NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1103 of 2014

- Oriental Insurance Company Ltd. Divisional Manager, Madina Building, Jail Road, Tahsil and District Bilaspur C.G.

------Appellant/Non-applicant 3

VERSUS

1. Sukhdev S/o Halal Khor Vishwakarma, Aged about 50 years
2. Jamuna Bai, W/o Sukhdev Vishwakarma, Aged about 48 years
3. Mahendra S/o Sukhdev Vishwakarma, aged about 25 years
4. Tikeshwar S/o Sukhdev Vishwakarma, Aged about 20 years

   No. 1 to 4 are claimants, R/o Saleh Batha, Post Office Kahi, Thana Kere Gaon, District Dhamtari, C.G.
5. Narendra S/o Uttam Singh Rajput, throughs Harishankar S/o Late Chote Lal Khubhkar, Village Kolihapuri, Post Pisegaon, Tahsil and District Durg C.G.

   -------Driver/ Non-applicant 1
6. Harishankar S/o Late Chote Lal Khubkar, Village Kolihapuri, Post Pisegaon, Tahsil and District Durg, C.G. **------Owner/ Non-applicant 2**
7. Premin Bai, W/o late Naradram Vishwakarma, Izhaari, R/o Post Office and Thanas Gurur, District Durg, C.G.

--------Non-applicant 4

----Respondents

WITH

MAC No. 1132 of 2014

- Smt. Premin Bai Wd/o late Shri Narad Ram Vishwakarma, aged about 27 years, Resident of Village Gurur, Thana-Gurur, Civil and Revenue District Durg, C.G.

---- Appellant/ Non-applicant 4

Versus

1. Narendra S/o Uttam Singh Rajput, through Harishankar S/o Late Chote Lal Khubhkar, Village Kolihapuri, Post Pisegaon, Tahsil and District Durg C.G.

   -------Driver
2. Harishankar S/o Late Chote Lal Khubkar, Village Kolihapuri, Post Pisegaon, Tahsil and District Durg, C.G. **------Owner**
3. The Oriental Insurance Company Ltd. Divisional Manager, Division No. 1, the Oriental Insurance Company Ltd. Jail Road, Durg, District Durg, C.G.
4. Sukhdev S/o Halal Khor Vishwakarma, Aged about 50 years
5. Jamuna Bai, W/o Sukhdev Vishwakarma, Aged about 48 years
6. Mahendra S/o Sukhdev Vishwakarma, aged about 25 years
7. Tikeshwar S/o Sukhdev Vishwakarma, Aged about 20 years

   Respondent 4 to 7 are residence of Village Salhebhatha, Post- Kahi, Thana, Kerengaon, Civil and Revenue Distt. Durg, C.G.

---- Respondents

MAC No. 1103/2014

For Appellant : Mr. Anumesh Shrivastava, Advocate.
For Respondent No. 7 : Mr. Sunil Sahu, Advocate.

MAC No. 1132/2014

For Appellant : Mr. Sunil Sahu, Advocate
For Respondent No. 3 : Mr. Pankaj Agrawal, 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.

10/08/2020

1. As both these appeals are arising out of the common award dated 30-08-2014 passed in claim case No. 62/2012 by Chief Motor Accidental Claims Tribunal, Raipur, wherein learned Claims Tribunal allowed the claim application in part and awarded total sum of Rs. 7,07,000/- as compensation.

2. Facts of the case in nutshell are that on 27-11-2011 at about 5:30 p.m., one truck bearing registration No. CG 07C 2055 (hereinafter referred to as "offending vehicle") driven by Respondent 5/ Non-applicant 1 rashly and negligently met with an accident and turned turtle. In the said accident, Narad Ram Vishwakarma occupant of the offending truck died. Accident was reported to concerned police station based on which, crime for offences under Sections 279, 337, 338, 304A of IPC was registered against the driver of offending vehicle. Claimants who are parents and siblings of the deceased Narad Ram filed an application under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs. 10,97,000/- as total compensation pleading therein that on the date of accident, deceased was earning Rs. 6,000/- per month from his labour work.

