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HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 1232 of 2014

(Arising out of award dated 27/08/2014 passed in Claim Case No.82 of 2014 by the First Additional Motor Accident Claims Tribunal Balod, District Balod, Chhattisgarh)

1. Smt. Sushila Jaiswal W/o Ramesh Chand, aged about 49 years,
2. Sudhir Jaiswal S/o Ramesh Chand, aged about 21 years,
3. Sushma Jaiswal D/o Ramesh Chand Jaiswal, aged about 27 years,
4. Pradeep Jaiswal S/o Ramesh Chand Jaiswal, aged about 25 years,
   All resident of Main Road, Rajhara, Ward No.19, Police Station Rajhara, Civil & Revenue District Balod (C.G.).

---- Appellants

Versus

1. Bramhanad Deshmukh S/o Heeruram, aged about 59 years, R/o village Korguda, Police Station Daundilohara, District Balod (C.G.).
2. Brijlal Jaiswal S/o Harishankar, R/o Kachche, Police Station Bhanupratappur, District Kanker (C.G.)
3. National Insurance Company Limited, Divisional Manager, Divisional Office, Kamthi Line, Rajnandgaon (C.G.)

---- Respondents

For Appellants : Shri Aman Yadav, Advocate
For Respondent No.1 & 2 : Shri Samir Singh, Advocate
For Respondent No.3 : Shri G.V.K. Rao, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

04/08/2020

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated

27/08/2014 passed by the First Additional Motor Accident Claims Tribunal Balod, District Balod, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.82/2014 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.3,50,000/- as compensation in a death case.

2. Brief facts relevant for disposal of this appeal, are that, on 13/06/2012, at about 11.00 AM, when Ramesh Chand Jaiswal was travelling on his motorcycle bearing registration No.CG-07/L/2248 and going to Dondi from Rajhara, while so, when he reached near old market Rajhara *(Purana Bazar)* towards dam side, one Truck bearing registration No.CG-19/H/6590 (hereinafter referred to as 'offending truck') driven by non-applicant No.1/respondent No.1 rashly and negligently, dashed the motorcycle of Ramesh Chand Jaiswal. In the said accident, Ramesh Chand Jaiswal suffered grievous injuries over his person. He was taken to Chandulal Chandkar Memorial Hospital, Bhilai where he has undergone treatment from 13/06/2012 to 20/06/2012. During the course of treatment, Ramesh Chand Jaiswal breath his last on 20/06/2012. The accident was reported to concerned Police Station, based upon which, crime was registered against non-applicant No.1 for offence punishable under Sections 279, 337 and 304-A.

3. Appellants/claimants, who are wife and children of deceased Ramesh Chand Jaiswal filed claim application under Section 166 of the M.V. Act seeking compensation of Rs.25,50,000/- mentioning therein that on the date of accident, deceased was aged about 52 years, engaged in transporting work and also tax payee. They have pleaded that deceased was having PAN card and also the income tax returns.

4. Respondents No.1 and 2/non-applicants No.1 and 2, who are driver and owner of offending truck submitted reply to claim application and pleaded that there was no accident with offending truck. First Information Report was registered against non-applicant No. 1 on the basis of false information and the amount of compensation claimed is highly exaggerated. It was further pleaded that the accident was on account of rash and negligent driving of motorcycle by deceased himself; on the date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company and non-applicant No.1 was possessing valid and effective driving licence to drive the vehicle.

5. Respondent No.3/non-applicant No.3/Insurance Company submitted separate reply to claim application pleading therein that on the date of accident, non-applicant No.1/driver of offending Truck was not possessing valid and effective driving licence to drive the vehicle and non-

applicant No.2 was not registered owner of offending vehicle nor offending vehicle was insured with non-applicant No.3.

6. Learned Claims Tribunal based on the pleadings made on behalf of respective parties, formulated as many as five issues for consideration. On appreciation of the pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that Ramesh Chand Jaiswal died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending truck by non-applicant No.1/driver of offending vehicle. Learned Claims Tribunal after recording the age of the deceased as 52 years, assessing the income of deceased as Rs.60,000/- per annum and awarded a sum of Rs.3,50,000/- as total compensation.

