NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1303 of 2014

1. Smt. Kunti Bai, W/o Late Umesh Kumar Kola, aged about 25 years
2. Rounak Kumar S/o Late Umesh Kumar Kola, aged about 1 years

   A-2 is Minor through her guardian Mother A-1.
3. Saradhuram Kola, S/o Ujiyar Singh Kola, aged about 55 years
4. Smt. Indarbai, W/o Saradhuram Kola, aged about 45 years.

   All Caste Gond, All R/o Village- Duggabahra, Post- Badbhoom, P.S. & Tahsil Gurur, District Balod (CG)

---- Appellants

Versus

1. Sunil Yadav, S/o Lalan Yadav R/o Village- Gangamunda (Ganganagar), P.S. Bodhghat, Jagdalpur, Distt. Baster C.G.
2. Lallan Yadav S/o Laxman Yadav R/o Gandhinagar Ward, Jagdalpur, Distt. Baster (CG).
3. Shriram General Insurance Company Limited, through Claim Manager, E/H Apartment Rikko Industrial Area, Seetapur, Jaipur (Rajasthan)

---- Respondents

For Appellants	:	Mr. Arvind Dubey, Advocate
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Mr. Sachin Singh Rajput, Advocate

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

Order On Board

Per Parth Prateem Sahu, J

21/08/2020

1. Feeling partially aggrieved by the award dated 10.10.2014 passed by the Additional Motor Accident Claims Tribunal,

Khairagarh, District Rajnandgaon (henceforth 'the Claims Tribunal') in Claim Case No.60/14 by which the Claims Tribunal partly allowed the application, awarded a total sum of Rs.4,60,000/-, after deducting 50% towards contributory negligence of the deceased himself, with interest at the rate of 6% p.a. from the date of filing of application till realization, the Claimant-appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') to enhance the amount of compensation awarded by the Claims Tribunal.

2. Facts relevant for disposal of this appeal, in brief, are that on 19.2.2014 Umesh Kumar Kola along with his familiar Uday Yadav was returning to his village from Vyas Kogera (Kanker) on motorcycle bearing. Umesh Kumar Kola was riding the motorcycle and Uday Yadav was travelling as pillion rider. When they reached on the national highway near village Nathiya Nawagaon, the motorcycle got dashed against the stationary truck bearing registration No.AG16-TU-6135 (for short 'the offending vehicle') from its backside. As a result, Umesh Kumar Kola fell down and died on spot. Accident was reported to the concerned police station based on which an offence was registered against non-applicant No.1-driver of offending vehicle.

3. Claimants, who are widow, children & parents of deceased respectively, filed an application under Section 166 of the Act of

1988 before the Claims Tribunal seeking a sum of Rs.70,90,000/- as compensation mentioning therein that on the date of accident, the deceased was engaged in the business of computer & screen printing and he was also earning from agriculture. Thus, the total income of the deceased from all sources was about Rs.15,000/- per month.

4. Despite service of notices, when non-applicant Nos.1 & 2 did not appear before the Claims Tribunal, they have proceeded ex-parte.

5. Non-applicant No.3 Insurance Company filed its reply to the application pleading therein that the accident occurred due to self-negligence of the deceased and as such, there was contributory negligence on the part of deceased also. Non-applicant No.1-driver, was not having valid & effective driving license to drive offending vehicle; there was no valid permit and fitness of the offending vehicle. The offending vehicle was plied on road in breach of conditions of insurance policy, therefore, the insurance company is not liable to indemnify the insured.

6. Upon appreciation of pleadings and evidence placed on record by the respective parties, the Claims Tribunal while holding the deceased to be contributory negligent to the extent of 50% has partly allowed application; awarded a total sum of Rs.4,60,000/- as compensation and fastened liability upon the insurance company to satisfy the impugned award to the extent of 50%

by holding that there was no breach of any condition of insurance policy.

