NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 913 of 2014

1. Smt. Jyoti Minj, W/o Late Dilip Kujur, aged about 33 years.
2. Ku. Priyanka Kujur, D/o Late Dilip Kujur, aged about 8 years.
3. Minor Nisih Kumar, D/o Late Dilip Kujur, aged about 6 years.
4. Minor Aasim Kumar, S/o Late Dilip Kujur, aged about 2 years.

   Applicant No.1 herself and Applicant No.2, 3 & 4 are minor through next friend Appellant No.1-Smt. Jyoti Minj, W/o Late Dilip Kujur.

   All R/o Upar Dumri, Post- Tabkola, Distt. Gumla (JH).

   At Present- Telephone Exchange, Jashpur, P.S. Jashpur, Distt. Jashpur C.G., District : Jashpur, Chhattisgarh

---- Appellants (Claimants)

Versus

1. Laxman Ram, S/o Balram Uraon, aged about 27 years, R/o Basta, Tahsil and District Jashpur (C.G.)
2. Maharana Ram Bhagat, S/o Virsai Ram Bhagat, aged about 22 years, Occupation-Driver, R/o village- Lodham, Tahsil and District Jashpur (C.G.).
3. Vinod Kumar Jain, S/o Hanuman Prasad Jain, aged about 45 years, R/o Near Bus Stand, Jashpur (CG)
4. Manoj Tirki, S/o Asaru Ram, aged about 35 years, Occupation-Driver, R/o Bartoli, Jashpur, Distt. Jashpur (CG)
5. The National Insurance Co. Ltd., Local Branch Office-Priyadharshani Nagar, District Bilaspur C.G.

---- Respondents

For Appellants	:	Mr. A.K. Prasad, Advocate
For Respondent No.2	:	Mr. J.K. Saxena, Advocate
For Respondent No.5	:	Mr. R.N. Pusty, Advocate

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

Order On Board

Per Parth Prateem Sahu, J

19/08/2020

1. Claimants/appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988')

seeking enhancement in the compensation awarded by the Additional Motor Accident Claims Tribunal, Jashpur vide award dated 9.5.2012 passed in Claim Case No.21/2012 by which learned Claims Tribunal partly allowed application of claimants and awarded a total amount of Rs.4,18,000/- as compensation in a death case.

2. Facts of the case, in brief, are that on 4.12.2008 Dilip Kujur along with his friend Ajit Beck was going towards Jashpur from village Lodaam on TVS Victor Motorcycle. Dilip Kujur was driving the motorcycle and Ajit Beck was travelling as a pillion rider. When they reached on Ranchi-Jashpur Main Road in between Village Jhargaon & Village Gholang, one Gama Jeep bearing registration number CG12-D-0846, going towards Gholang side, dashed their motorcycle as a result they fell down on road and Dilip Kujur was ran over by the Dumper bearing registration No.CG14-A-2914 (for short 'the offending dumper'), which was coming from opposite direction, causing grievous injuries on various parts of his body. Dilip Kujur was immediately taken to the District Hospital, Jashpur where during the course of treatment he died on the same day. Report of accident was lodged in Police Station Jashpur based on which offence under Section 304A of the Indian Penal Code was registered against non-applicant Nos.2 & 5.

3. Claimants, who are widow and children of deceased Dilip Kujur, have filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking compensation of

Rs.55,60,000/- under various heads. It was pleaded in the application that on the date of accident, the deceased was working as Para-teacher and getting honorarium of Rs.3,000/- per month. The honorarium payable to Para-teachers has been enhanced from Rs.3,000/- to Rs.5,000/- w.e.f. 1.1.2009. As such, the deceased was earning Rs.15,000/- per month from the profession of teaching and agriculture. The deceased was the only breadwinner in the family and on account of his untimely death in a motor vehicular accident, loss of income has occasioned to them, therefore, they are entitled to the compensation as claimed by them.

4. Non-applicant Nos.1 & 2 have jointly filed their reply to the application and denied the pleadings made therein by claimants including the fact that accident was caused by Gama Jeep bearing registration number CG12-D-0846. It was pleaded by them that when said Jeep was standing idle near Jhargaon as the school students travelling in it had gone to answer the call of nature, at that time the deceased came from behind on motorcycle, dashed against the Jeep and fell down on the road.

5. Non-applicant No.4 & 5, driver & owner of offending dumper, have also filed joint reply denying the pleadings made by claimants in their application. They have pleaded that the driver has not driven the offending dumper in a rash and negligent manner, therefore, they are not liable to make payment of any compensation. By way of additional submissions, it was pleaded that in case they are held responsible to pay

compensation, then non-applicant No.6 Insurance Company is liable to indemnify them.

6. Non-applicant No.6 Insurance Company also submitted its reply to claimant's application denying the pleadings made therein. It was pleaded that on the date of accident, offending dumper was being plied in breach of condition of insurance policy. The accident was not between offending Dumper and motorcycle. It was a case of head-on-collusion between Gama Jeep & motorcycle and thus there was contributory negligence on the part of the deceased. The driver, owner & insurance company of motorcycle are necessary parties in the matter, but they have not been impleaded as non-applicants in the application, the application is liable to be dismissed for non-joinder of necessary parties. The claimants, out of greed, have claimed exaggerated compensation.

7. On appreciation of pleadings and evidence placed on record by the parties, the Claims Tribunal vide impugned award reached to the conclusion that Dilip Kujur died due to injuries suffered by him in a motor vehicular accident occurred due to rash and negligent driving of Jeep by non-applicant No.2-driver and offending dumper by non-applicant No.5. Neither there was any element of contributory negligence on the part of deceased nor was there any breach of condition of insurance policy. Consequently, the Claims Tribunal awarded a total sum of Rs.4,18,000/- as compensation, apportioning it in the ratio of 50:50 between the driver & owner of Gama Jeep and the owner,

driver & insurance company of offending dumper.

8. Mr. Prasad, learned counsel representing claimants-appellants submits that the Claims Tribunal erred in not accepting the claimants' pleading & evidence about the income of the deceased to be Rs.15,000/- per month and in assessing his monthly income at Rs.3,000/- on notional basis. He further submits that the Claims Tribunal has not awarded any amount towards future prospects, as held in the decision of Hon'ble Supreme Court in the matter of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680** wherein it was held that in case deceased, victim of motor accident, was below 40 years of age and in self-employment, an addition of 40% of established salary of deceased towards future prospects should be made. He also submits that looking to the number of dependent family members i.e. 5, the Claims Tribunal ought to have deducted one-fourth and not one-third towards personal and living expenses of the deceased. He submits that the amount awarded under other conventional heads are also on lower side. On the aforementioned grounds, learned counsel seeks to enhance the amount of compensation suitably.

9. Mr. Pusty, learned counsel appearing on behalf of respondent No.5-Insurance Company has supported the impugned award and submitted that the claimants failed to prove the fact of income of deceased by adducing cogent and clinching documentary evidence on record before the Claims Tribunal, therefore, the compensation awarded by the Claims Tribunal is

just and proper and the same is not required to be enhanced at all.

10. We have heard learned counsel for both sides and perused the records of the Claims Tribunal.

11. As regards the income of deceased, it is true that the claimants/ appellants have pleaded in their application and stated in their statements that the deceased used to earn Rs.15,000/- per month from the profession of Para-teacher & agriculture, but no cogent and reliable evidence was led before the Claims Tribunal to establish the income of deceased to the extent of Rs.15,000/- per month. The only available document to prove income of the deceased is certificate dated 12.02.2009 (Ex.A-6) issued in the letter head of Block Resource Centre, Chainpur certifying that deceased was working as 'Para Teacher' in Primary School, Churildand and getting honorarium of Rs.3,000/- per month and that the honorarium being paid to Para Teacher is enhanced to Rs.5,000/- w.e.f. 1.1.2009. However, this document has not been proved in the manner known to law i.e. by examining its author. Except this, no other document has been produced by the deceased for proving the income. This apart, the amount of compensation payable in a death case arising out of a motor vehicular accident is to be determined taking into consideration earning of the deceased on the date of accident and any enhancement in the perks/salary/honorarium to the post on which deceased was working at later point of time, cannot be taken into consideration for the said purpose. In these

circumstances, we do not find any fault in the approach of the Claims Tribunal in discarding the evidence of appellants about the increased income of the Para Teachers and fixing monthly income of deceased on notional basis i.e. Rs.3,000/- per month, which cannot be said to be on lower side in view of pleadings made in the application with respect to income of deceased on the date of accident.

12. As far as non-grant of future prospects is concerned, 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, there is no dispute that on the date of accident, the deceased was 34 years of age, as mentioned in post-mortem report Ex.A-4, he was not in permanent employment and working on a fixed salary, therefore, in view of law laid down by the Apex Court in Pranay Sethi's case (supra), the claimants/appellants are entitled for an additional amount of 40% of the monthly income of the deceased as future prospects.

13. So far as deduction towards personal expenses of deceased is concerned, the Claims Tribunal while computing loss of dependency has deducted 'one-third' from the income of

deceased towards his personal & living expenses. In the matter of **Sarla Verma & ors Vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 121** Hon'ble Supreme Court while dealing with the issue of deduction towards personal & living expenses of the deceased, has held that where number of dependent family members are 4 to 6, one-fourth is to be deducted towards personal expenses. In case at hand, the total number of dependent family members is 4 and in such a situation, the deduction towards personal and living expenses of the deceased should be one-fourth and not one-third, as has been done by the Claims Tribunal. The Claims Tribunal erred in assessing compensation deducting one-third from the income of the deceased.

14. Perusal of the impugned award reveals that multiplier of 17 applied by the Claims Tribunal is incorrect in the given facts and circumstances of the case. In view of the age of the deceased, which was 34 years on the date of accident, the Claims Tribunal should have applied multiplier of 16, as has been held by Hon'ble Supreme Court in the matter of Sarla Verma's case (supra) that where the deceased is between the age group of 30 & 35 years, multiplier of '16' is to be taken for the purpose of computation of loss of dependency. Therefore, the proper multiplier to be applied for assessing the loss of dependency would be '16' and not '17' as applied by the Claims Tribunal.

15. For the foregoing reasons, we proposes to recompute the amount of compensation payable to claimants/appellants.

16. The income of deceased is taken as Rs.3,000/- per month, as assessed by the Claims Tribunal on notional basis, 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.4,200/- (3000+1200). Accordingly, annual income of deceased for the purpose of calculating compensation comes to Rs.50,400/- (4200x12). Out of this amount, one-fourth is to be deducted towards personal & living expenses of the deceased and after deducting one-fourth, annual loss of dependency would come to Rs.37,800/- (50400-12600). By applying multiplier of 16, as held above, to annual loss of dependency, total loss of dependency would come to Rs.6,04,800/- (37800x16). Besides this, appellant No.1, widow of deceased, is entitled for a sum of Rs.40,000/- towards spousal consortium and appellant Nos.2 to 4, minor children of deceased, are entitled for a sum of Rs.40,000/- towards parental consortium, as held by Hon'ble Supreme 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**. In addition to aforesaid amount, they are also entitled to get a sum of Rs.15,000/- for funeral expenses; Rs.15,000/- for loss of estate. Thus, claimants/appellants are entitled for a total sum of Rs.7,14,800/-, instead of Rs.4,18,000/- as awarded by the Claims Tribunal. 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 and from the date of filing of this appeal till its realization, meaning thereby the claimants/ appellants are not entitled to the interest for the period of delay in filing this appeal i.e. 759 days.

17. Respondent No.1 & 2 will be liable to pay 50% of total amount of compensation i.e. Rs.3,57,400/- and balance 50% amount of compensation i.e. Rs.3,57,400/- will be paid by respondents No.3 to 5, jointly and severally. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants/appellants as compensation shall be adjusted from the total amount of compensation as calculated above.

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)	(Parth Prateem Sahu)
Chief Justice	Judge

roshan/-