NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 913 of 2013

1. Smt. Santoshi Bai Sahu, aged about 34 years, wife of late Krishna Ram Sahu
2. Bhagirathi Sahu, aged about 17 years, son of late Krishna Ram Sahu
3. Avan Sahu, aged about 16 years, son of late Krishna Ram Sahu

   Appellants no. 2 & 3 are minor through legal guardian mother Smt. Santoshi Bai Sahu wife of late Krishna Ram Sahu,
4. Kheduram Sahu, aged about 78 years, son of late Aasharam Sahu,
5. Smt. Bhagbati, aged about 70 years, wife of Kheduram Sahu,

   All are resident of village-Karhibhadar, Police Station & Tahsil-Balod, Civil District-Durg, Revenue District-Balod (C.G.).

---- Appellants

Versus

1. Chitranjan Yadav, aged about 35 years, son of Madanlal Yadav, resident of Ganjpara, Balod, Police Station & Tahsil-Balod, Civil District-Durg, Revenue District-Balod (C.G.).
2. D.P. Pandey son of S.S. Pandey resident Dalli Road, Aamapara, Balod, Police Station & Tahsil-Balod, Civil District-Durg, Revenue District-Balod (C.G.).
3. United India Insurance Company Limited, through the Branch Manager, Branch Office, Paras Complex, near Gurudwara, Station Road, Durg, Tahsil & Police Station-Durg, Civil & Revenue District-Durg (C.G.).
4. Vijay Yadav, aged about 36 years, son of Sawantram Yadav resident Kundrapara, Balod, Police Station & Tahsil-Balod, Civil Disrict-Durg, Revenue District-Balod (C.G.).
5. Ketan Patel resident of C/o M/s Bhagwati Timber, Ganjpara, Balod, Police Station & Tahsil-Balod, Civil District-Durg, Revenue District-Balod (C.G.).
6. Universal C.P. General Insurance Company Limited through the Branch Manager, Branch Office, Raipur, Tahsil & Police Station-Raipur, Civil & Revenue District-Raipur (C.G.).

---- Respondents

For Appellants	:	Mr. Avinash Chand Sahu, Advocate
For Respondents No.1 & 2	:	None
For Respondent No.3	:	Mr. H.B. Agrawal, Senior Advocate with Ms. Richa Dwivedi, Advocate
For Respondents No.4 & 5	:	None
For Respondent No.6	:	Mr. Amrito Das and Ms. Pratibha Das, Advocates

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

29.01.2020

1. This appeal has been filed by appellants/claimants 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 04.12.2012 passed by Additional Motor Accident Claims Tribunal, Balod, District Durg (now District Balod), Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.54 of 2011, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.6,11,000/- as compensation along with interest at the rate of 6% per annum from the date of filing of claim application till its realization in a death case.

2. The facts of the case in nutshell, are that, on 03.03.2011 when one Krishna Ram Sahu was returning his home from his work place on the bicycle, at that relevant time, one Truck bearing registration No.CG08/B/1825, which was towing another Truck bearing registration No.CG12/C/0589, dashed the bicycle of Krishna Ram Sahu from front side and caused accident. In the aforementioned accident, Krishna Ram Sahu suffered grievous injuries over his person and succumbed to the injuries on the spot. The accident was reported to the concerned Police Station, based on which, Crime No.105/2011 was registered against the drivers of both the Trucks.

3. The appellants who are claimants have filed claim application under Section 166 of the M.V. Act before the concerned Claims Tribunal claiming Rs.15,24,000/- as compensation on account of accidental death of Krishna Ram Sahu pleading therein that the deceased was working as Mason and thereby earning Rs.250/- per day. It was also pleaded that they were dependent on the deceased.

4. Non-applicants No.1, 2, 4 and 5 have submitted reply to the claim application jointly and pleaded that the drivers of both the Trucks were possessing valid and effective driving license, the accident took place on account of rash and negligent driving of the bicycle by the deceased himself. It was also pleaded that both the Trucks were insured with the Insurance Company. One of the Truck i.e. CG08/B/1825 was insured with respondent No.3 and another Truck i.e. CG12/C/0589 was insured with respondent No.6. The liability, if any, for payment of amount of compensation will on the Insurance Company.

