NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1179 of 2014

1. Chanda Bai, aged about 40 years, wife of Indal Prasad Rajak.
2. Indal Prasad Rajak, aged about 45 years, son of late Jaijairam Rajak,

   Both R/o Uslapur, Vaishnavi Vihar, Bilaspur, Tahsil and District Bilaspur C.G.

------Appellants/Claimants

VERSUS

1. Jitendra Kumar Tripathi, aged about 23 years, Son Jagdish Prasad Tripathi, R/o Kathar, Police Station Rampur, District Sidhi M.P. at present Somwari Bazar Dipika, Tahsil Dipika, District Korba, C.G.

   ------Driver
2. Anshul Jain, son of Devendra Kumar Jain, R/o L-9, Vinoba Nagar, Bilaspur C.G. **---------Owner**
3. Oriental Insurance Company Limited, through Branch Manager, Rama Trade Apartment, infront of Rajiv Plaza, Purana Bus Stand, Bilaspur, C.G.

----Respondents

For Appellants : Mr. Atanu Ghosh, Advocate.
For Respondent No. 3 : Mr. Anumesh 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, J.

21/08/2020

1. This is claimants' appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 26-08-2014 passed in claim case no. 140/2014 by Third Additional Member of First Additional Motor Accident Claims Tribunal, Bilaspur C.G. whereby the learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs. 4,09,000/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 11-03-2013 Shivkumar Rajak was traveling on a motor cycle bearing Registration No. CG 10EE 2302 as a pillion rider, driven by one Gautam Sahu. When they

reached over Uslapur flyover, one vehicle bearing Registration No. CG 04JC 9287 (hereinafter referred to as “offending vehicle”) driven by Respondent 1/ Non-applicant 1 rashly and negligently dashed the motor cycle of Gautam Sahu and caused accident. In the aforementioned accident, Shivkumar Rajak suffered grievous injuries over his person and succumbed to those injuries. The accident was reported to concerned police station based upon which crime was registered against Respondent 1/ Non-applicant 1 driver of the offending vehicle. Claimants who are parents of the deceased Shivkumar filed an application under Section 166 of the Motor Vehicles Act, seeking compensation of Rs. 90,50,000/- on account of untimely motor accidental death of their son pleading therein that the deceased was earning Rs. 8,500/- per month from his occupation of driver and attendant and they were dependent upon him.

3. Non-applicant 1 and 2/ Respondent 1 and 2 who are driver and owner of the offending vehicle submitted reply to the claim application pleading therein that no accident was taken place from the offending vehicle, fact of involvement of offending vehicle in the accident has been made to falsly, income pleaded in the claim application and the amount of compensation claimed is highly exaggerated, Respondent 1/ Non-applicant 1 driver was possessing valid and effective driving licence on the date of accident and the offending vehicle was insured with Respondent 3/ Non-applicant 3-Insurance Company.

4. Non-applicant 3/ Respondent 3-Insurance Company submitted reply to the claim application resisting the claim stating therein that there was no accident with the offending vehicle but it is the driver of the motor cycle Gautam Sahu who drove his vehicle rashly and negligently, the amount claimed is highly exaggerated, there was no licence with Respondent 1/ Non-applicant 1, no valid permit and fitness of the vehicle with Non-

applicant 2 and as such there was breach of conditions of insurance policy.

5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that deceased Shivkumar died in a motor accident with offending vehicle driven by Respondent 1/ Non-applicant 1 rashly and negligently, contributory negligence was not found to be proved, breach of conditions of insurance policy was also not found to be proved and awarded a total sum of Rs. 4,09,000/- as compensation.

6. Mr. Atanu Ghosh, learned counsel for appellants submits that the learned Claims Tribunal erred in assessing the income of the deceased as Rs. 3,000/- per month only ignoring the income as pleaded in the claim application as Rs. 8,500/- per month and supported by documentary as well as oral evidence of the employer. He further submitted that the Claims Tribunal has not awarded any amount of compensation towards future prospects and very meagre amount of compensation is awarded on other conventional heads. He submits that the amount of compensation to be enhanced suitably.

7. Per contra, Mr. Anumesh Shrivastava, learned counsel representing Respondent 3-Insurance Company submits that the award passed by the Claims Tribunal is just and proper which does not call for any interference. He submits that the Claims Tribunal has found the income as pleaded in the claim application to be not proved and therefore, rightly taken the income of the deceased on notional basis. It is also pointed by learned counsel that the Claims Tribunal erred in awarding access amount towards the other conventional heads which requires to be appropriately scaled down.

8. We have heard learned counsel for the respective parties and perused

the record.

9. Sofar as, the submission made by the learned counsel for the appellants with regard to income of the deceased assessed by the learned Claims Tribunal as Rs. 3,000/- per month to be on lower side is concerned. We have perused the record.

