

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 954 of 2014**

- Parvinder Kaur Wd/o Guruvinder Singh Dhillan, aged about 35 yers
- Ku. Jaspreet D/o late Guruvinder Singh Dhillan, aged about 06 years
- Randeep S/o late Guruvinder Singh Dhillan, aged about 04 years
- Amarjeet Kaur, Wd/o Amrik Singh Dhillan, aged about 65 years

Appellant no. 2 and 3 are minor, through their natural guardian mother Parvinder Kaur, All are R/o R.D. Colony, E Block 304, Heerapur, Raipur, Police Station Amanaka Civil and Revenue District Raipur C.G.

-----Appellants**VERSUS**

1. Mohd. Mukhtar S/o Mohd. Maneer, R/o Shishu Bagan Bazar, Raniganj, Police Station Raniganj, Civil and Revenue District Badwan (West Bengal) **-----Driver**

2. M/s. R.T. Construction, 31 Nityadhan Mukherjee Road, IInd Floor Hawda, Civil and Revenue District Hawda, W.B.

Presently R/o South Teelpada, Post Sivdi, Civil ad Revenue, District Birbhum (W.B.) **-----Owner**

3. Reliance General Insurance Company Ltd., through In-charge Officer, Reliance General Insurance Company Ltd., Ravi Bhawan, Jaistambh Chowk, Raipur C.G.

----Respondents

For Appellants	:	Mr. Amiykant Tiwari, Advocate
For Respondent 3	:	Mr. Sourabh Sharma, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board**Per Parth Prateem Sahu, J.****05/10/2020**

1. Claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth "Act of 1988") for enhancement of the amount of compensation awarded by the Clams Tribunal by impugned award dated 25-01-2014 passed by 4th Additional Motor Accident Claims Tribunal, Raipur in claim case no. 240/2011 whereby learned Claims Tribunal allowed the application in part and awarded Rs. 5,30,400/- as

compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 16-01-2010 at about 3:45 pm, when Guruvinder Singh was driving his truck bearing registration no. CG 04J 5392 reached near Krishna Hotel at Gurugram Highway Palagarh, West Bengal, one another Truck bearing registration no. WB 53 8909 (hereinafter referred to as "offending vehicle") driven by Respondent 1/ non-applicant 1 dashed the truck of Guruvinder Singh. In the said accident, Guruvinder Singh suffered grievous injuries and succumbed to those injuries on spot, his truck was also badly damaged. Claimants who are widow, children and widow mother of deceased Guruvinder filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.31,95,000/- pleading therein that on the date of accident deceased was 38 years able-bodied person. Appellant 1/ Applicant 1 was registered owner of the truck driven by deceased and deceased himself used to manage, look-after and drive the truck by his own and was earning Rs. 20,000/- per month.
3. Respondent 3/ Non-applicant 3-Insurance Company submitted reply to claim application and denied the pleadings made therein. In additional pleadings, it was pleaded that the offending vehicle was insured for a period from 02.03.2009 to 01.03.2010 as goods carrying vehicle package policy. Driver of the offending vehicle does not have the valid and effective driving licence, there was no valid permit and fitness of the vehicle on the date of accident. There was contributory negligence on the part of the deceased driver of the truck CG 04J 5392.
4. On appreciation of pleadings and evidence placed on record by the respective parties, learned Claims Tribunal held that Non-applicant 1/ Respondent 1 while driving the offending vehicle rashly and negligently dashed the truck driven by deceased in which Guruvinder Singh driver of

the truck suffered grievous injuries and died. Breach of conditions of policy could not be found to be proved and awarded Rs. 5,30,400/- as compensation.

5. Mr. Amiyakant Tiwari, learned counsel for the appellants submits that the Claims Tribunal erred in assessing the income of the deceased as Rs. 3,000/- per month which is on lower side. He submits that from the facts available on record itself, it is clear that the deceased was working as driver of the truck, aged about 38 years driving the truck having a permit valid for inter-state. The accident took place at a place situated at West Bengal whereas the deceased is a resident of Raipur, Chhattisgarh and the truck was registered with RTO, Raipur. He submits that driving a truck inter-state shows that he was an experienced and expert driver. He further submits that though the truck was registered in the name of Appellant 1/ Applicant 1 as per the pleadings but for the purpose of income received from the truck to be taken as income of the deceased, apart from his work of driving. He further points out that the Claims Tribunal erred in not awarding any amount towards future prospects in the facts of the case where deceased was aged about 38 years. As per the law laid down by the Supreme Court in the case of **National Insurance Company Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**, there should be an addition of 40% of the established income for the purpose of calculating the income of the deceased. He further points out that the Claims Tribunal awarded very meagre amount of Rs. 12,000/- on other conventional heads which is also contrary to the law laid down by the Supreme Court in the cases of **Pranay Sethi (supra)** and **Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others** reported in **(2018) 18 SCC 130**.
6. Per contra, Mr. Sourabh Sharma, learned counsel appearing for Respondent 3-Insurance Company submits that the claimants failed to

prove the income of the deceased, they have not placed on record any documentary evidence to show that the truck driven by the deceased was owned by him or Appellant 1. He submits that in the facts of the case, the Claims Tribunal has awarded just amount of compensation which does not call for any interference.

7. We have heard learned counsel for the respective parties and perused the record.
8. The place of accident was at district Birbhum, Palagarh situated at West Bengal is undisputed. Deceased met with an accident while driving the truck CG04J5392 i.e. registered at Raipur, Chhattisgarh, in an area located in West Bengal is also not disputed. Copy of certificate-cum-policy schedule issued for the truck is available on record at page no. 22 which is for the period from 03.11.2009 to 02.11.2010. Copy of registration certificate of the truck is also available on record at page no. 23. Looking to the aforementioned two documents though not exhibited but available on record and also taking into consideration the address of the claimants, it is not in dispute that the deceased was a resident of Raipur, Chhattisgarh and his vehicle was registered at RTO, Raipur but on the date of accident, he was plying the truck in West Bengal State which indicates that the deceased was an experienced and expert driver, having an ability to drive his vehicle all over India. Copy of policy and the registration certificate available on record would further show that the vehicle was registered in the name of Appellant 1 for which the policy is also issued in the name of Appellant 1, wife of Guruvinder Singh.
9. In the aforementioned facts and circumstances of the case and taking into consideration the nature of employment and plying of the truck in another State, we are of the considered view that the Claims Tribunal erred in assessing the income of the deceased as Rs. 3,000/- per month which is

on lower side. Even if in the cases where claimants failed to prove the income of the deceased by placing admissible piece of documentary evidence on record, the duty is casted upon the Claims Tribunal to assess the income of the deceased on notional basis, taking into consideration the nature of employment/ occupation of the deceased, price index, cost of living and wage structure along with all surrounding circumstances.

10. Taking into consideration the overall facts and circumstances of the case, we find it appropriate to assess the income of the deceased as Rs. 8,000/- per month. The Hon'ble Supreme Court in the case of ***Pranay Sethi (supra)*** has held that there will be an addition of 40% of the established income where the deceased was not in permanent employment and aged below 40 years.
11. In the case at hand, the Claims Tribunal accepted the age of the deceased in between 36-40 years, hence, there will be addition of 40% of the established income in the income of the deceased for assessing the total income of the deceased on the date of accident for the purpose of calculating the amount of compensation. Claims Tribunal erred in awarding only Rs. 12,000/- towards other conventional heads which is much on lower side in view of the dictum of the Supreme Court in the case of ***Pranay Sethi (supra)*** and ***Nanu Ram (supra)***.
12. For the foregoing reasons, we find it appropriate to recompute the amount of compensation to be awarded to the claimants which is as under.
13. The monthly income of the deceased has been assessed by this Court as Rs. 8,000/- i.e. Rs.96,000/- per annum. By adding 40% of the established income towards future prospects, total yearly income of the deceased will come to Rs.1,34,400/- [Rs.96000+40% of Rs.96000]. There are four dependents of the deceased, hence, there will be deduction of 1/4th towards personal and living expenses of the deceased. After deducting

1/4th from the total income, yearly loss of dependency will come to Rs.1,00,800/-. As on the date of accident, deceased was in between 36-40 years of age, appropriate multiplier would be of 15. Upon applying multiplier of 15 to yearly loss of dependency, total loss of dependency will come to Rs.15,12,000/-[Rs.100800x15]. Apart from the aforementioned amount of loss of dependency, Appellant 1 is entitled for Rs. 40,000/- towards loss of spousal consortium; appellant 2 and 3 children are entitled for 40,000/- towards parental consortium and appellant no.4 mother of the deceased is entitled for Rs. 40,000/- towards loss of filial consortium. Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses.

14. Now the appellants-claimants are entitled for total sum of **Rs. 16,62,000/-** [Rs.15,12,000+Rs.40,000+Rs.40,000+Rs.40,000+Rs.15,000+Rs.15,000] as compensation instead of Rs.5,30,400/- as awarded by the Claims Tribunal. The aforementioned amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions imposed by the Claims Tribunal will remain intact.
15. The appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
 Judge