7. Shri Aman Yadav, learned counsel for the appellants/claimants submits that learned Claims Tribunal erred in assessing the income of the deceased as Rs.5,000/- per month and Rs.60,000/- per annum ignoring the income tax deposited by deceased in Form No. 16A and also under Section 26AS of the Income Tax Act, 1961. He also points out that after the accident, deceased immediately took treatment in private hospital at Bhilai and the claimants have annexed the relevant documents in support of medical expenditure incurred by them, but learned Claims Tribunal has not awarded entire amount of medical expenditure

incurred by claimants for treatment of the deceased. It is further contended that learned Claims Tribunal erred in considering the age of deceased as 58 years on the date of accident, whereas the claimants in their claim application have very specifically pleaded age of deceased on the date of accident to be 52 years, which can also be ascertained from the documents available on record. It is also argued that learned Claims Tribunal has applied lesser factor of multiplication for calculating total amount of compensation and further awarded meager amount towards other conventional heads. He lastly submits that taking into consideration all these aspects, the amount of compensation may be suitably enhanced.

8. Per contra, Shri G.V.K. Rao, learned counsel for respondent No.3/Insurance Company submits that the claimants failed to prove the income of deceased by placing cogent and reliable piece of evidence before the learned Claims Tribunal, therefore, learned Claims Tribunal was justified in taking the income of deceased on notional basis. He further submits that learned Claims Tribunal awarded the entire bills placed on record, which were admissible towards medical expenses and submission of the learned counsel for the appellants is not correct on both counts. It is contended that learned Claims Tribunal after applying the appropriate

multiplier, awarded just and proper amount of compensation, which does not call for any interference.

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

10. Perusal of record of the claim case would show that the claimants in support of their claim has filed documents from Ex. P-1 to Ex. P-5, which are prepared by the Police and Doctor who conducted postmortem report; medical bills from Ex. P-6 to Ex. P-15 and bill of expenditure towards repairing of the motorcycle as Ex. P-16. To prove the income of deceased, claimants have placed on record the documents showing the income during the period from 01/01/2011 to 31/03/2011 as Ex. P-17, 01/04/2010 to 30/06/2010 as Ex. P-18, 01/07/2010 to 30/09/2010 as Ex. P-19 and 01/10/2010 to 31/12/2010. These are quarterly returns submitted by the deceased under Section16-A of the Income Tax Act, 1961. The claimants have also placed on record the payment statement of Singh Transporters as Ex. P-22 and to prove the annual income, they have filed Form 26AS as Ex. P-23 for the year 2009-2010, Ex. P-24 for the year 2011-12 and Ex. P-25 for the year 2012-13 issued by the Income Tax Department.

11. Perusal of Form No.16-A for the period from 01/01/2011 to 31/03/2011, the amount paid/credited has been shown in the

name of the deceased as Rs.3,09,746/-, for the period from 01/04/2010 to 30/06/2010 as Rs.55,331/-, for the period from 01/07/2010 to 30/09/2010 as Rs.44,335/- and for the period from 01/10/2010 to 31/12/2010 as Rs.1,68,811/-, which are evident from Ex. P-17 to Ex. P-20. Likewise, Ex.P-24 is Form 26AS issued by the Income Tax Department in the name of Ramesh Chand Jaiswal, in which, the deduction has been made towards tax is Rs.5,781/- on the credited amount of Rs.5,78,223/-. This deduction has been made under Section 194C of the Income Tax Act, 1961 towards payments to contractors.

12. From the documents shown and placed on record of the Income Tax Department deducting 'tax at source' shows that the deceased was engaged as a contractor. The acknowledgement of income tax return for the period 2010-11 has not been placed on record before learned Claims Tribunal to show the exact personal income of the deceased, but the document, which is placed on record is the document showing 'tax deducted at source only'. The payment made under the documents as mentioned above in the facts and circumstances of the case where it has been shown that the tax has been deducted at source under Section 194C of the Income Tax Act, 1961 cannot be taken as income of the deceased. In facts of the case at hand where personal income is not shown, the income from the business can be

taken as 20% from the receipts of business, therefore, in the facts and circumstances of the case, where the total receipts for the period from 01/04/2010 to 31/03/2011 as shown in Form 26AS (Ex. P-24) as Rs.5,78,223/- and by applying formula of 20% profit from the business, income of the deceased comes to Rs.1,15,644.6/- rounding it off as Rs.1,15,645/- per annum.

13. Learned Claims Tribunal without considering the aforementioned documents i.e. Ex. P-17 to Ex. P-20 as well as Ex. P-24 placed on record by the claimants in support of the prove of income of deceased has erroneously assessed the income as Rs.60,000/- per annum, which cannot be sustainable and it is hereby set aside. In the considered opinion of this Court, the income of deceased is taken as Rs.1,15,645/- per annum for the purpose of calculating the amount of compensation.

