NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 649 of 2014

ICICI Lombard General Insurance Co. Ltd., through it's Legal Manager, ICICI General Insurance Co. Ltd. Ground Floor, Vanijya Bhawan, Devendra Nagar Road, Raipur Chhattisgarh.

---- Appellant

Versus

1. Smt. Budhiyarin Bai, wife of Late Shri Lalit Kumar Tarak, aged about 39 years,
2. Bhoj Kumar, son of Late Lalit Kumar Tarak, aged about 19 years
3. Kumari Ritu, daughter of Late Lalit Kumar Tarak, aged about 18 years
4. Sanat Kumar, son of Late Lalit Kumar Tarak, aged about 16 years
   Respondent No. 4 is a minor and is represented through his natural guardian mother, Smt. Budhiyarin Bai,
   Respondent No. 1 to 4 all residents of Village Panduka, P.S. Rajim, Tehsil Chhura, District Gariyabandh, Chhattisgarh.
5. Khomeshwar Sahu, son of Hemlal Sahu, aged about 25 years, resident of Village Kopra, P.S. Rajim, District Gariyabandh, Chhattisgrh.
6. Tokashwar Sahu, son of Late Shri Mahadev Sahu, aged about 30 years, resident of village Kopra, P.S. Rajim, District Gariyabandh, Chhattisgarh.

---- Respondents

For Appellant	: Shri P. Acharya, Advocate on behalf of Shri Amrito Das, Advocate
For Respondents No.1 to 4	: Shri Suresh Tandan, Advocate
For Respondents No. 5 & 6	: None

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

Judgment on Board

Per Parth Prateem Sahu, Judge

23/09/2020

1. Appellant/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 28/03/2014 passed by the

Additional Motor Accident Claims Tribunal Gariyaband, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.62 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.17,05,000/- as compensation in a death case.

2. Facts of the case in nutshell, are that, on 27/03/2013, when Lalit Kumar Tarak was traveling on a motorcycle along with Rakesh Verma from Rajim to Panduka and reached between village Sarkada – Kopra, one motorcycle bearing No.CG-04/DG/9597 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1, dashed the motorcycle of Lalit Kumar Tarak. In the aforementioned accident, Lalit Kumar Tarak and Rakesh Verma fell down and suffered grievous injuries. Lalit Kumar Tarak was admitted to Mekahara Government Hospital, Raipur, where he succumbed to injuries during the course of treatment. The accident was reported to concerned Police Station, based upon which, crime No.73/2013 was registered against non-applicant No.1.

3. Claimants, who are widow and children of the deceased Lalit Kumar Tarak filed claim application under Section 166 of the M.V. Act claiming compensation of Rs.73,00,000/- mentioning therein that on the date of accident, deceased Lalit Kumar Tarak was earning Rs.12,000/- per month from his work as Sweet Maker/Cook in the Hotel.

4. Non-applicants No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application pleading

therein that accident was not on account of rash and negligent driving of offending vehicle by non-applicant No. 1; on the date of accident, non-applicant No.1 was possessing valid and effective driving licence and offending vehicle was insured with non-applicant No.3/Insurance Company, as such, liability, if any, would be upon the Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to claim application while denying the pleadings made in the claim application, pleaded that non-applicant No.1 was not possessing valid and effective driving licence and if insurance of offending vehicle is proved, there is breach of condition of insurance policy.

6. On appreciation of the pleadings and evidence placed on record by the respective parties, held that non-applicant No.1 while driving the offending vehicle rashly and negligently dashed the motorcycle of Lalit Kumar Tarak, death of Lalit Kumar Tarak was on account of motor accidental injuries suffered by him. On the date of accident, deceased was aged about 40 years; earning Rs.12,000/- per month; breach of conditions of insurance policy condition was not found to be proved and awarded a total sum of Rs.17,05,000/- as compensation.

7. Shri P. Acharya, learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal erred in accepting the income of deceased as pleaded in claim application without there being any admissible piece of evidence placed on record. He further submits that claimants have paced oral evidence and examined one Khowa Lal (AW-3) employer of the deceased to

prove income. Khowa Lal (AW-3) failed to produce any document with regard to payment of salary of the deceased. It is contended that in absence of any reliable piece of evidence to prove income of deceased, the income can only be assessed on notional basis. He points out that learned Claims Tribunal has awarded excessive amount under other conventional heads i.e. Rs.85,000/-, in which, Rs.25,000/- towards funeral expenses, Rs.25,000/- towards loss of consortium to widow, Rs.25,000/- towards love and affection and Rs.10,000/- towards loss of estate. It is lastly contended that as per law laid down by Hon'ble Supreme Court, there is no head under the schedule as 'loss of love and affection' to be awarded to the claimants.

