

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 916 of 2014**

1. Smt. Lalo Bai W/o late Tota Ram, aged about 60 years
2. Minor Ritu Ram S/o late Tota Ram, aged about 17 years
3. Minor Ku. Sarita D/o late Tota Ram, aged about 10 years, All Caste- Munda, and the appellant No. 2 and 3 minors through their next friend mother Smt. Lalo Bai

All R/o Village Kulda, Police Station- Lodam, P.S. Jashpur, Tahsil and District Jashpur C.G. Civil and Revenue District Jashpur C.G.

-----Appellants/Claimants**VERSUS**

1. Harjot Singh Saini S/o Nirmal Singh Saini, aged about 60 years, R/o G.E. Road, Tatibandh, Raipur Tahsil and District Raipur C.G.
2. Ram Kumar Maravi S/o Basori Ram Occupation- Driver R/o Village Berwadih, Police Station- Ghuma, District Sivni M.P.

At present through Harjot Singh Saini, G.E. Road, Tatibandh, Raipur, Tahsil and District Raipur C.G.

3. United India Insurance Company Ltd. Local Branch Office- Raigarh, District Raigarh C.G. Civil and Revenue District Raigarh C.G.

-----Respondents

For Appellants	: Mr. A.K. Prasad and Mr. Rishikant Mahobia Advocate
For Respondent 1 & 2	: None.
For Respondent 3	: Mr. H.B. Agrawal, Sr. Adv. with Mr. Pankaj Agrawal, Adv.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per Parth Prateem Sahu, J.****19/11/2020**

1. Appellants-claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") seeking enhancement of the amount of compensation awarded by learned Motor Accident Claims Tribunal, Jashpur, District Jashpur C.G. *vide* impugned award dated 15.04.2010 in claim case no. 07/2007.
2. Heard on I.A. No. 01/2014 which is an application for condonation of delay with a prayer to condone the delay of about 1580 days in filing the appeal.

3. Learned counsel for the appellants submits that the appellants are poor labourers, resident of tribal area, have lost their sole bread-winner in motor accident. Due to financial constraint, they could not file the appeal within prescribed time of limitation. He also argued that the appellants who are rustic labourers and residents of rural area of district Jashpur, they were not aware about the legal provision of law of limitation. It is further contended that looking to the object of the Act in which appeal is preferred, delay in filing the appeal may be condoned.
4. Mr. Pankaj Agrawal, learned counsel for Respondent 3, on the other hand, submits that the reason assigned in the application is not sufficient to condone the delay, no explanation has been offered for day to day delay, the application for condonation of delay may be dismissed.
5. We have heard learned counsel for the respective parties.
6. Upon perusal of pleadings made in the application for condonation of delay in filing the appeal except financial constraint, not having the knowledge of legal provisions no other specific ground has been raised by the learned counsel for the appellants. Ignorance of law cannot be taken as sufficient cause for condoning delay but then it is to be considered that what are the provisions under which the appeal is filed with delay. Appeal is filed under Section 173 of the Act of 1988 seeking enhancement of the amount of compensation by the appellants for loosing their bread-winner in a motor accident. Object of the Act is to award just compensation to the claimants, they cannot be deprived of from their entitlement to receive just compensation on technicalities. At the same time, it is also to be looked into that they may not be given advantage of their own wrong of not approaching the Court within the time affecting the rights of the respondents.
7. Taking into account the object of the Act, we find it appropriate to condone the delay of 1580 days in filing the appeal with a condition that the

appellants-claimants will not be entitled for any interest for the delayed period. For the foregoing reasons, I.A. No. 01/2014 is allowed with the above condition.

8. On merits of the case, learned counsel for the appellants submits that on 14.07.2006, when late Totaram, while crossing the road was knocked down by truck bearing registration no. CG 04G 6855 driven by non-applicant 2 rashly and negligently. In the said accident, Totaram suffered grievous injuries over his person, he was taken to Community Health Centre, Lodam but looking to the serious condition of the injured, he was referred to higher hospital and while shifting to the hospital at Ranchi, he succumbed to injuries on the way to hospital. Deceased on the date of accident was working as Mason and earning Rs. 4,000/- per month. Claims Tribunal erroneously assessed the income of deceased aged 37 years as Rs. 27,000/- p.a. overlooking the pleadings, date of accident and evidence placed on record by the appellants-claimants. He further contended that learned Claims Tribunal has not added any amount towards the future prospects as per ruling of Supreme Court in the case of **National Insurance Company Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and awarded meagre amount of compensation on other conventional heads contrary to the judgment passed by the Supreme Court in the case of **Pranay Sethi (supra)** and **Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others** reported in **(2018) 18 SCC 130**. The amount of compensation awarded to the tune of Rs. 2,80,000/- is much on lower side.
9. Mr. Pankaj Agrawal, learned counsel for Insurance Company submitted that the claimants failed to prove the occupation and income of the deceased in accordance with the law. Claims Tribunal was perfectly justified in assessing the income on notional basis taking into consideration the date of accident. Amount of compensation awarded by

the Claims Tribunal is just and proper which does not call for any interference.