5. Non-applicant No.3 submitted reply to claim application and pleaded therein that on the date of accident, it is insurer of Truck bearing registration No.CG08/B/1825, but on the date of accident, the Truck was being driven in violation of conditions of insurance policy as the driver of the Truck was not possessing valid and effective driving license; there was no valid permit and fitness of the Truck on the date of accident. It was also pleaded that the claim made by the appellants/claimants are exaggerated.

6. Non-applicant No.6 submitted reply to claim application and pleaded that on the date of accident, it is insurer of Truck bearing registration No.CG12/C/0589, but the accident took place with the Truck No.CG08/B/1825 and there was no negligence on the part of driver of Truck No.CG12/C/0589. It was further pleaded that as the accident took place with the Truck No.CG12/C/0589, the driver, owner and insurer of said Truck will be liable for payment of amount of compensation, if any.

7. On appreciation of the pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal arrived at a finding that accident took place on account of negligence of both the drivers, the claimants failed to prove the income of the deceased, the income was assessed on notional basis as Rs.150/- per day i.e. Rs.4,500/- per month and by applying the multiplier of 16, awarded a total compensation of Rs.6,11,000/- holding the non-applicants jointly and severally liable for payment of amount of compensation.

8. Mr. Avinash Chand Sahu, learned counsel appearing for the appellants/claimants submits that the learned Claims Tribunal committed an error in not considering the income of the deceased as pleaded in the claim application and also proved by the witness Gaukaran (AW-4), who is contractor. He further submits that the learned Claims Tribunal has committed an error in not awarding any amount of compensation towards loss of future prospects and further that the amount awarded on other conventional heads is on the lower side.

9. Mr. H.B. Agrawal, learned senior counsel appearing for respondent No.3 submits that the learned Claims Tribunal has taken into consideration the income of the deceased on notional basis, which do not call for any interference because the income could not be proved by the appellants/claimants by producing document or reliable piece of evidence. He further submits that the amount of compensation awarded by learned Claims Tribunal is just and proper and needs no interference.

10. Mr. Amrito Das, learned counsel appearing for respondent No.6 submits that though the income of the deceased has been claimed as Rs.250/- per day, but no admissible piece of evidence has been produced by the appellants/claimants before the learned Claims Tribunal. The learned Claims Tribunal is justified in assessing the income of the deceased on notional basis. He further submits that the amount of compensation awarded by learned Claims Tribunal is just and proper in the facts and circumstances of the case, which do not call for any interference.

11. I have heard learned counsel appearing for the respective parties and perused the record carefully.

12. So far as the submission made by learned counsel appearing for the appellants/claimants that the learned Claims Tribunal has assessed the income of deceased as Rs.4,500/- per month to be erroneous is concerned, the claimants have pleaded the income of deceased in claim application as Rs.250/- per day. To prove the income of the deceased, the claimants have examined Santoshi Bai Sahu (AW-1), Kartik (AW-2), Rajendra Kumar Sahu (AW-3) and Gaukaran. (AW-4). Santoshi Bai Sahu (AW-1) widow of deceased Krishna Ram Sahu and she has only made oral statement with regard to income of the deceased. Kartik (AW-2) is a friend of deceased and engaged in the work of Mason. He stated that he and deceased Krishna Ram Sahu were working under Gaukaran (AW-4) and the deceased was getting Rs.250/- per day as wages. In cross-examination, he admitted that he is not having any document with respect to the wages they were paid by the contractor. Rajendra Kumar Sahu (AW-3) has stated that he is Secretary of the Mason Welfare Association and deceased was registered with the Mason Welfare Association at Sl. No.690. Gaukaran (AW-4) stated that the deceased was working under him and was getting wages at the rate of Rs.250/- per day. In cross-examination, he stated that he is not having any register or document showing the payment made to the deceased as wages. He also admitted that he is not having any license of contractor-ship; he is not having any certificate nor he has issued the income certificate to the claimants as a contractor.

13. Ongoing through the aforementioned evidence placed on record by the appellants/claimants before the learned Claims Tribunal, it is apparent that the claimants have not produced any documentary evidence with respect to income of the deceased. Gaukaran (AW-4) who is said to be a contractor, under whom, the deceased was working has not maintained any record of engagement of the deceased with him as Mason and also having no record showing payment of wages made by him to deceased Krishna Ram Sahu. Engagement of deceased Krishna Ram Sahu as Mason is only proved by Rajendra Kumar Sahu (AW-3) who has been examined and stated that he is Secretary of Mason Welfare Association and his name is entered in Exhibits P-13 to P-19. The claimants have not proved the income of deceased by producing cogent and reliable piece of evidence except oral evidence, which cannot be considered as the proved income for assessing the income of deceased Krishna Ram Sahu.

14. When income is not proved then the proper course for assessing the income of deceased is on the notional basis based on his engagement and nature of employment. In the instant case, employer has proved the engagement of deceased as Mason, which comes under the category of skilled labour. Learned counsel appearing for the appellant submitted that for assessing the income on the basis of notional income, the Collector rate fixed within the District Balod and prevailing in State will be the best method and at that relevant time, as per chart available with him, notional income of the skilled labour is fixed as Rs.4,361/-.

15. Looking to the statements made by learned counsel for the appellants and the documents relied upon by him, learned Claims Tribunal has assessed the income of deceased as Rs.4,500/- per month, which is more than the Collector rate fixed for the skilled labour, therefore, in the opinion of this Court, learned Claims Tribunal has rightly assessed amount of monthly income of deceased, which do not call for any interference.

16. The learned Claims Tribunal has deducted 1/3rd amount of monthly income towards personal and living expenses of the deceased is not correct looking to the number of dependents as 5 (five). The amount towards personal expenses to be deducted from the income of the deceased has been decided by the Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[1] wherein the Hon'ble Supreme Court has specifically held that in case where the dependents are four to six in number, 1/4th amount should be deducted from the income of the deceased towards his personal expenses. In the case at hand, number of claimants are five. The

1 **(2009) 6 SCC 121**

appropriate deduction should be 1/4th instead of 1/3rd.

17. Further, the learned Claims Tribunal has also not awarded any amount of compensation towards future prospects. On the date of accident, as per postmortem report (Exhibit P-6), the deceased has been shown to be 35 years of age, which is less than 50 years, therefore, in view of the law laid down by the Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**[2], the claimants are also entitled for the additional amount of 40% of the proved income towards future prospects.

18. The learned Claims Tribunal has awarded only Rs. 35,000/- towards other conventional heads, which is on the lower side. The amount towards conventional heads is also fixed by the Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra). In view of the law laid down in aforementioned case, the claimants are entitled for the amount of Rs.70,000/- towards other conventional heads.

19. In view of aforementioned discussions and law laid down by Hon'ble Supreme Court in the aforementioned cases, in the considered opinion of this Court, just and proper amount of compensation is to be awarded to the claimants. For the reasons stated herein-above, the amount of compensation to be awarded to the appellants/claimants requires recalculation which is in following terms :-

2 **AIR 2017 SC 5157**

The learned Claims Tribunal taken the monthly income of the deceased as Rs.4,500/- and by adding 40% towards loss of future prospects i.e. Rs.1,800/-, the monthly income of the deceased comes to Rs.6,300/- and yearly income comes to Rs.75,600/-. After deducting 1/4th towards his personal expenses i.e. Rs.18,900/- (75,600 / 4), the yearly dependency of the claimants comes to Rs.56,700/-. As at the time of accident, the deceased was shown to be aged about 35 years, therefore, multiplier of 16 would be applicable in the present case. After applying the multiplier of 16, the total loss of dependency comes to Rs.9,07,200/- (56,700 x 16). In addition to the aforesaid amount of compensation, the appellants/claimants are also entitled for a total sum of Rs.70,000/- towards conventional heads.

20. On the basis of above recalculation, the appellants/claimants will be entitled for total compensation of Rs.9,77,200/- (9,07,200 + 70,000) instead of Rs.6,11,000/- as awarded by the learned Claims Tribunal. The amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.

21. The appeal is allowed in part and impugned award dated 04.12.2012 is modified to the extent indicted herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh