% from the date of filing of claim application till its realization.

2. Brief facts relevant for disposal of this appeal are that, on 31/08/2012 Ashok Baid along with his family was travelling in a Wagan R. Car bearing registration No.CG04/HC/0596 and going to Raipur from Dhamtari, when they reached near village Chitaud, a Truck bearing registration No.CG04/JB/4459 (hereinafter referred to as “offending truck”) driven by non-applicant No.1 dashed the Car. In the aforementioned accident, Ashok Baid suffered grievous injuries over his head, chest and leg, he was taken to the hospital and during the course of treatment, succumbed to the injuries suffered by him in the motor accident. The accident was reported to concerned Police Station, based on which, Crime No.360 of 2012 for offence punishable under Sections 279, 337, 338 and 304A of IPC was registered against non-applicant No.1/driver of offending truck.

3. The claimants who are widow, children and mother of deceased Ashok Baid filed claim application before the Claims Tribunal claiming Rs.72,50,000/- on all heads as compensation on account of motor accidental death of Ashok Baid stating that they were dependent on the deceased.

4. Non-applicants No.1 and 2, who are driver and owner of offending truck have filed their reply to claim application and denied all the adverse pleadings made against them. It was pleaded that the accident took place on account of rash and negligent driving of driver of Car itself. Driver, owner and Insurance Company of Car has not been arrayed as party respondents, as such, the claim application is not maintainable on account of non-joinder of necessary party. It was further pleaded that on the date of accident, offending truck was insured with non-applicant No.3/Insurance Company and driver of offending truck/non-applicant No.1 was possessing valid and effective driving licence, the liability, if any, for payment of amount of compensation would be on the Insurance Company.

5. Non-applicant No.3/Insurance Company submitted its separate reply and denied all the adverse pleadings made in the claim application. It was pleaded that on the date of accident, non-applicant No.1/driver of offending truck was not possessing valid and effective driving licence; there was no valid permit and fitness certificate of the offending truck and offending truck was being driven in violation of the conditions of insurance policy, Insurance Company is not liable for payment of any amount of compensation.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, arrived at a finding that the accident took place on account of rash and negligent driving of non-applicant No.1 i.e. driver of offending truck and in the said accident, Ashok Baid who was occupant of Car died; there was no violation of conditions of insurance policy, and awarded a total sum of Rs.9,53,670.50 as compensation.

7. Mr. Sunil Sahu, learned counsel for the appellants submits that learned Claims Tribunal committed error in not taking into consideration the oral evidence of Prafull Kumar Deshlahara (AW-3) (Chartered Accountant), who in his evidence has specifically stated that deceased Ashok Baid was maintaining the HUF Account in the name of Labhchand Pukhraj Baid Firm, deceased Ashok Baid were three brothers. therefore, the income of Labhchand Pukhraj Baid Firm (HUF) is to be divided into three shares. He further points out that the income of the HUF is Rs.2,90,635/- on the date of accident, 1/3rd amount of aforementioned income of HUF ought to have been added in the income of deceased Ashok Baid. He also points out that learned Claims Tribunal also committed error in not awarding any amount towards loss of future prospects. He lastly points out that the agricultural income as shown in the computation of total income, which is part of Ex.P-14 has not been added into the income of deceased Ashok Baid while calculating the amount of compensation to be awarded to the appellants/claimants and prays that amount of compensation to be enhanced suitably.

8. Ms. Shivali Dubey, learned counsel for respondents No.1 and 2 supports the impugned award.

9. Mr. Dashrath Gupta, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal has awarded just and proper amount of compensation after taking into consideration the last income tax return receipt of the year 2012-13 submitted by the claimants before the learned Claims Tribunal wherein the income of deceased Ashok Baid has been shown as Rs.1,11,354/-. It is further submitted by learned counsel that learned Claims Tribunal while rejecting the submissions of claimants for adding 1/3rd amount of income as shown in the income tax return of Labhchand Pukhraj Baid Firm (HUF) recorded that the appellants/claimants have not filed any document showing that the deceased Ashok Baid was a member of HUF. Perusal of document Ex. P-

15 shows that in the name and address column, it has been mentioned as Labhchand Pukhraj Baid HUF and in said column, it has been specifically mentioned as, Proprietor Pukhraj Baid HUF. He also points out that looking to the specific detail of a person who is managing the accounts of HUF by showing Pukhraj Baid as Proprietor HUF, the evidence of Prafull Kumar Deshlahara (AW-3) is not acceptable wherein he has stated that the HUF account in the name of Labhchand Pukhraj Baid is being operated or maintained by deceased Ashok Baid. The appellants/claimants have not produced any documentary evidence before the learned Claims Tribunal showing that the deceased Ashok Baid was also a member or partner of HUF, therefore, learned Claims Tribunal has rightly discarded the submission of the appellants/claimants. Learned counsel further points out that the agricultural income as shown in part of Ex.P-14 in computation of total income amounting to Rs.83,819/-, the deceased Ashok Baid was not an agriculturist, but is a businessman. The agricultural property even after the death of deceased Ashok Baid will remain with the family and from where, appellants/claimants can yield the income as yielding by deceased Ashok Baid. He also points out that the deceased Ashok Baid was a businessman and not personally involved in the agricultural activities, but even if, the submission of learned counsel for appellants is accepted, he might be performing agricultural activities by some other persons and labours, therefore, the appellants/claimants have not suffered any loss towards agricultural income.