10. We have heard learned counsel for the respective parties and also perused the record.
11. The fact with regard to accident, insurance and liability fastened upon non-applicants jointly and severally including the Insurance Company is not in dispute. This appeal is only with regard to enhancement of amount of compensation awarded by the Claims Tribunal. Upon going through the pleadings would show that the claimants in their claim application have very specifically pleaded the age of the deceased as 37 years, occupation to be Mason and income as Rs. 4,000/- per month. In support of the pleadings, claimants have examined Smt. Lalo Bai widow of deceased as AW-1, Budhram as AW-2 and Tabarak Hussain as AW-3 to prove their claim. AW-1 in her statement has stated that her husband was earning Rs. 4,000/- per month. In cross-examination she stated that her husband was earning Rs. 130/- per day and further admitted that she has not placed any document on record to prove income of the deceased. AW-2 Budhram has also stated that the deceased was earning Rs. 130/- per day from the work of Mason; similar statement has been made by AW-3 as well, their evidence remained unshaken in cross-examination.
12. True it is that the claimants have not placed on record any documentary evidence with regard to income of the deceased but then it is to be considered that what was the occupation of the deceased, where he was residing and whether there can be any documentary evidence to that effect or not. It is not in dispute that deceased was not in permanent employment. Looking to the nature of employment, it may not be possible for appellants of placing on record any document in proof of income. In absence of any documentary evidence, income is to be assessed on notional basis taking into consideration the date of accident, cost of living,

occupation of the deceased and wage structure.

13. Accident took place on 14.07.2006, occupation of the deceased has been shown to be Mason which comes within the category of skilled labourer, hence taking into consideration the overall fact and circumstances of the case and factors prevailing on the date of accident, we find it appropriate to assess the income of the deceased as Rs. 3,000/- per month ie. Rs. 36,000/- per annum. Deceased, on the date of accident, was aged about 37 years as mentioned in the post mortem report which is not in dispute, hence there will be addition of 40% of established income towards future prospects as per rulings of Hon'ble Supreme Court in the case of **Pranay Sethi (supra)**. Claims Tribunal has awarded Rs. 10,000/- towards other conventional heads which in the considered opinion of this Court is much on lower side. The amount of compensation to be awarded on other conventional heads is fixed and the heads on which it is to be awarded is also specified by Hon'ble Supreme Court in case of **Pranay Sethi (supra)**. Claimants are entitled for the said amount of compensation on other conventional heads. Types of loss of consortium has been explained by the Hon'ble Supreme Court in case of **Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others** reported in **(2018) 18 SCC 130** ie. loss of spousal consortium, loss of parental consortium and loss of filial consortium.
14. For the foregoing discussion, amount of compensation to be awarded to the claimants requires recalculation and re-computation which is as under.
15. Income of the deceased has been taken as Rs. 3,000/- per month ie. Rs. 36,000/- per annum, by adding 40% of established income towards future prospects, yearly income of the deceased will come to Rs. 50,400/- [Rs. 36,000+40% of Rs. 36,000]; after deducting 1/3rd towards personal and living expenses of the deceased, loss of yearly dependency will come to Rs. 33,600/-. Deceased on the date of accident was 37 years old, hence

there will be multiplier of 15 as applied by the Claims Tribunal, upon applying multiplier of 15 to yearly loss of dependency, actual loss of dependency suffered by the appellants-claimants would be Rs. 5,04,000/- [Rs.33,600x15]. Apart from the above loss of dependency, claimants are also entitled for Rs. 40,000/- towards loss of spousal consortium to widow, Rs. 40,000/- towards loss of parental consortium to children, Rs. 15,000/- towards loss of estate, Rs. 15,000/- towards funeral expenses.

16. Now the appellants-claimants shall be entitled for total sum of **Rs.6,14,000/- [Rs.504000 + Rs.40000 + Rs.40000 + Rs.15000 + Rs.15000]** as compensation instead of Rs. 2,80,000/- as awarded by the Claims Tribunal. The aforementioned amount of compensation shall carry interest @ 6% pa from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact. We have already held that the appellants-claimants shall not be entitled for interest for the period of 1580 days (period of delay in filing appeal).
17. Consequently, appeal is allowed in the aforementioned terms and the impugned award is hereby modified to the extent as indicated herein-above.

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

Sd/-
(Parth Prateem Sahu)
 Judge