3. Respondent 5 and 6/ Non-applicant 1 and 2 who are driver and owner of the offending truck even after service of notice remained absent and they were proceeded ex parte.

4. Appellant/ Non-applicant 3-Insurance Company submitted reply to the claim application, they have denied the fact of accident on account of rash and negligence driving of Respondent 5/ Non-applicant 1 and made pleadings with regard to income and the compensation claimed by claimants to be on higher side, there was no valid and effective driving licence with the driver, no valid permit and fitness, thereby, there was breach of conditions of insurance policy and the Insurance Company was not having any liability to satisfy the amount of compensation.

5. Respondent 7/ Non-applicant 4-widow of deceased Narad Ram submitted reply to the claim application and resisted the claim application filed on behalf of the claimants but she admitted that claimant No. 1 and 2 are parents and claimant 3 and 4 are younger brothers of deceased and they were living jointly along with deceased. She further pleaded that after marriage deceased was residing along with her in a separate house at village Salhebhata, there was partition between the claimants and the deceased, Respondent 3 and 4 are major, married and residing separately along with their own family, Respondent 1 and 2 parents are having ancestral property. She further pleaded that being a sole legal representative of the deceased, she filed an application under Worksmen's Compensation Act (fatal) before the Commissioner, Worksmen's Compensation, Dhamtari but it was withdrawn.

6. Based upon the pleadings made by the respective parties, learned Claims Tribunal formulated as many as five issues for consideration and after conclusion of the proceedings held that death of Narad Ram was on account of motor accidental injuries due to rash and negligent driving of the offending truck by Respondent 5, there was no contributory negligence, breach of conditions of insurance policy was not found to be proved and awarded a total sum of Rs. 7,07,000/- as compensation.

7. Mr. Anumesh Shrivastava, learned counsel appearing for Appellant-Insurance Company in MAC 1103/2014 submitted that the learned Claims Tribunal erred in

awarding excessive amount of compensation. He submits that the learned Claims Tribunal awarded Rs. 2,50,000/- on the head of loss of consortium, love and affection which is contrary to the guidelines issued by the Supreme Court in case of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680** and further awarded Rs. 25,000/- on funeral expenses which is also on higher side. He further argued that the learned Claims Tribunal applied the multiplier of 18 for calculating the total amount towards loss of dependency even after recording the age of the deceased as 30 years on the date of accident, whereas appropriate multiplier would be 17 as held by Hon'ble Supreme Courts in the matter of ***Sarla Verma & others v. Delhi Transport Corp. & anr.*** Reported in **(2009) 6 SCC 121.** He further submits that the impugned award may kindly be modified accordingly. No other ground is raised by the learned counsel for the appellant before us in this case.

8. Mr. Sunil Sahu, learned counsel for the claimants in appeal 1103/2014 submits that the award passed by the learned Claims Tribunal is not on higher side but the Claims Tribunal awarded meagre amount of compensation in the facts and circumstances of the case for which the claimants have filed separate appeal for enhancement of the award in MAC No. 1132/2014. He submits that the argument raised by the learned counsel for the appellant with regard to grant of excessive amount of compensation on other conventional heads is not correct. Learned Claims Tribunal taking into consideration the law in ***Rajesh and others vs. Rajbir Singh and others*** reported in **2013 ACJ 1403** has awarded the amount of compensation of Rs. 2,75,000/- which cannot be said to be erroneous. Learned counsel further submits that the appellant in MAC No. 1132/2014 filed by the widow (Non-applicant 4) of the deceased has sought enhancement of the impugned award on various heads. He submits that the learned Claims Tribunal contrary to the evidence placed on record and the pleadings made in the application with regard to the income of the deceased as Rs. 6,000/- per month has assessed the income of the deceased as only Rs. 3,000/- per month and that too in an accident which took place on 27-11-2011. He further submits that the