10. I have heard learned counsel appearing for the respective parties and perused the record carefully.

11. So far as the first submission raised by learned counsel for the appellants that 1/3rd income of Labhchand Pukhraj Baid HUF Firm is to be added in the income of deceased Ashok Baid is concerned, perusal of Ex.P-15 to Ex. P-17 nowhere mentions the name of the deceased Ashok Baid being a member or partner of HUF. The appellants/claimants except the income tax return of Labhchand Pukhraj Baid HUF Firm, has not produced any other document or made oral evidence to substantiate their argument/claim that the deceased Ashok Baid is also one of the member or partner of HUF. Document on which reliance is placed shows Pukhraj Baid to be Proprietor of HUF. As the appellants have failed to produce any documentary evidence that the deceased Ashok Baid was also a member or partner of the HUF, in the opinion of this Court, learned Claims Tribunal has not committed any error in rejecting the claim for adding of 1/3rd income of HUF as the income of deceased Ashok Baid., more so, when Prafull Kumar Deshlahara (AW-3), Chartered Accountant, in his statement has stated that the account is being maintained and operated by deceased Ashok Baid. But, in the documents Ex. P-15 to Ex. P-17, it is clearly mentioned Pukhraj Baid to be Proprietor of Labhchand Pukhraj Baid HUF.

12. Further submission made by learned counsel for the appellants is that the agricultural income is not added in the income of the deceased Ashok Baid is concerned, perusal of records would show that the agricultural income which the deceased Ashok Baid as shown in the income tax return, the agricultural property will remain with the appellants/claimants and they can very well yield the income from that property. Deceased Ashok Baid was not an agriculturist, but he might be doing agricultural activities through professionals or labours etc. and the appellants/claimants can maintain or continue the agricultural activity through same procedure. For the above reason's, in the opinion of this Court, the appellants/claimants may not suffer any loss of agricultural income.

13. Other submission made by learned counsel for the appellants is that learned Claims Tribunal committed an error in not awarding any income towards loss of future prospects is concerned, the learned Claims Tribunal based on the records of the criminal Court has assessed the age of the deceased in between 50-55 years, therefore, in view of the law laid down by the Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**[1], the claimants are entitled for an additional amount of 10% of the established income towards future prospects.

14. The last submission made by learned counsel for the appellants that learned Claims Tribunal has awarded meager amount towards other conventional heads is concerned, the amount towards conventional heads is also fixed by the Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra), therefore, in view of the law laid down in aforementioned case, the claimants are also entitled for total sum of Rs.70,000/- towards other conventional heads in addition to the amount of loss of dependency.

15. In view of aforementioned discussions and law laid down by Hon'ble Supreme Court in the aforementioned case, in the considered opinion of this Court, the appropriate compensation is to be awarded to the claimants. For the reasons stated herein-above, the amount of compensation to be awarded to the appellants/claimants require recalculation which this Court calculates the same in following terms :-

1 **AIR 2017 SC 5157**

The learned Claims Tribunal has taken the annual income of the deceased as Rs.1,11,354/- and by adding 10% towards loss of future prospects i.e. Rs.11,135/-, the annual income of the deceased would come to Rs.1,22,489/-. After deducting 1/4th towards his personal and living expenses i.e. Rs.30,622/- (1,22,489 / 4), the annual dependency of the claimants would come to Rs.91,867/-. As at the time of accident, the deceased was shown to be aged about 50-55 years and in view of law laid down in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[2], multiplier of 11 would be applicable in the present case. After applying the multiplier of 11, the total loss of dependency comes to Rs.10,10,537/- (91,867 x 11). In addition to the aforesaid amount of compensation, the appellants/claimants are also entitled for Rs.70,000/- towards other conventional heads.

16. On the basis of above recalculation, the appellants/claimants will be now entitled for total compensation of Rs.10,80,537/- (10,10,537 + 70,000) instead of Rs.9,53,670.50 as awarded by the learned Claims Tribunal. The amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.

17. The appeal is allowed in part and impugned award dated 14/08/2015 is modified to the extent indicted herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh

2 **(2009) 6 SCC 121**