7. Mr. Arvind Dubey, learned counsel appearing on behalf of claimants/appellants submits that the claimants have specifically pleaded in their application and also statement that on the date of accident, the deceased was engaged in the business of computer & screen printing and also in agriculture activities and thereby earning Rs.15,000/- per month. However, the Claims Tribunal disbelieved the evidence of claimants and fixed monthly income of deceased at Rs.5,000/-. He submits that the deceased was below 40 years of age at the time of accident, therefore, the Claims Tribunal should have made an addition of 40% towards future prospects instead of 30%. He prays that the amount of compensation be enhanced accordingly.

He also submits that the Claims Tribunal erred in holding the deceased to be contributory negligent for the accident to the extent of 50% and scaling down the amount of compensation accordingly. The Claims Tribunal altogether ignored the fact that offending truck was parked on a national highway without taking precautionary measures i.e. without switching on the parking lights / indicators / reflector about such parking so that it can be noticed by other vehicles passing from there. Referring to the evidence of AW-2, pillion rider of the motorcycle and eyewitness of the accident, it has been submitted that this witness has specifically stated about the place of parking of offending truck that too without putting on parking lights or indicators. Hence, the finding of contributory negligence arrived at the Claims Tribunal is liable to be set aside being not based on any concrete and cogent evidence.

8. Mr. Sachin Singh Rajput, learned counsel representing respondent No.3- Insurance Company would argue that fixation of Rs.5,000/- as monthly income of deceased and fixation of 50% contributory negligence on the part of the deceased by the Claims Tribunal are based on proper appreciation of evidence placed on record by the parties and the same does not call for any interference. He further submits that amount of compensation awarded by the Claims Tribunal is just and reasonable in the given facts and circumstances of case and need not to be enhanced.

9. We have heard learned counsel for the parties and perused the records of the Claims Tribunal.

10. So far as fixation of Rs.5,000/- as monthly income of the deceased is concerned, perusal of record reveals that the claimants have not produced any documentary evidence with respect to income of the deceased, except one marriage card said to have been printed in the shop of deceased and cash/credit memo book of the deceased showing receipt of income by deceased from the said business. Perusal of cash/credit memo book (Ex.P-10) would show that the

deceased was running his business in the name & style of 'Umesh Computer & Screen Printing' in village Duggabahra. The works which deceased used to do in his shop are also mentioned in cash/credit memo book i.e. work of banner, sign board, thermacol, cutting, radium cutting & screen printing. Perusal of marriage card (Ex.P-9) reveals that it was printed in the shop of deceased. Claimant No.1 examined herself as AW-1 before the Claims Tribunal and she has stated in her examination-in-chief, which was filed in the shape of an affidavit under Order 18 Rule 4 of the Code of Civil Procedure, 1908, that her deceased husband was engaged in the business of screen printing and earning Rs.15,000/- per month. She has proved the documents Ex.P-9 & P-10. In the cross-examination, she has admitted that she has not placed bank statement / income tax return of the deceased to establish his income. She also admitted to have not filed any document showing income of deceased from agriculture.

11. Amarnath (AW-2) & Uday (AW-3) have stated in their statement that the deceased was engaged in the business of screen printing and in the cross-examination denies the suggestion that the deceased was not earning Rs.15,000/- per month.

12. In the light of above oral and documentary evidence brought on record by the claimants, the engagement of deceased in the business of computer & screen printing cannot be disbelieved, but the fact remains that the claimants have not filed any

cogent documentary evidence establishing monthly income of the deceased as pleaded by them in the application i.e. Rs.15,000/- per month and in absence thereof, the Claims Tribunal was justified in assessing monthly income of deceased on notional basis, but at the same time, erred in fixing his income at Rs.5,000/- per month. The accident occurred in the year 2014. Considering the fact that deceased was engaged in the work of screen printing and other several works, as mentioned in Ex.P-10, and further considering the price index and inflation rate prevailing in the year 2014, we feel that the income of deceased was not less than Rs.6,500/- per month. Accordingly, we fix monthly income of deceased at Rs.6,500/- per month in place of Rs.5,000/- per month, as assessed by the Claims Tribunal.

