NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 492 of 2015

Reserved on. 06.08.2020
Pronounced on. 11.08.2020

1. Smt. Santra Devi W/o Late Triveni Sah Aged About 40 Years R/o Village Meuda P.S. And Tehsil Kudara Distt. Kaimur Bihar.
2. Indrajeet Kumar Prasad S/o Late Triveni Sah Aged About 16 Years Minor Through Natural Guardian Mother Smt. Santra Devi R/o Village Meuda P.S. And Tehsil Kudara Distt.- Kaimur Bihar.
3. Madhubala Kumari D/o Late Triveni Sah Aged About 15 Years Minor Through Natural Guardian Mother Smt. Santra Devi R/o Village Meuda P.S. And Tehsil Kudara Distt.- Kaimur Bihar.
4. Shailendra Kumar Gupta S/o Late Triveni Sah Aged About 12 Years Minor Through Natural Guardian Mother Smt. Santra Devi R/o Village Meuda P.S. And Tehsil Kudara Distt.- Kaimur Bihar. **---- Appellants**

Versus

1. Shivprasad Yadav S/o Bachaou Yadav Aged About 25 Years Occupation-Driver, R/o Village Sahijankhurd P.S. And Tahsil Rabertsganj U.P.
2. Shyamanand S/o Ramprasad aged major Occupation- Owner R/o Village Sahijankhurd P.S. And Tahsil Rabertsganj U.P.
3. Branch Manager New India Insurance Company Limited Branch Office Braham Road Ambikapur Distt- Surguja Chhattisgarh.
4. National Insurance Company Ltd Mandal Office Taha Complex Ring Road No. 1 Priyadarshani Nagar Bilaspur Distt. Bilaspur Chhattisgarh. **---- Respondents**

For Appellants:	: Shri A.N. Pandey, Advocate
For Respondent No. 3:	: Shri Samir Singh, Adovate.
For Respondent No. 4:	: Shri R. N. Pusty, Adovocate.

Hon'ble Shri Justice Sanjay S. Agrawal
CAV Judgment/order

1. The Claimants have preferred this appeal questioning the legality and propriety of the award dated 05.07.2014 passed by the Additional Motor Accident Claims Tribunal, Ramanujganj, District Balrampur Ramanujganj (hereinafter referred to as 'the Tribunal') in Claim Case No. 21/2013, whereby, the Tribunal has awarded a total amount of

compensation to the tune of Rs.6,50,000/- (Rupees Six Lakhs Fifty Thousand Only) with 9% interest per annum from the date of award till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description in the Tribunal.

2. Briefly stated the facts of the case are that on 24.03.2013, the deceased Triveni Sah was returning to his village Meuda, District Kaimur (Bihar) along with others by a Qualis Car bearing Registration No. CG-07-1950, which was owned by one Bhagwan Sah and was insured with Non-Applicant No. 4/National Insurance Company Limited. It was being driven by its driver Guna cautiously and as soon as, they reached near the village Aragahi, it was dashed vehemently with the standing vehicle 'Truck', bearing Registration No. UP 64-H-3537, which was parked over there by its driver Shivprasad Yadav, in a negligent manner without showing its indicators. Owing to which, the alleged accident occurred which caused the sad demise of as many as 4 persons including the deceased Triveni Sah. The alleged offending vehicle 'Truck' was owned by Non-Applicant No. 2/Shyamanand and was insured with Non-Applicant No. 3/New India Insurance Company Limited. A criminal case was registered against the driver of the alleged offending vehicle 'Truck' in Police Station Ramanujganj in connection with the Crime No. 36/2013 under Section 279, 337 and 304 (A) of I.P.C. and the charge sheet was thereafter submitted after its investigation before the Chief Judicial Magistrate, Ramanujganj.

3. On account of the alleged accident, the claimants, who are widow and children of the deceased Triveni Sah instituted a claim petition under Section 166 of the Motor Vehicles Act of 1988 (hereinafter referred to as

the 'Act of 1988') by submitting *inter alia* that the deceased, a 45 years old, was engaged in cloth business and used to earn Rs.10,000/- (Rupees Ten Thousand Only) per month and, thus, have claimed total amount of compensation of Rs.19,90,000/- (Rupees Nineteen Lakhs and Ninety Thousand Only) under various heads.

4. Non-Applicants have contested the aforesaid claim and the Tribunal after considering the evidence led by the parties has arrived at a conclusion that the alleged accident occurred due to the contributory negligence of driver of both the vehicles and are equally responsible for it. It held further that the vehicle in question, i.e., 'Truck' was not being used in violation of the Insurance Policy as alleged by the insurer of it and that by considering the monthly income of the deceased to the tune of Rs. 5,000/- (Rupees Five Thousand Only), awarded total amount of compensation along with its interest as mentioned herein above.

5. Being aggrieved, the claimants have preferred this appeal. Shri Pandey, learned counsel appearing for the Appellants/Claimants submits that the Tribunal while passing the award under appeal ought to have considered the future prospects of the income of the deceased in order to provide just and fair compensation payable to the Claimants. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of **National Insurance Company Limited vs. Pranay Sethi** reported in **(2017) 16 SCC 680.**

6. On the other hand, learned counsel for the Respondents have supported the award impugned as passed by the Tribunal.

7. I have heard learned counsel for the parties and perused the entire record carefully.

8. The only issue involved in this appeal is, as to whether just and fair amount of compensation payable to the claimants have been awarded or not. According to the Claimants, the deceased was engaged in cloth business and used to earn Rs.10,000/- per month, but have failed to produce any cogent and reliable evidence in order to establish the said fact. In absence thereof, the Tribunal has rightly assessed his monthly income to the tune of Rs. 5,000/-. It however, appears that while determining the amount of compensation, future prospects of his income has not been taken into consideration, though required to be added by 25% of his monthly income, as he was a self employed and was 45 years old at the relevant time, in the light of the principles laid down by the Supreme Court in the matter of **National Insurance Company Limited vs. Pranay Sethi and others** (supra).

9. Considering the monthly income of the deceased to the tune of Rs.5,000/-, yearly Rs.60,000/- and that by adding 25% of it, i.e., Rs.15,000/-, towards future prospects of his income, the annual dependency would be worked out at Rs.75,000/- (Rs.60,000/- +Rs.15,000/-). Since the number of dependents upon the deceased was 4, therefore, 1/4th of his income, i.e., Rs.18,750/- is required to be deducted towards his personal and living expenses. The yearly dependency would, thus, be arrived at Rs.56,250/- (Rs.75,000/- – Rs.18,750/-). As the age of the deceased at the time of accident was 45, the multiplier applicable would be 14 in the light of the principles laid down by the Supreme Court in the matter of ***Sarla Verma (Smt) And Others*** vs. ***Delhi Transport Corporation And Another*** reported in **(2009) 6 SCC 121**. As such, by applying the multiplier of 14, the total

dependency would come to Rs.7,87,500/-.

10. Besides, the widow and minor of the deceased are entitled to be awarded loss of consortium under the head of spousal and parental consortium as held in the matter of ***Magma General Insurance Company Limited*** vs. ***Nanu Ram Alias Chuhru Ram And Others*** reported in **(2018) 18 SCC 130**. Consequently, in addition, the claimants are entitled to the following amounts towards conventional heads:-

	Mode of Compensation	**Amount (In Rs.)**
(i)	For loss of consortium to wife	40,000/-
(ii)	For loss of parental consortium to their minors @ Rs.40,000/- each	1,20,000/-
(iii)	For funeral expenses	15,000/-
(Iv)	Loss of estate	15,000/-
	Total	Rs.1,90,000/-

11. The claimants would, thus, be entitled to a total amount of compensation to the tune of Rs.9,77,500/- (Rs.7,87,500/-+ Rs.1,90,000/-), with 6% interest per annum from the date of filing of the claim petition till the date of actual payment.

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

Sd/-
(Sanjay S. Agrawal)
JUDGE

Vivek