NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.229 of 2014

1. Smt. Keja Bai Wd/o Late Shivprasad Mishra Aged About 65 Years.
2. Ku. Vijaylaxmi D/o Late Shivprasad Mishra Aged About 34 Years.

   Both are R/o. Mohlai, P. S. Pulgaon, Distt. Durg C.G., Thru- Krishna Kumar Sharma S/o Late Banshilal Sharma, Age- 50 Yrs, R/o Sharma Tent House, Rajendra Nagar, District : Bilaspur, Chhattisgarh.

---Claimants/appellants

Versus

1. Rajnath Yadav S/o Manaka Yadav R/o Station Para, Dhamtari, Distt. Dhamtari C.G., Thru- Mahavir Dhan Kutti Kendra, Proprietor Ishwar Golachha, S/o L.K. Golachha, Mill Para, Durg, Tah and Distt. Durg C.G., Present Address- Tilak School, Near Pani Tanki, Shikshak Nagar, Durg, Tah & Distt. Durg C.G.
2. Mahavir Dhan Kutti Kendra Thru- Proprietor Ishwar Golachha, S/o L.K. Golachha, Mill Para, Durg, Tah and Distt. Durg C.G., Present Address- Tilak School, Near Pani Tanki, Shikshak Nagar, Durg, Tah. and Distt. Durg, Chhattisgarh
3. The Manager The Oriental Insu. Co. Ltd., Rajendra Park Chowk, Durg, Tah and Distt. Durg C.G.

--- Respondents

For Appellants	:	Mr. Jitendra Gupta, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Mr. Anumesh Shrivastava, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Judgment on Board

Per Parth Prateem Sahu, J

21/08/2020

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by learned 1st Additional Motor Accident Claims Tribunal, Durg vide award dated 22.08.2013 passed in Claim Case No.126/12.

2. Facts relevant for disposal of this appeal are that on 20.08.2012, Ajay Mishra, along with Ashok Kumar Sahu & Sumit Shukla, was going on Pulsar motorcycle bearing registration No.CG04/DC/8276, (for short 'the motorcycle') towards Anjora. Sumit Shukla was driving the motorcycle and Ajay Mishra & Ashok Kumar Sahu was travelling as pillion rider. When they reached near Khapri Nala Bypass, one Matador Truck bearing registration No.CG07-C-3984, (for short, 'offending vehicle'), driven by respondent No.1/Rajnath Yadav, dashed against the motorcycle as a result of which Ajay Mishra suffered grievous injuries and died. Matter was reported to Police Station – Pulgaon based on which Crime No.402/12 for the offence under Sections 279, 304-A of the Indian Penal Code was registered against driver of offending vehicle.

3. Claimants, who are mother and sister of deceased -Ajay Mishra, filed an application under Section 166 of the Act of 1988 before the Tribunal claiming a sum of Rs.18,36,000/- as compensation on the ground that on the date of accident, deceased-Ajay Mishra was aged about 41 and was earning Rs.10,000/- per month by selling vegetable and also from agriculture work, but on account of his untimely death, they have been deprived from his income.

4. Non-applicant No.1 & 2, owner & driver of offending vehicle, submitted their joint reply to application and denied the entire pleadings made therein against them. It was pleaded that amount of compensation claimed by the claimants is on higher side. On the date of accident, driver of offending vehicle was having valid and effective driving license to drive the offending vehicle. Vehicle was insured with Insurance

Company, hence liability, if any, to make payment of amount of compensation would be of insurance company.

5. Respondent No.3/Insurance Company also filed its reply and denied the pleadings made in application. The employment and income of deceased as pleaded by claimants in application were denied for want of documentary evidence. It was also denied that accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1-driver. It was pleaded that as the accident is outcome of head-on collusion between the motorcycle and offending vehicle, it was case of contributory negligence. The offending vehicle was plied in breach of condition of insurance policy as at the time of accident, the driver of offending vehicle was not possessed with a valid and effective driving license. On the basis of aforementioned ground, it was pleaded by Insurance Company that it is not liable to indemnify the insured.

6. On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal discussed the case of claimants/appellants herein in Paragraph No.25 onwards of the impugned award for the purpose of awarding the amount of compensation; allowed claim application in part and awarded a sum of Rs.2,62,000/- as compensation along with interest @ 6% p.a by assessing monthly income of deceased notionally at Rs.3,000/- per month on the ground that documents of agriculture property placed on record i.e. Ex.P/8, P/9 & P/10, names of several persons are recorded as co-owners and that no other source of income has been proved by the claimants. The Tribunal has further held that the driver of motorcycle on which deceased Ajay Mishra was travelling along with one another

person, was also contributory negligent for the accident to the extent of 50%.

