NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 713 of 2013

1. Smt. Jagmuni widow of late Jansai (*wrongly mentioned in the impugned award as Dhansai*), aged about 25 years, Occupation Agriculturist.
2. Ku. Savita D/o late Jansai, aged about 10 years
3. Vikas S/o Late Jansai, aged about 07 years
4. Vikram S/o late Jansai, aged about 05 years

   No. 2 to 4 are minor through Legal Guardian mother Smt. Jagmuni (Appellant 1)
5. Jitu S/o Late Mathu, aged about 66 years, Occupation Agriculturist

   All are caste Gayar, R/o Village Kanchi, Post Irai, P.S. Asta, Tahsil Manora, Civil and Revenue District Jashpur C.G.

------Appellants/ Claimants

1. Vijay Kumar Jain S/o Ashok Agrawal, Pro. Ashok Agencies, Occupation Owner of Vehicle, R/o Bhaiyathan Road, Surajpur, P.S. and Tahsil Surajpur, District Surajpur C.G.
2. Branch Manager, United India Insurance Company limited, Bramharoad, Ambikapur District Surguja, C.G.

-------**Respondents**

For Appellants : None
For Respondent 2 : Ms. Chitra 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.

26/06/2020

1. The appellants-claimants have filed this appeal challenging the impugned award dated 29-04-2013 passed in Motor Accident Claim Case No. 132/2012 by 3rd Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja C.G., whereby the learned Claims Tribunal allowed the claim application in part and while awarding a total sum of Rs. 7,42,000/- as compensation to the claimants, exonerated the Insurance Company from its liability and fastened the liability to

satisfy the amount of compensation upon Respondent 1/ non-applicant 1- Owner of the offending vehicle.

2. No one appeared on behalf of the appellants during the virtual hearing of the case. Upon contacting, Mr. A.N. Pandey, Advocate who filed Vakalanama available on record, on behalf of the appellants, stated that he is not appearing and representing the appellants in this appeal.

3. The appellants-claimants have mainly raised the grounds of assessing less monthly income of the deceased by the Claims Tribunal, applying deduction towards personal and living expenses and award of compensation on lower side for the purpose of enhancement of the amount of compensation and further raised the ground that the learned Claims Tribunal erred in exonerating the Insurance Company, though, on the date of accident, driver of the offending vehicle was possessing valid and effective driving licence to drive the vehicle. It is brought to the notice of this Court that the owner of the offending vehicle who is Respondent 2 has challenged the same impugned award before this Court by filing M.A.(C) No. 621/2013, challenging exoneration of Insurance Company from its liability to pay amount of compensation which was allowed by this Court *vide* judgment dated 16-11-2018 and the Insurance Company was held to be liable for satisfying the amount of compensation, in the aforementioned case, the Insurance Company was represented by Advocate.

4. In the aforementioned circumstances, as the breach of policy conditions has already been decided and the Insurance Company has been held to be liable to satisfy the amount of compensation, the only ground which remains for consideration in this appeal is for enhancement of the award. The Hon'ble Supreme Court has already laid down the guidelines and parameters for considering the income of the injured or deceased, where the income has not been proved and further the deduction, application of multiplier, award of compensation on other conventional heads and also the award of future

prospects have been considered in the cases of *Sarla Verma & others v. Delhi Transport Corp. & Anr* reported in *(2009) 6 SCC 121*, *National Insurance Company Ltd. vs. Pranay Sethi* reported in *(2017) 16 SCC 680* and *Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others* reported in (*2018) 18 SCC 130*. It is in these circumstances, we have taken the case for hearing in absence of the learned counsel for the appellants-claimants, keeping in mind the interest of claimants.

5. Facts relevant for disposal of appeal are that on 26-03-2012, when Jansai was travelling on a motor cycle as pillion rider with one Rajesh, it met with an accident with one four wheeler (Chota Hathi) bearing Registration No. CG15AC 0640 (offending vehicle). In the aforementioned accident, driver of the motor cycle Rajesh died on spot whereas Jansai died on the way to hospital. The accident was reported to concerned Police Station based upon which a crime bearing no. 48/12 was registered on 26-03-2012.

6. Claimants who are widow, children and father of the deceased Jansai filed claim application under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs. 10,90,000/-, on account of motor accidental death of Jansai.

7. Respondent 1/ Non-applicant 1 who is the owner of the offending vehicle submitted reply to the claim application pleading therein that on the date of accident, three persons were travelling on motor cycle, the driver of the offending vehicle was driving the vehicle carefully and was possessing valid and effective driving licence, there was valid registration, fitness and permit and the vehicle was insured with Respondent 2/ Non-applicant 2-Insurance Company, the liability to pay the amount of compensation, if any, is of Respondent 2/ Non-applicant 2-Insurance Company.

8. Respondent 2/ Non-applicant 2-Insurance Company submitted reply to the claim application pleading therein, that there was negligence on the part of the driver of the motor cycle, on the date of accident driver of both the vehicles were not

possessing valid and effective driving licence and the offending vehicle was being plied in breach of conditions of insurance policy. The accident occurred between two vehicles, hence, there will be contributory negligence on the part of the driver of both the vehicles.