8. Per contra, Shri Suresh Tandan, learned counsel for respondents No.1 to 4/claimants submits that deceased was an able-bodied person of 40 years of age and working as Sweet maker/Cook in the hotel and thereby earning Rs.12,000/- per month. He further submits that though the claimants have failed to prove the income of deceased by placing any documentary evidence but they have examined owner of the Hotel/employer of the deceased, who in his statement, very clearly stated that deceased was working for last 12 years and he was being paid Rs.400/- per day.

9. We have heard learned counsel for the respective parties and perused the record carefully.

10. To appreciate the first submission made by learned counsel for the appellant with regard to income taken by learned Claims

Tribunal of the deceased as Rs.12,000/- per month, the claimants have pleaded the occupation of deceased as Hotel *Mistri* (Sweet Maker/Cook). In support of their pleadings, they have filed the certificate issued by one Khowa Lal (AW-3) stating himself to be owner of the Hotel to prove the document/certificate issued by Khowa Lal. The claimants have examined Khowa Lal, author of the document as AW-3, who in his evidence stated that he was paying Rs.400/- per day to the deceased. In cross-examination, he stated that his Hotel is not registered, he has not kept any account with regard to payment to the employees/workers. He further stated that he was earning Rs.1,000/- per day from the business of Hotel. Apart from this, claimants have examined Smt. Budhiyarin Bai widow of deceased as AW-1 and Rakesh Verma, friend of the deceased as AW-2 accompanying as pillion to Lalit Kumar Tarak on the date of accident. But these two witnesses cannot be said to be the witnesses of income of the deceased because the widow of deceased Lalit Kumar Tarak has stated that her husband was earning Rs.400-500 per day from his work.

11. From the above documentary and oral evidence available on record, we do not find any clinching piece of evidence so as to prove the income of deceased on the date of accident. The evidence which has been brought on record is only the oral evidence of the employer, but he failed to prove the income by placing any register, account book etc. with regard to payment of Rs.400/- per day to the deceased. But form the evidence brought on record, the occupation of deceased has been proved to be the

Sweet Maker/Cook in the Hotel of one Khowa Lal. In absence of any clinching and reliable piece of evidence, income of the deceased is to be assessed on notional basis taking his occupation, date of accident, price index and cost of living. After considering the aforementioned factors, we find it appropriate to assess the income of deceased as Rs.7,000/- per month instead of Rs.12,000/-. Accordingly, we hold the income of the deceased as Rs.7000/- per month.

12. So far as the second submission made by learned counsel for the appellant that learned Claims Tribunal erred in awarding Rs.85,000/- towards awarded towards other conventional heads to be on higher side, on perusal of the impugned award, it would show that total number of claimants are four i.e. one widow and three children. Amount of compensation to be awarded under the other conventional heads has been considered and fixed by Hon'ble Supreme Court. The award of Rs.25,000/- towards funeral expenses is on higher side. There is no head like love and affection for awarding the compensation, but the learned Claims Tribunal has awarded Rs.25,000/- towards love and affection.

13. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the claimants requires re-consideration and re-computation, which is as under :

The monthly income of the deceased is taken as Rs.7,000/- per month and Rs.84,000/- per annum. On the date of accident, deceased Lalit Kumar Tarak was shown to be 40 years of age as per postmortem report (Ex.P/9), therefore, in view of law laid down by Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi**[1], there will be an addition of 25% of the income towards future prospects. By adding 25% of the income towards future prospects, the total annual income of deceased will come to Rs.1,05,000/- (84,000 x 25% = 21,000 and 84,000 + 21,000). On the date of accident, the deceased was survived by four legal heirs, therefore, in view of dictum of Supreme Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[2], appropriate deduction would be 1/4th. After deducting 1/4th towards his personal and living expenses of the deceased, yearly loss of dependency of the claimants will come to Rs.78,750/- (1,05,000 / 4 and 1,05,000 – 26,250). As it is held the age of the deceased to be 40 years as per postmortem report (Ex.P/9), the appropriate multiplier would be 15. By applying the multiplier of 15, the amount of compensation towards loss of dependency will come to **Rs.11,81,250/-** (78,750 x 15). Apart from above, the claimants will be further entitled for a sum of **Rs.40,000/-** towards spousal consortium to the wife (payable to the spouse because of the death of partner), **Rs.40,000/-** towards parental consortium to the children (payable to children because of the death of parents), **Rs.15,000/-** towards loss of estate and **Rs.15,000/-** towards funeral expenses.

1 **(2017) 16 SCC 680**
2 **(2009) 6 SCC 121**

14. Now, the claimants are entitle for total compensation of **Rs.12,91,250/-** (11,81,250 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.17,05,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 9% per annum as awarded by Claims Tribunal from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

15. In the result, the appeal is allowed in part and impugned award is modified to the extent indicated herein-above.

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

Yogesh