learned Claims Tribunal has not awarded any amount towards future prospects and further submitted that the award of amount on other conventional heads is just and proper which does not require to be interfered. Lastly learned counsel for the appellant/ widow of the deceased submits that the Claims Tribunal erred in apportioning the amount of compensation between the claimants who are parents and younger brothers of the deceased who are already married and further distributed the amount of compensation equally between them, widow of deceased except award of Rs. 50,000/- i.e. Rs. 25,000/- each to claimant no. 3 and 4. He submits that the appellant/ Non-applicant 4 being widow of the deceased be awarded major portion of the amount of compensation. He prays that the amount of compensation may suitably be enhanced and the amount of compensation be apportioned in appropriate manner.

9. Mr. Pankaj Agrawal, learned counsel appearing for Respondent-Insurance Company in appeal No. 1132/2014 submits that the claimants have not proved the income of the deceased by placing any admissible piece of evidence before the Claims Tribunal and the Tribunal was justified in assessing the income of the deceased on notional basis in absence of any admissible piece of evidence. He further submits that the Claims Tribunal has calculated the amount of loss of dependency strictly in accordance with the law and therefore, it does not require any interference.

10. We have heard learned counsel for the respective parties and also perused the record.

11. We will first deal with the appeal filed by the Insurance Company in MAC No. 1103/2014. The accident was not disputed by the Insurance company, the policy was also not disputed by the Insurance company and the grounds of appeal which are taken in their memo of appeal and also submitted before us with regard to the award of excessive amount of compensation on other conventional heads i.e. to the extent of Rs. 2,75,000/- and further application of wrong multiplier. Perusal of impugned award would show that the learned Claims Tribunal awarded

Rs. 25,000/- towards funeral expenses and Rs. 2,50,000/- towards love and affection to claimants 1 to 4 and towards consortium to widow of the deceased and the total of the amount comes to Rs. 2,75,000/-. Award of compensation on the head of other conventional heads has been considered by the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** in a Constitutional Bench judgment. In the said judgment, the award of compensation on other heads has been held to be the loss of estate, loss of consortium and funeral expenses and the amount has also been fixed under it as Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively.

12. Learned counsel for the appellant-Insurance Company has rightly pointed out that the Claims Tribunal erred in awarding excessive amount of compensation of Rs. 2,75,000/- on other conventional heads. The award of amount of compensation on other conventional heads requires recalculation in view of the law laid down by the Supreme Court in case of **Pranay Sethi (supra)**. Sofar as the application of multiplier is concerned. The Hon'ble Supreme Court in the case of **Sarla Verma (supra)** has held that the appropriate multiplier for a deceased person who was between the age group of 26-30 years to be 17 and in view of the above, we are of the view that the Claims Tribunal erred in applying multiplier of 18 in the facts and circumstance of the case which also requires to be corrected.

13. Now, we will consider the grounds raised by the learned counsel for the appellant/ widow of the deceased who is Non-applicant 4 therein. First ground raised by her is with regard to income of the deceased as assessed by the Tribunal to Rs. 3,000/- per month only.

14. Learned counsel for the appellant widow argued that the income has been very specifically pleaded and also proved by the claimants and Non-applicant 1 in their evidence that the income of the deceased on the date of accident was Rs. 6,000/- per month. Upon going through the record and evidence, we find that the submission made by the learned counsel for the appellant that the income of Rs. 6,000/- per month has been proved is not sustainable. There is only oral

statement made in their evidence by the claimants and Non-applicant 4, but, the said pleading and the oral evidence have not been supported by placing any documentary evidence on record. In view of the above, the monthly income of the deceased as Rs. 6,000/- cannot be said to be proved income and therefore in the facts and circumstance of the case, the income of the deceased is to be assessed on notional basis. For assessing the income of any person on notional basis, it is required to consider the price index, wage rate, nature of work and also the age of the deceased. Date of accident is 27-11-2011, the occupation of the deceased has been shown to be a labour. In view of the aforementioned facts available on record, we find it appropriate to assess the income of the deceased as Rs. 4,000/- per month.

15. Other grounds raised by the learned counsel for the appellant/ widow is, that no amount towards future prospects has been awarded. The law in this regard is well settled by the Hon'ble Supreme Court by its Constitutional Bench judgment in case of **Pranay Sethi (supra)** and held as under:

> “59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax”

16. In the case at hand, the deceased was aged about 30 years i.e. less than 40 years, therefore, there will be addition of 40% of established income towards future prospects. Claimants/ legal representatives of the deceased will be entitled for the amount of compensation on other conventional heads including the loss of consortium. Loss of consortium has been considered by the Hon'ble Supreme Court in the case of ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in **(2018) 18 SCC 130** and held that there will be loss of spousal consortium to widow, loss of parental consortium to children and loss of filial consortium to the parents of the deceased.

17. For the foregoing reasons, the amount of compensation to be awarded to the claimants and the appellant-widow requires re-computation which is worked out as under.

18. Income of the deceased as assessed by this Court as Rs. 4,000/- per month i.e. Rs. 48,000/- per annum. By adding 40% of the established income, the total yearly income of the deceased will come to Rs. 67,200/-. There are four legal representatives of the deceased including the appellant-widow out of them two persons are major brothers and pleaded to be married and, therefore, they cannot be held to be dependent upon the deceased and, therefore, appropriate deduction would be only 1/3rd as applied by the Claims Tribunal. After deducting 1/3rd towards personal and living expenses, yearly loss of dependency will come to Rs. 44,800/- [Rs.67,200- 1/3rd of Rs.67,200], on the date of accident age of the deceased was shown as 30 years as mentioned in post mortem report Ext. P-4 and in absence of any documentary evidence regarding proof of age, it is taken as 30 years as mentioned in the post mortem report of the deceased; appropriate multiplier, considering the age of the deceased will be 17. By applying the multiplier of 17, total loss of dependency comes to Rs. 7,61,600/- [Rs.44800x17]. Apart from the above loss of dependency, claimants will be entitled for Rs. 15,000/- towards loss of estate, Rs. 15,000/- towards funeral expenses, Rs. 40,000/- towards spousal consortium and Rs. 40,000/- towards filial consortium. Now the claimants will be entitled for total amount of **Rs. 8,71,600/-** [Rs.7,61,600+Rs.15,000+Rs.15,000+Rs.40,000+Rs.40,000}

19. Ground raised by the learned counsel for the appellant/ widow that the Claims Tribunal erred in apportioning the amount equally between the widow and parents of the deceased i.e. claimant no. 1 father and claimant no. 2 mother of the deceased is concerned. Submission made by the learned counsel for the appellant/ widow appears to be reasonable. Claimant no. 1 and 2 parents are having two major sons i.e. claimant no. 3 and 4 to take care and support. Claimant no. 3 and 4 who are brothers of the deceased will be entitled for Rs.

25,000/- each of the total compensation as awarded by the Claims Tribunal, after deducting Rs. 50,000/- from the balance amount of compensation, widow of deceased will be entitled for 70% of the balance amount along with interest and 30% of the amount of compensation will be equally shared by the claimant 1 and 2/ parents of the deceased along with interest. Now, the amount of compensation is to be apportioned as under.

20. From the total amount of compensation i.e. Rs. 8,71,600/-, Rs. 50,000/- will be deducted towards compensation for claimant 3 and 4, after deducting the said amount, balance amount of the compensation will come to Rs. 8,21,600/-. Now, appellant-widow of the deceased will be entitled for 70% of balance amount which comes to **Rs. 5,75,120/-** and rest 30% of the amount will be awarded in favour of claimant 1 and 2 i.e. father and mother of the deceased which comes to **Rs. 2,46,480/-**

21. In the result, both the appeals are allowed in part and the impugned award is modified accordingly. The aforementioned amount of compensation will carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions imposed by the learned Claims Tribunal apart from the above will remain intact.

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

Sd/-
(Parth Prateem Sahu)
Judge

Pawan