NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1062 of 2015

- Nurul Huqe S/o Dil Mohammad Aged About 28 Years R/o Village- Narayanpur P. S.- Premnagar Distt- Surajpur, Chhattisgarh Owner

---- Appellant

Versus

1. Chait Ram S/o Late Tilochan Ram Aged About 50 Years Occupation- Agriculturist
2. Amrit Bai W/o Chait Ram Aged About 48 Years Occupation- Agriculturist
3. Bandhan Singh S/o Chait Ram Aged About 15 Years
4. Dewati D/o Chait Ram Aged About 15 Years Occupation- Student

   Respondents 3 and 4 minors through natural guardian appellant-1, father Chait Ram

   All are Cast- Kanwar R/o Village- Kathmunda P. S.- Premnagar Tahsil- Udaipur Distt- Surajpur, Chhattisgarh
5. Narayan Singh S/o Jamuna Prasad Aged About 42 Years Occupation- Driver R/o Village- Narayanpur P. S.- Premnagar Tahsil- Udaipur Distt- Surajpur Chhattisgarh Occupation- Driver

---- Respondents/Non-Applicants

For Appellant	:	Shri AN Pandey, Advocate
For Respondents-1 to 4	:	Shri Samir Singh, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

04.11.2020

1. NA2, Owner of offending vehicle bearing No.CG 16 ZD/0465 has preferred this appeal under Section 173 of Motor Vehicle Act, 1988 challenging the impugned award dated 04.05.2015 passed by the Motor Accidents Claims Tribunal, Surajpur, Distrct Sarguja (For short, 'Claims Tribunal') in Claim Case No.59 of 2014 whereby learned Claims Tribunal allowed application under Section 166 of the Act of 1988 in part and awarded a total sum of Rs.3,49,000/- as compensation in a fatal accident, fastening liability upon Owner and Driver of offending vehicle.

2. Facts of the case in nutshell are that on 30.12.2013, Tuleshwar Singh was travelling on the offending vehicle and going to village Namna. On the way when the offending vehicle reached near village Phulchuhi, at that relevant time, NA1, driver of offending vehicle drove the vehicle rashly and negligently and got the vehicle turned turtle. In the aforementioned accident, