

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 1076 of 2014**

National Insurance Company Limited, Branch Manager, 500 Marahtal, Karamchand Chowk, Jabalpur, Tah. and Distt. Jabalpur (M.P.), Through its Divisional Manager, Divisional Office, Akash Ganga Parisar, Supela, Bhilai, Tah. and Distt. Durg (C.G.) (Insurer)

---- Appellant**Versus**

1. Shivshankar Mandal S/o Shri Sheetal Mandal, aged 55 years
2. Smt. Sanjukta Mandal W/o Shri Shivshankar Mandal aged 45 years,
3. Ku. Rumi Mandal D/o Shri Shivshankar Mandal, aged 08 years, Minor through Guardian Father Shri Shivshankar Mandal (Respondent No.1).

Respondent No.1 to 3 all are R/o D.M.C. Talab Par, Ward No.18, Kumhari, P.S. Kumhari, Tah. Dhamdha, Distt. Durg (C.G.).

4. Rakesh Sareyam S/o Shri Dhoop Singh Sareyam, aged 28 years R/o Village Balarpur, P.S. Bandol, Tah. and Distt. Sheoni (M.P.) (Driver)
5. Shri Sarwal Singh Saini S/o Shri Dilip Singh Saini, aged 65 years, R/o 19 Jasuja City, Dhanwantari Nagar, Jabalpur, Distt. Jabalpur M.P. (Owner)

---- Respondents

For Appellant	: Mr. Dashrath Gupta, Advocate
For Respondents No. 1 to 3	: Mr. Punit Ruparel, Advocate
For Respondents No. 4 & 5	: None

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****16/03/2020**

1. Appellant/Insurance Company has filed this appeal under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 22/07/2014 passed by Additional Motor Accident Claims Tribunal, Durg, District Durg (C.G.), (hereinafter referred to as 'Claims Tribunal') in Motor Accident

Claim Case No.140 of 2013, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.7,67,000/- along with interest at the rate of 6% per annum from the date of filing of claim application till its realization as compensation in a death case.

2. Brief facts relevant for disposal of this appeal are that, on 19/12/2012 at about 10.35 PM (22.35 hours), Goutam Mandal was travelling on a motorcycle bearing registration No.CG-04/ZJ/4771 as a pillion rider, owned and driven by Rakesh Gupta and were going towards Vardhaman Petrol pump. At that relevant time, one truck bearing registration No.MP-20/HB/3005 (hereinafter referred to as "offending truck") coming from Raipur, dashed the motorcycle from back side, due to which, Goutam Mandal suffered grievous injuries over his person and succumbed to those injuries.
3. Claimants/respondents No. 1 to 3 who are parents and sister of deceased Goutam Mandal filed claim application under Section 166 of the M.V. Act before the competent Claims Tribunal claiming total compensation of Rs.21,74,000/- on account of accidental death of young Goutam Mandal aged about 25 years.
4. Non-applicants No.1 and 2, who are driver and owner of offending vehicle did not choose to appear before the learned Claims Tribunal and were proceeded *exparte*.
5. Non-applicant No.3/Insurance Company submitted reply to claim application and denied all the adverse pleading made in the claim application. It was pleaded that at the time of accident, driver of offending truck was not possessing valid and effective driving licence, there was

breach of conditions of insurance policy. It was further pleaded that the accident took place on account of negligent driving of driver of the motorcycle and further that the income of deceased Goutam Mandal has been shown on higher side.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties arrived at a finding that the accident took place on account of rash and negligent driving of non-applicant No.1/driver of offending truck and Goutam Mandal died on account of accidental injury suffered by him in motor accident; there was no violation of conditions of insurance policy and after assessing income of the deceased Goutam Mandal as Rs.3000/- on notional basis, awarded a total sum of Rs.7,67,000/- as compensation.
7. Mr. Dashrath Gupta, learned counsel for the appellant submits that the learned Claims Tribunal overlooking the fact that deceased Goutam Mandal was unmarried, awarded compensation on higher side. He further submits that learned Claims Tribunal erroneously deducted 1/3rd amount towards personal and living expenses instead of 50% as held by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**¹. It was further contended that learned Claims Tribunal committed error in awarding excessive amount of Rs.3,00,000/- towards other conventional heads, which is contrary to the law laid down by Hon'ble Supreme Court in catena of judgments and prayed that the amount of compensation should be reduced suitably.
8. Per contra, Mr. Punit Ruparel, learned counsel for respondents No.1 to 3/claimants submits that learned Claims Tribunal awarded just and

¹ (2009) 6SCC 121

reasonable amount of compensation in the facts and circumstances of the case, which do not call for interference.

9. I have heard learned counsel appearing for the respective parties and perused the record carefully.
10. To appreciate the submission made by learned counsel for appellant/Insurance Company while challenging the quantum of award passed by learned Claims Tribunal in favour of respondents No. 1 to 3/claimants, it is to be seen whether learned Claims Tribunal has awarded just and proper amount of compensation to the claimants/respondents No.1 to 3 i.e. parents and minor sister of deceased Goutam Mandal, aged about 25 years on the date of accident i.e. 19/12/2012.
11. Before the learned Claims Tribunal, it was pleaded that on the date of accident, deceased Goutam Mandal was working as Mason and earning Rs.400/- per day i.e. Rs.12,000/- per month. True it is that claimants have failed to prove the income of deceased Goutam Mandal by producing cogent and reliable piece of evidence, but at the same time, it should not be overlooked the fact that engagement of deceased Goutam Mandal in the work of Mason as it was not proved otherwise by appellant/Insurance Company. The work of Mason comes within the category of skilled labour, therefore, looking to the date of accident, wage rate prevailing in the District as also the price index, the learned Claims Tribunal has committed error in assessing the income of deceased Goutam Mandal as Rs.3000/- per month by taking Rs.100/- per day as wage rate, which cannot be said to be a daily wage to be given to the ordinary labour.

12. Learned Claims Tribunal has deducted 1/3rd towards personal and living expenses of deceased Goutam Mandal which is definitely contrary to the law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.)** (supra) and thereby committed an error.
13. Other submission of learned counsel for the appellant is that the learned Claims Tribunal committed an error in awarding excessive amount towards other conventional heads i.e. total Rs.3,35,000/-.
14. To appreciate the submissions made by learned counsel for the appellant and also looking to the beneficial piece of legislation for awarding the amount of compensation to the injured person or family members of the deceased Goutam Mandal, it is to be seen that the claimants should be awarded just and reasonable amount of compensation as in the case at hand to the family members of the deceased who have lost their young son.
15. Looking to the date of accident, price index as well as wage rate of skilled labour, the learned Claims Tribunal assessed the monthly and yearly income of the deceased Goutam Mandal on lower side and also not awarding any amount towards loss of future prospects, which the claimants are entitled in view of law laid down by Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and Ors.**², I am not inclined to interfere with the amount awarded to the claimants except an amount of Rs. 1,00,000/-, which has been awarded to the minor sister towards loss of love and affection.

2 AIR 2017 SC 5157

16. In view of above, now the claimants will be entitled for a total sum of Rs.6,67,000/- (7,67,000 - 1,00,000) towards compensation against the death of young boy, aged about 25 years as lump sum amount. In the considered opinion of this Court, the amount of Rs.6,67,000/- towards compensation would be just and proper amount of compensation to the claimants. The aforementioned amount of compensation shall carry interest at the rate of 6% per annum as awarded by learned Claims Tribunal from the date of filing of claim application till its realization. The other conditions as imposed by learned Claims Tribunal shall remain intact.
17. The appeal is allowed in part to the extent indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh