NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 620 of 2014

1. Salomon Minj S/o Markush Minj, Aged About 52 Years.
2. Jasinta Minj W/o Salomon Minj, Aged About 50 Years.

   Both are R/o. village - Khala Darima, Post- Karanji, Darima Road, P.S. Darima, Tah. Ambikapur, Distt. Surguja C.G., Presently R/o Kailashpur, P.S. Chalgali, Tah. Wadrafnagar, Distt. Balrampur C.G.

---- Appellants/claimants

Versus

1. United India Insurance Company Limited, Branch Office, Ambikapur, Distt. Surguja C.G.
2. Harsh Kumar Ekka @ H.K. Ekka S/o Agapit Ekka Aged About 45 Years, Occupation -Service (SECL, Vishramput), R/o. Hospital Colony, Vishrampur, Distt. Surajpur C.G.

--- Respondents

For Appellants	:	Mr. G.V.K. Rao, Advocate.
For Respondent No.1	:	Mr. H.B. Agrawal, Senior Advocate with Mr. Pankaj Agrawal, Advocate.
For Respondent No.2	:	Ms. Soniya Kuldeep, Advocate on behalf of Mr. Bhupendra Singh, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Parth Prateem Sahu, J

23/11/2020

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 Additional Motor Accident Claims Tribunal, Pratappur, Distt Surajpur, (CG) (for short, 'the Tribunal) vide award dated 29.03.2014 passed in Claim Case No.27/2012, whereby the Tribunal allowed application in part and awarded total compensation of Rs.20,000/- in a death case.

2. Facts relevant for disposal of this appeal are that on 18.10.2010, at about 9 A.M, Depika Minj alongwith Harsh Kumar Ekka @ H.K. Ekka ie non-applicant No.2 was going to Vishrampur Bus Stand on motor cycle bearing

registration No.CG/15/C/1984. Deepika Minj was traveling as 'pillion rider', whereas non-applicant No.2 was driving the motorcycle. When they cross Global School and reached near Vijay Rada's house, due to rash and negligent driving of motorcycle by non-applicant No.2, Deepika Minj fell down and suffered grievous injury on her head. She was taken to SECL Hospital at Vishrampur, from where she was referred to Ambikapur for better treatment, there she succumbed to the injuries. Accident was reported to concerned Police Station based upon which, crime bearing No.999/10 was registered against non-applicant No.2, after completion of investigation, final report was submitted before the Court of Jurisdictional Magistrate.

3. Appellants/claimants, who are parents of deceased, filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.46,38,000/- pleading therein that on the date of accident, deceased was 26 years young lady, working on the post of 'Shiksha Karmi Grade-II' at Government Middle School, Bonga and drawing salary of Rs.8,000/- per month, she was also earning Rs.3,000/- per month by taking tuition classes.

4. Non-applicant No.1/Insurance Company submitted its reply denying the pleadings made therein. It was further pleaded that deceased was a pillion rider, motorcycle was insured with Company under the liability only policy ie for the third party, hence, deceased does not come within the purview of third party. There was breach of condition of insurance policy as on the date of accident non-applicant No.2 was not possessing valid and effective driving license, hence, Insurance Company is not liable to satisfy any amount of compensation. Defence is also taken with regard to the collusion between the applicants and non-applicant No.2.

5. On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal arrived at a finding that deceased died on account of motor accidental injuries suffered by her due to rash and negligent driving of motorcycle by non-applicant No.2. Insurance Company failed to prove breach of policy condition of motorcycle. Tribunal has recorded a finding that on the date of accident, deceased was unmarried and his father ie applicant No.1 was a government employee and applicant No.2 is his mother, hence, both the applicants were not dependant upon deceased. Upon assessing Rs.7,400/- as monthly income of deceased, Tribunal allowed claim application in part, awarded total compensation of Rs.20,000/- along with interest @ 7.5% p.a and fastened liability to satisfy the amount of compensation upon non-applicant No.2.

6. Learned counsel for the appellants/claimants submits that on the date of accident, deceased was employed as 'Siksha Karmi Grade -II' under Janpad Panchayat Pratappur and drawing salary of Rs.7,400/- per month as assessed by the Tribunal. As on the date of accident, deceased was unmarried, therefore, parents were also beneficiary of her income. He further submits that the Tribunal erred in holding that as applicant No.1/appellant No.1 -father of deceased was in government servant on the date of accident, hence, they cannot be said to be dependant upon the deceased. He further submits that for filing an application under Section 166 of the Act of 1988 dependency is not a necessary factor, a person being legal heir can also maintain an application. Furthermore, applicant No.2/appellant No.2 -mother of deceased was not an earning member, hence, it cannot be said that she was not dependant upon deceased. He further submits that the Tribunal has already assessed income of deceased as Rs.7,400/- per month based on the salary certificate and therefore ought to have calculated the amount of compensation adopting

multiplier system. He points out that the Tribunal has not awarded any amount towards future prospects though the deceased was in permanent employment. The amount awarded towards other conventional heads are also on lower side. He prays that amount of compensation awarded to claimant be enhanced suitably in view of the judgments passed by the Hon'ble Supreme Court in cases of **Sarla Verma (Smt.) and others vs. Delhi Transport Corporation & Ors**[1], **National Insurance Company Ltd. vs. Pranay Sethi**[2] and **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhuru Ram**[3] .