7. Learned counsel for the appellants submits that the Tribunal committed error in assessing income of deceased only as Rs.3,000/- per month, ignoring the pleadings and documentary evidence placed on record by claimants with regard to income of deceased from agriculture. Alternatively, he submits that even it is accepted that income of deceased pleaded in application cannot be taken as it is in view of the fact that in the documents placed on record name of other persons have also been shown as co-owners of the agriculture property, then also the income fixed by the Tribunal on notional basis i.e. Rs.3,000/- per month, is on lower side. He submits that notional income is to be fixed on the basis of nature of employment of deceased, price index & wage structure prevailing on the date of accident. He further submits that looking to the date accident ie 20.08.2012, the income of deceased ought to have been taken as Rs.5,000/- per month on notional basis. He further submits that the Tribunal erred in not awarding any amount towards future prospects and the amount awarded under other conventional heads is also on lower side. On the aforesaid grounds, he prays that the amount of compensation awarded to claimants be enhanced suitably by modifying the impugned award.

8. Per contra, learned counsel for respondent No.3/Insurance Company submits that the Tribunal after considering the materials available on record, particularly the facts that the claimants have not been able to prove income of deceased by placing cogent and reliable piece of evidence, has rightly assessed monthly income of deceased as

Rs.3,000/- on notional basis and awarded just and proper amount of compensation to the claimants, which does not call for any interference.

9. We have heard learned counsel for the parties and also perused the records.

10. So for as first argument raised by learned counsel for appellants with regard to income of deceased is concerned, admittedly claimants have produced the documents of agriculture property, which is recorded in the name of various persons including deceased. Even otherwise, agriculture property, if any, in the name of deceased will not go alongwith him but it will remain there with the claimants and the only loss which they would suffer is with regard to engagement of additional hand for the purpose of supervision etc. Claimants have pleaded in their pleadings that on the date of accident, deceased was engaged in the work of selling vegetable and he was also doing agriculture work and thereby earning Rs.10,000/- per month. However, claimants failed to produce any documentary evidence on record to prove income of deceased as pleaded by them. In such a situation, it will be proper to assess monthly income of deceased on notional basis. Looking to nature of work of deceased, as pleaded before the Tribunal, and considering the price index and wage rate prevailing in Distt- Durg on the date of accident, income of deceased can be assessed at Rs.4,500/- per month on notional basis, presuming him to be engaged as a 'manual labour'. Accordingly, we fix monthly income of deceased as Rs.4,500/-.

11. Coming to the next argument advanced by learned counsel for appellants/ claimants that the Tribunal erred in not awarding any amount towards future prospects. Hon'ble Supreme Court in catena of decisions

including in **National Insurance Company Ltd. vs. Pranay Sethi**[1] has held that in case the deceased, victim of motor accident, was self-employed or on a fixed salary, and below the age of 50 years, an addition of 25% of actual loss of income towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads 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."

12. Indisputably, in case at hand, on the date of accident, deceased was aged about 41 years, which was also accepted by the Tribunal, therefore, this Court is of the considered opinion that appellants/claimants are entitled for an addition of 25% of established income of deceased towards future prospect, as per decision of Hon'ble Supreme Court in the case of **Pranay Sethi** (supra).

13. The Tribunal has awarded a total sum of Rs**.10,000/-** under other conventional heads, which in the opinion of this Court is on lower side and the same is required to be enhanced in view of the decision of Supreme Court in the case of Pranay Sethi (supra) and **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhuru Ram**[2].

14. For the foregoing reasons, we proposed to recompute the amount of compensation awarded by the Tribunal.

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1 (2017) 16 SCC 680
2 2018 18 SCC 130

15. **I**ncome of deceased is taken as Rs.4,500/- per month as held above, and by adding 25% of income towards future prospects, in view of the guidelines issued by the Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra), which comes to Rs.1,125/- (25% of 4500). Total monthly income of deceased is assessed at Rs.5,625/- (4500+1125) and accordingly yearly income of deceased comes to Rs.67,500/- (5625X12). As on the date of accident, deceased was bachelor, 50% amount is to be deducted towards his personal and living expenses. After deducting 50%, annual loss of dependency comes to Rs.33,750/- (67500 – ½). The Tribunal has accepted the age of deceased in between 41 to 45 years and has correctly applied multiplier of 14. By applying multiplier of 14 total loss of dependency will come to Rs.4,72,500/- (33750 X14). Apart from this, claimants are also entitled for a sum of Rs.40,000/- towards loss of filial consortium, Rs,15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Now appellants/claimants will be entitled for a total sum of **Rs.5,42,500/-** instead **of Rs.2,62,000/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

16. In the result, appeal is allowed in part and the impugned award stands modified to the extent as indicated herein-above.

Sd/-

(P.R. Ramamchandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-