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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1053 of 2014

1. Smt.Janki Sahu, W/o Murlidhar Sahu Aged About 47 Years R/o Parashnagar, Main Road, Kasdol, Thana And Tah. Kasdol, Distt. Baloda Bazar-Bhatapara C.G.,

2. Manoj Sahu, S/o Murlidhar Sahu Aged About 38 Years R/o Parashnagar, Main Road, Kasdol, Thana And Tah. Kasdol, Distt. Baloda Bazar-Bhatapara C.G., District : Balodabazar-Bhathapara,

3. Mahendra Sahu, S/o Murlidhar Sahu Aged About 25 Years R/o Parashnagar, Main Road, Kasdol, Thana And Tah. Kasdol, Distt. Baloda Bazar-Bhatapara C.G., District : Balodabazar-Bhathapara,

4. Manish Sahu, S/o Murlidhar Sahu Aged About 21 Years R/o Parashnagar, Main Road, Kasdol, Thana And Tah. Kasdol, Distt. Baloda Bazar-Bhatapara C.G., District : Balodabazar-Bhathapara,

---- Appellants/Claimants

Versus

1. Mannulal Sahu, S/o Sonaram Sahu Aged About 40 Years R/o Ward No. 2, Lavan, Thana- Kasdol, Distt. Baloda Bazar C.G., (Driver of Truck No. C.G. 04 ZD.0188)

2. Satish Kumar Pandey, S/o Krishan Kumar Pandey Aged About 38 Years R/o Lavan, Thana- Kasdol, Distt. Baloda Bazar C.G., District : Balodabazar-Bhathapara, (Owner of Truck No. C.G. 04 ZD.0188)

3. Bharti Axa General Insu.Co.Ltd. S/o Thru- Branch Manager, Chawala Complex, First Floor, Devendra Nagar, Raipur, Tah. And Distt. Raipur C.G.,

---- Respondents/Non-applicants

For Appellant	:	Ms. Sharmila Singhai, Advocate.
For Respondents No. 1 & 2:		None, though served.
For Respondent No. 3	:	Shri N.K.Thakur, Advocate.

DB: Hon'ble the Chief Justice &
Hon'ble Shri Justice Sanjay S. Agrawal

Order / Award on Board

Per Sanjay S. Agrawal, J.

13.10.2020

1. The claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, the Act, 1988) seeking enhancement of

the award impugned dated 25th July, 2014 passed in claim case No. 68/2013 whereby the learned Tribunal has awarded total sum of Rs.11,85,000/- with 9% interest per annum from the date of filing of the claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description before the Tribunal.

2. Briefly stated the facts of the case are that on 08.06.2013 at about 12.30 pm, deceased Murlidhar Sahu was returning along with his son Mahendra Kumar by his Bolero from village Kosiha to Kasdol after completing his bore-well work. At the relevant time, when he reached near the Balodabazar-Kasdol main road, he was hit vehemently from his opposite side by the offending vehicle “Hywa” truck bearing registration No.C.G-04-JD-0188 owing to rash and negligent driving by its driver, namely, Mannulal Sahu, which was owned by Non-applicant No.2 Satish Kumar and insured with Bharti Axa General Insurance Company Limited. As a result of the accident, deceased sustained grievous injuries and died on the spot, giving rise to the institution of the claim under Section 166 of the Act, 1988 by his widow and sons. According to them, the deceased, who was 48 years old, was an agriculturist and was engaged also in the business of digging bore-wells and used to earn Rs.4,60,000/- annually and thus claimed total amount of compensation to the tune of Rs.37,50,000/- under various heads.

3. According to the driver and owner of the alleged offending vehicle, the deceased himself was responsible for the alleged accident. It is pleaded further that since it was insured with the said insurance company, therefore, in case of any liability being fastened, the same could be indemnified by the said company. While, the insurer of it, took a defence that the driver of it was driving the same without holding the valid and effective driving licence in

violation of the insurance policy, as such, no liability could be fastened upon it.

4. The claimants have examined Smt. Janki Sahu (A.W.1), Mahendra Kumar Sahu (A.W.2) and one Pramod Meshram (A.W.3), who was the Income Tax Inspector in support of their claim, while none was examined by the Non-applicants in rebuttal.

5. After considering the evidence led by the parties, it was held by the Tribunal that the alleged accident occurred due to the rashness and negligent driving by the driver of the alleged offending vehicle, which led to sad demise of Murlidhar, who was 48 years old at the relevant point of time. It held further that the driver of the alleged offending vehicle was possessing the effective and valid driving licence and, in consequence while fastening the liability upon the insurance company and by considering the annual income of the deceased at Rs.1,40,000/-, awarded total amount of compensation along with its interest as mentioned herein above.

6. Ms. Sharmila Singhai, learned counsel appearing for the appellants/claimants submits that the finding of the Tribunal assessing the annual income of the deceased to the tune of Rs.1,40,000/- while disbelieving the agricultural income of Rs.2,00,000/-, as shown in his income tax returns, is apparently contrary to law. It is contended further that while determining the amount of compensation, the Tribunal has erred in deducting half of his income instead of 1/3rd towards his personal and living expenses and that by ignoring to consider the future prospects of his income, a meager amount of compensation payable to the claimants has been awarded.

7. On the other hand, Shri N.K.Thakur, learned counsel appearing for

respondent No.3 has supported the award impugned as passed by the Tribunal.