9. Learned Claims Tribunal, on appreciation of pleadings and evidence placed on record by the respective parties, held that the accident is a result of rash and negligent driving of the offending vehicle by its driver due to which Jansai died. Learned Claims Tribunal further held that the driver of the offending vehicle was not possessing valid and effective driving licence but he was having licence to driver Light Motor Vehicle (LMV). After recording aforementioned findings amongst others learned Claims Tribunal held that the accident was a result of negligency of the driver of both the vehicles and held that there was breach of conditions of insurance policy and exonerated the Insurance Company from its liability for payment of amount of compensation. Claims Tribunal awarded a sum of Rs. 7,42,000/- as total compensation.

10. So far as the ground raised in this appeal with regard to exoneration of Insurance Company from its liability to be erroneous, has already been decided in MA(C) No. 621/2013 by taking into consideration the dictum of Hon'ble Supreme Court in the case of *Mukund Dewangan v. Oriental Insurance Company Ltd.* reported in (2017) 14 SCC 663 and held the Insurance Company to be liable to satisfy the amount of compensation. In view of above, in the present case also, the liability to satisfy the amount of compensation will be upon Respondent 2/ Insurance Company.

11. Now the question arises for consideration before this Court is with regard to enhancement of the amount of compensation. The pleadings of the claimants in their claim application as appeared from the contents of the claim application with regard to income, was that the deceased was having the income from agricultural as well as labour work. They have pleaded the income of the deceased as Rs.

8,000/- per month. The learned Claims Tribunal, taking into consideration that the claimants have not produced any documentary evidence to show the agricultural land owned by Jansai (deceased) as well as his agricultural income, assessed the income of the deceased as Rs. 6,000/- per month. In the above circumstances, when the claimants have not able to prove the agricultural land recorded in the name of deceased Jansai and agricultural income from it by placing acceptable evidence on record, we do not find any error in disbelieving the income pleaded by the claimants in their claim application and assessing the income of the deceased as Rs. 6,000/- per month. Learned Claims Tribunal has taken age of the deceased as 37 years, therefore, in view of the dictum of Hon'ble Supreme Court in the matter of *Pranay Sethi* (supra), there will be an addition of 40% of the established income of the deceased towards future prospects, the Tribunal had deducted 1/3rd towards personal and living expenses. The claimants are widow, three children and father of the deceased, therefore, even taking into consideration, the widow and children, the deduction towards personal and living expenses as held by Hon'ble Supreme Court in the matter of *Sarla Verma* (supra) will be 1/4th instead of 1/3rd as applied by learned Claims Tribunal. The multiplier to be applied, in the facts and circumstances of the case, will be 15. Learned Claims Tribunal further awarded a sum of Rs. 22,000/- on other conventional heads which is on lower side, in view of the dictum of the Hon'ble Supreme Court in the matters of *Pranay Sethi* (supra) and *Nanu Ram* (supra).

12. For the foregoing reasons, the amount of compensation to be awarded to the claimants requires re-computation which is as under.

13. The income of the deceased as taken by the learned Claims Tribunal as Rs. 6,000/- per month i.e. Rs. 72,000/- per annum. By adding 40% of the established income towards future prospects, the yearly income of the deceased comes to Rs. 1,00,800/- [Rs.72,000 + 40% of Rs.72,000] After deducting 1/4th of the yearly income towards personal and living expenses, loss of yearly dependency comes to Rs. 75,600/- [Rs.1,00,800-1/4th of Rs. 1,00,800]. As on the date of accident,

deceased was in between 36-40 years of age, appropriate multiplier to be applied is of 15 and upon applying multiplier of 15, total loss of dependency comes to Rs. 11,34,000/- [Rs.75,600x15]. Apart from the aforementioned amount towards loss of dependency, claimants will further be entitled for a sum of Rs. 40,000/- towards loss of spousal consortium to the Appellant 1, Rs. 40,000/- towards loss of parental consortium to Appellant 2 to 4, Rs. 40,000/- towards loss of filial consortium to Appellant 5, Rs. 15,000/- towards funeral expenses and Rs. 15,000/- towards loss of estate. Now the appellants-claimants will be entitled for a total sum of **Rs. 12,84,000/-**. The aforementioned amount of compensation will carry interest @ 6% p.a. from the date of filing of claim application till its realization. From the enhanced amount of compensation, sum of Rs. 1 lac each to be deposited in Fixed Deposit in any Nationalized Bank in the name of Appellant 2 to 4 for a period of 3 years. Rest conditions as imposed by the learned Claims Tribunal will remain intact. Respondent 2-Insurance Company shall deposit the entire amount of compensation at the earliest preferably within a period of two months from the date of receipt of copy of the order.

14. In view of the above, the appeal is allowed in part and the impugned award passed by the learned Claims Tribunal is modified to the extent as indicated hereinabove.

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

Sd/-
(Parth Prateem Sahu)
Judge

Pawan