13. As regards the future prospects, in the matter of Pranay Sethi (supra), Hon'ble Supreme Court while dealing with the issue of grant of future prospects has held 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."

In the case hand, as per pleadings in the application, the deceased was not in permanent employment and as per date of birth of deceased mentioned in his learner's license (Ex.P-2), on the date of accident, he was about 29 years old, therefore, in view of law laid down by the Apex Court in Pranay Sethi's case (supra), the claimants/appellant is entitled for an additional amount of 40% of established income of the deceased as future prospects. The Claims Tribunal erred in adding 30% of the income of deceased towards future prospects. In view of the judgment of Apex Court in Pranay Sethi's case (supra) and in the given facts of the case, 40% of the income of the deceased is to be added towards future prospects.

14. The Claims Tribunal has awarded a total sum of Rs.36,000/- under other conventional heads i.e. Rs.10,000/- towards funeral expenses, Rs.6,000/- towards loss of estate, Rs.10,000/- towards loss of love & affection and Rs.10,000/- towards loss of consortium, which in the opinion of this Court is on lower side and the same is required to be enhanced in view of decision of the Apex Court in the matters of Pranay Sethi (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130**.

15. So far as the challenge to the finding recorded by the Claims Tribunal on contributory negligence is concerned, we have perused FIR, which is placed on record as Ex.P-4. This FIR has been lodged by none other than appellant No.3-father of deceased. It is mentioned in FIR that truck in question was negligently parked on road without indicator. Copy of spot map

is also available on record as Ex.D-1 in which place where the truck in question was parked is mentioned as 'beside the road'. In view of the documentary evidence available on record in the shape of spot map (Ex.D-1), which was not challenged or questioned before any authority, we are not inclined to interfere with the finding recorded by the Claims Tribunal holding the deceased contributory negligent for the accident to the extent of 50%.

16. For the foregoing reasons, we propose to recompute the amount of compensation payable to claimants/appellant.

17. The income of deceased is taken as Rs.6,500/- per month and Rs.78,000/- per annum, as held above, and since at the time of accident the deceased was below the age of 40 years and was not in permanent employment, in view of law laid down in the matter of **Pranay Sethi** (supra), the income of deceased is required to be increased by 40% towards future prospects, which comes to Rs.9,100/- (6500+2600). Accordingly, annual income of deceased for the purpose of calculating compensation comes to Rs.1,09,200/- (9100x12). Out of this amount, one-third is to be deducted towards personal & living expenses of the deceased, as deducted by the Claims Tribunal, and after deducting one-third, annual loss of dependency would come to Rs.72,800/- (109200-36400). By applying multiplier of 17, as applied by the Claims Tribunal, to annual loss of dependency, total loss of dependency would come to

Rs.12,37,600/- (72800x17). Besides this, in the light of decisions of Supreme Court in the matters of Pranay Sethi (supra) and Magma Insurance (supra), appellant No.1, widow of deceased, is entitled for a sum of Rs.40,000/- towards spousal consortium, appellant No.2, minor son of deceased, is entitled for a sum of Rs.40,000/- towards parental consortium and appellants No.2 & 3, parents of deceased, are entitled for a sum of Rs.40,000/- towards filial consortium. Besides this, the appellants are also entitled to get a sum of Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. Thus, claimant / appellants are entitled for a total sum of Rs.13,87,600/-. However, since the finding of the Claims Tribunal that deceased was contributory negligent for the accident to the extent of 50% and the same has also been affirmed by us, the amount of compensation is required to be slashed down by 50% and by doing so, net amount of compensation payable to claimants/appellants would come to Rs.6,93,800/-. This amount of compensation shall carry simple interest @ 6% p.a. from the date of filing of claim application till the date of passing of impugned award. Rest of the conditions as imposed by the Claims Tribunal shall remain intact.

18. In the result, the appeal stands allowed and the impugned award stands modified to the extent indicated above.

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

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