8. We have heard learned counsel for the parties and perused the entire record carefully.

9. From perusal of the record, it appears that the deceased Murlidhar was engaged in the business of digging bore-wells and his gross salary as depicted from income tax return (Ex.P.9) for the year 2013-14 was shown to be Rs.3,25,000/-. It appears that while considering this document and by deducting a sum of Rs.67,200/- towards rent as shown therein, the Tribunal assessed his yearly income at Rs.2,57,800/- and we do not find any infirmity in the same. It, however, appears that the observation of the Tribunal that the alleged business of him could be carried out by the claimants by engaging a Manager by presuming his monthly salary of Rs.10,000/-, yearly Rs.1,20,000/- and thereby reducing the said income of the deceased from his business appears to be unjustified and cannot be upheld. What is reflected from perusal of his income tax returns (Ex.P.7 & P.8) for the year 2011-12 and 2012-13 that his income from the said business was increased gradually from Rs.1,10,850/- to Rs.2,35,715/- and was increased further upto Rs.2,52,800/- as depicted from his income tax return (Ex.P.9), which was submitted for the relevant year of 2013-14 while showing his gross income as Rs.3,25,000/-. These are the statutory documentary evidence showing the income of the deceased for which the claimants have been deprived of it on account of his untimely death. The said income of the deceased, therefore, should not have been restricted upto Rs.1,20,000/- while drawing such a presumption. We, therefore, do not deem it proper to reduce the said yearly income of the deceased as such in absence of any evidence led by the Non-applicants and

we are inclined to consider his annual income as such, i.e., Rs.2,57,800/-. In so far as the agricultural income of the deceased, as shown therein to be of Rs.2,00,000/- is, however, rightly not taken into consideration by the Tribunal in absence of any revenue papers like *Khasra Panchshala,* B-1-*Kishtbandi and Rin-Pustika* etc. and we do not find any infirmity in the approach of the Tribunal in this regard.

10. Considering the annual income of the deceased at Rs.2,57,800/- and by determining the actual income of him, an addition of 25% of it, i.e.,Rs.64,450/- is to be made in the light of principles laid down by the Constitution Bench of the Supreme Court in the matter of ***National Insurance Company Limited -v- Pranay Sethi*** reported in **(2017) 16 SCC 680** as the deceased was a self-employed person of 48 years old. It would, thus, come to Rs.3,22,250/- (Rs.2,57,800/- + Rs.64,450/-) and that by deducting 1/3rd of it, i.e., Rs.1,07,416.66, rounded off to Rs.1,07,417/- towards personal and living expenses as the deceased's two sons, except Mahendra Kumar Sahu, were unemployed and dependent upon him. Thus, the yearly dependency would come to Rs.2,14,833/- (Rs.3,22,250/- - Rs.1,07,417/-). By applying the multiplier 13, looking to the age of the deceased, the total dependency would work out to Rs.27,92,829/- (Rs.2,14,833/- x 13).

11. Besides, the widow and sons are entitled to be awarded loss of consortium under the head of spousal and parental consortium, as held by the Supreme Court in the matter of ***Magma General Insurance Company Limited*** vs. ***Nanu Ram @ Chuhru Ram and others*** reported in **(2018) 18 SCC 130** at the rate of Rs.40,000/-, as held in the said matter of **Pranay Sethi** (supra). Consequently, in addition, the claimants are entitled to the

following amounts towards conventional heads:-

Sl. No.	Mode of Compensation	Amount in Rs.
1.	For loss of spousal consortium to widow	40,000/-
2.	For loss of parental consortium to sons	40,000/-
3.	For Funeral expenses	15,000/-
4.	For loss of estate	15,000/-
	Total:	Rs. 1,10,000/-

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12. Consequently, the claimants would be entitled to a total sum of Rs.29,02,829/- (Rs.27,92,829/- + Rs.1,10,000/-) with 9% interest per annum, as awarded by the Tribunal, from the date of filing of claim petition till the date of actual payment.

12.1 Out of the aforesaid sum, a sum of Rs.20,02,829- shall be given to widow (claimant No.1) Smt. Janki Sahu. Out of it, a sum of Rs.2,00,000/- shall be given to her through account payee cheque, while remaining amount, i.e., 18,02,829/- shall be deposited in her name in any of the Nationalised Banks for a period of 3 years.

12.2 Likewise, Rs.4,00,000/- each shall be deposited in the name of deceased's sons, namely, Mahendra Kumar Sahu (claimant No.3) and Manish Kumar Sahu (claimant No.4) and, Rs.1,00,000/- in the name of another son Manoj Sahu (claimant No.2) in any of the Nationalised Banks for a period of 3 years, which shall be disbursed to them after its maturity, as per the direction of the Executing Court.

12.3 In so far as the interest part is concerned, the same would be calculated at the said rate of 9% per annum from the date of filing of the claim petition till the date of actual payment and be disbursed to them through cheque, as per the direction of the Executing Court, to the claimants.

13. It is observed further that if the widow (claimant No.1) and sons want to withdraw a portion of it or the entire deposited amount of their share during the said period of 3 years, then they are at liberty to move an application for the said purpose before the concerned Executing Court, which may be considered by it and an appropriate order may be passed in this regard.

14. In view of above, the appeal is allowed in part to the extent indicated herein above with the aforesaid observations. Rest of the observations as made by the Tribunal shall remain intact. No order as to costs.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Sanjay S. Agrawal)
Judge

Anjani