14. The second ground raised by learned counsel for the appellants/claimants that award of medical expenses by learned Claims Tribunal to be contrary of the document placed on record and the same is on lower side is concerned, perusal of bill dated 20/06/2012 (Ex. P-6) of Chandulal Chandkar Memorial Hospital where the deceased took treatment as inpatient from the date of accident till his death would show the total medical expenditure as Rs.41,815/-. In the considered opinion of this Court, the

claimants will be entitled for actual medical expenditure incurred by them for treatment of the deceased as appearing from Ex. P-6 i.e. Rs.41,815/-.

15. The other ground raised by learned counsel for the appellants/claimants with regard to age of the deceased, learned counsel of the appellants/claimants stated that learned Claims Tribunal has erroneously held the age of the deceased as 58 years contrary to the date mentioned in the documents placed on record of Income Tax Department to be 52 years.

16. In view of above argument raised by learned counsel for the appellants, we have pin-pointed put query to learned counsel to show, in which document, date of birth of the deceased has been mentioned to ascertain the actual age of the deceased, but learned counsel for the appellants failed to point out the date of birth of deceased. From other documents available on record i.e. postmortem report (Ex. P-5), in which, the doctor conducted postmortem has mentioned the age of deceased as 58 years. From perusal of Ex. P-6, which is a discharge summary bill of deceased would also show the age of deceased as 58 years. In view of aforementioned documents i.e. postmortem report (Ex. P-5) and discharge summary bill (Ex.P-6), we do not find any error in considering the age of deceased as 58 years.

17. Learned Claims Tribunal committed error in applying the multiplier of 8 instead of 9 and deduction of 1/3rd in view of the law laid down by Hon'ble Supreme Court in the matters of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[1] and **National Insurance Co. Ltd. v. Pranay Sethi**[2]. Learned Claims Tribunal has awarded only Rs.15,000/- towards medical expenses, which is erroneous and the claimants will be entitled for the entire amount of Rs.41,815/- towards medical expenses incurred by them as mentioned in Ex. P-6.

18. Learned Claims Tribunal has awarded only Rs.15,000/- towards other conventional heads, which is on lower side in view of dictum of Hon'ble Supreme Court in the matters of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others**[3]**.**

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

As discussed above, the income of deceased is assessed by this Court as Rs.1,15,645/- per annum. On the date of accident, deceased Ramesh Chand Jaiswal was

1 **(2009) 6 SCC 121**
2 **(2017) 16 SCC 680**
3 **(2018) 18 SCC 130**

shown to be in age group between 56-60 years, therefore, in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra), there will be an addition of 10% of the income towards future prospects. By adding 10% of the income towards future prospects, the total annual income of deceased will come to Rs. 1,27,209/- (1,15,645 x 10% = 11,564 and 1,15,645 + 11,564). On the date of accident, the deceased was survived by four claimants, therefore, in view of dictum of Supreme Court in **Sarla Verma** (supra), 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.95,407/- (1,27,209 / 4 and 1,27,209 – 31,802). As it is held the age of the deceased to be 58 years, the appropriate multiplier would be 9. By applying the multiplier of 9, the amount of compensation will come to **Rs.8,58,663/-** (95,407 x 9). 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, **Rs.15,000/-** towards funeral expenses, **Rs.41,815/-** towards medical expenditure, **Rs.10,000/-** towards pain and suffering, looking to the period of treatment of deceased as inpatient and

Rs.10,000/- towards transportation for carrying deceased from the place of accident i.e. Rajhara to Bhilai and return.

20. Now, the appellants/claimants are entitled for total compensation of **Rs.10,30,478/-** (8,58,663 + 40,000 + 40,000 + 15,000 + 15,000 + 41,815 + 10,000 + 10,000) instead of Rs.3,50,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. The liability to satisfy the amount of compensation will be upon respondent No.3 as held by Claims Tribunal.

21. From the aforementioned amount of compensation, appellant/claimant No.1 being widow of the deceased will be entitled for 50% of total amount of compensation and rest of the 50% of balance amount of compensation to be disbursed equally to appellants/claimants No. 2 to 4. The other conditions imposed by learned Claims Tribunal shall remain intact.

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

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

Yogesh