10. Appellants/ claimants in their claim application have pleaded that deceased on the date of accident was working as driver-cum-attendant and earning Rs. 8,500/- per month. This pleading of income in para 4 of the claim application has been denied by general denial from the part of Non-applicants. Claimants in support of the pleading with regard to the income of the deceased have placed a certificate issued by Smt. Mausmi Kar (Jana) W/o Niranjan Kar, Assistant Professor, R/o R-8, Vinobha Nagar, State Bank Colony, Bilaspur as Ext. P-10. Perusal of the certificate Ext. P-10 would show that the deceased was working as driver-cum-attendant for last 11 months and the certificate was issued on 09-04-2013. Claimants apart from placing the income certificate issued by the employer of the deceased have examined the employer as witness before the Claims Tribunal as AW-3. In her evidence under Order 18 Rule 4 of CPC as Statement in Chief, she very specifically stated that the deceased was working with her as Driver-cum-attendant since last 11 months from the date of accident and the deceased was being paid Rs. 8,500/- per month. In her statement, she also stated that she was engaged as Assistant Professor and her husband is also engaged as Assistant Professor. This witness was cross-examined at length by the learned counsel appearing for the Insurance Company. In her cross-examination, she admitted that she was not in Government service but working as Assistant Professor with C.V. Raman University a private Institution, adding to it, she also admitted that her husband was in Government employment. In her statement, she further stated that she

was an income-tax payee and further admitted that in income tax return, there was mentioned of the income but there is no mention about as to how much amount is paid or deducted to whom or on which head.

11. Considering the nature of engagement of the deceased shown in the pleadings in the certificate Ext. P-10 produced in support of the plea of income and also got the income certificate proved by the employer AW-3 who was working as Assistant Professor and her husband was also in government employment as Assistant Professor. When, the deceased was a person of lower strata and engaged by a private person as driver-cum-attendant then it cannot be considered that he might be in a position at that time to ask for the appointment letter and some other document but looking to the nature of case and object of the Act, appropriate income is to be assessed.

12. In the case at hand, there was a pleading that deceased was working as Driver-cum-attendant, meaning thereby, the decease was doing more work than that of a normal driver. The claimants have also examined Goutam Sahu as AW-2, who also was engaged as driver with some other private person and he in his oral evidence before the learned Claims Tribunal has stated the income from the work of driver as Rs. 6,000/- per month. Taking into consideration the overall facts of the case, the nature of work and the engagement of the deceased, the position of the employer wherein wife and husband were working on the post of Assistant Professor and the employer being a lady entered into the witness box to prove the certificate issued by her, we hold that the Claims Tribunal erred in assessing the income of the deceased as Rs. 3,000/- per month.

13. The accident is of March 2013, claimants have examined one Goutam Sahu, working as driver as also the employer. Deceased, apart from work of driver is doing the work of attendant. He might be receiving some extra

amount of wages for his extra work than normal driver. In the facts of case, nature of engagement of deceased and evidence brought on record, we find it appropriate to reckon the wages/ salary of deceased to be Rs. 7,000/- per month.

14. Looking to the copy of licence of deceased available on record showing his authorization to drive the Light Motor Vehicle and Motor Cycle with gear as also considering the date of accident i.e. 11-03-2013; learned Claims Tribunal has not awarded any amount of compensation towards future prospects for which the claimants will be entitled for. There will be an addition of 40% in the established income in view of the law laid down by the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680**. The deceased was a bachelor, therefore, there will be deduction of 50% of the income towards his personal and living expenses.

15. In view of the above, the amount of compensation to be awarded to the claimants requires re-computation which is as under.

16. Income of the deceased is taken as Rs. 7,000/- per month i.e. Rs. 84,000/-. By adding 40% of the established income towards future prospects, the total income of the deceased will come to Rs. 1,17,600/- [Rs.84,000+40% of Rs.84,000]. There will be 50% deduction towards personal and living expenses, after deducting 50% from the yearly income, total yearly income of the deceased will come to Rs. 58,800/-. Deceased was in between the age group of 21-25 years and therefore, appropriate multiplier will be of 18, after applying the multiplier of 18, loss of dependency will come to Rs. 10,58,400/- [Rs.58,800x18]. Apart from the above, the claimants will be further entitled for Rs. 15,000/- towards loss of estate, Rs. 15,000/- towards funeral expenses and Rs. 40,000/- towards filial consortium. Now, the claimants will be entitled for total amount of **Rs. 11,28,400/-** (in words: Rupees Eleven Lac Twenty Eight

Thousand and Four Hundred only) [Rs.10,58,400 + Rs.15,000 + Rs.15,000 + Rs.40,000] as compensation instead of Rs. 4,09,000/- as awarded by the Claims Tribunal. Aforementioned amount of compensation will carry interest @ 6% from the date of filing of claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.

17. In the result, the appeal is allowed in part and the impugned award passed by the Claims Tribunal is hereby modified to the extent as indicated herein-above.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

Pawan