7. Per contra, learned counsel for respondent No.1/Insurance Company while supporting the impugned award, submits that considering the fact that Insurance Policy was issued for motorcycle as 'liability only policy' covering risk of third party, the Tribunal has rightly exonerated Insurance Company from its liability and awarded just amount of compensation, which does not call for any interference.

8. Learned counsel for respondent No.2/owner-cum-driver of motorcycle, submits that the Tribunal after considering the entire facts and materials available on record, has arrived at a right finding that since parents were not dependant upon deceased, they are not entitled for any amount of compensation towards loss of dependency. She further submits that finding recorded by the Tribunal with regard to the status of appellant No.1 -father of deceased to be a government servant is not in dispute. Appellant No.1 has filed his statement in shape of an affidavit under Order 18 Rule 4 of CPC but he was not cross -examined, hence, that cannot be accepted as evidence.

9. We have heard the learned counsel for the parties and perused the record of claim case.

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[1] (2009) 6 SCC 121
[2] (2017) 16 SCC 680
[3] 2018 18 SCC 130

10. Question which arise for consideration of this Court is whether claimant not dependant on the income of family member, who died in a motor vehicular accident, is entitled to amount of compensation?

11. Application for compensation is envisaged under Section 166 of the Act of 1988 is extracted below for ready reference :-

> "**Application for compensation. —** (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made —
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> (a) by the person who has sustained the injury; or
>
> (b) by the owner of the property; or
>
> (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
>
> (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:
>
> Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.
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> (2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:
>
> Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.]
>
> [(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]"

12. Perusal of above-quoted provision of law would show that for maintaining an application seeking compensation on account of motor -accidental death of

family member, claimant should not necessarily be dependent upon deceased. All or any of the legal representatives of deceased can file application for compensation. In case at hand, deceased being unmarried daughter forms part of the family of appellants/parents of deceased. Even if father of deceased is under employment as government servant then also being a family member and father of deceased and appellant No.2-mother, are beneficiary to the income of deceased.

13. Issue with regard to the claim filed by the major married and earning sons of deceased was considered by Hon'ble Supreme Court in case of **National Insurance Company Limited vs. Birender**[4], in which the Hon'ble Supreme Court upon discussing the provision under Section 166 of the Act of 1988, Section 2 (11) of the CPC 7 and considering its earlier judgment in case of **Manjuri Bera vs Oriental Insurance Company Ltd**[5] has held thus :-

> "14......................In paragraph 15 of the said decision, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.

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[4] AIR 2020 SCC 434
[5] 2007 SC 1474

> 15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meager income between Rs.1,00,000/ and Rs.1,50,000/ per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.

14. If the aforementioned law laid down by the Hon'ble Supreme Court is applied to the facts of present case, where deceased was unmarried daughter and being the part of the family of appellants. Hence, even if appellant No.1 -father of deceased was earning member, then also appellant No.1 and appellant No.2 -mother of deceased will be entitled for just amount of compensation, as she would inherit estate of deceased. For claiming an amount of compensation, it is not mandatorily required that legal representatives should be fully dependant upon deceased.

15. For the foregoing discussion and taking support of the law declared by the Hon'ble Supreme Court in case of **National Insurance Company Limited vs. Birender** (supra), we are of the view that the Tribunal erred in deciding the claim upto the conventional heads only. In view of above, finding record by the Tribunal that appellant No.1 being an earning member and appellant No.2 being wife of appellant No.1, are not entitled for any amount of compensation towards loss of dependency is not sustainable and it is hereby set aside.

16. As the Tribunal has already assessed income of deceased as Rs.7,400/- per month, it is further required to compute the amount of compensation by applying the law declared by the Hon'ble Supreme Court towards application of deduction, multiplier and award of amount under other conventional heads.

17. For the foregoing reasons, we propose to compute the amount of compensation awarded by the Tribunal.

18. Income of deceased assessed by the Tribunal as Rs.7,400/- per month and Rs.88,800/- per annum (7400X12). As on the date of accident, deceased was 26 years of age and in permanent employment, there will be an addition of 50% towards future prospects in view of the decision of Hon'ble Supreme Court in case of **Pranay Sethi** (supra). By adding 50% of income towards future prospects, total annual income of deceased comes to Rs.1,33,200/- (Rs.88,800/- + 50% of Rs.88,800/). 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.66,600/- (Rs.1,33,200 – 50% of Rs.1,33,200). Copy of Marksheet of Class 5th & 8th of deceased placed on record, in which DOB has been mentioned as 02.11.1984, according to which, she was aged about 25 years 11 months and 16 days and comes within in the age group of 25 to 30 years, hence, appropriate multiplier would be '17'. By applying multiplier of 17, total loss of dependency will come to Rs.11,32,200/- (Rs.66,600 X 17).

19. Apart from this, appellants/claimants are also entitled for a sum of Rs.40,000/- towards loss of filial consortium, Rs,15,000/- towards funeral expenses & Rs.15,000/- towards loss of estate.

20. Now appellants/claimants shall be entitled for a total compensation of **Rs.12,02,200/-** (Rs.11,32,200 + Rs.40,000 + Rs.15,000 + Rs.15000) instead of

Rs.20,000/- as awarded by the Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of application till its realization. Liability to satisfy the amount of compensation will be upon respondent No.2/owner & driver of motorcycle. Rest of the conditions of impugned award shall remain intact.

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

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-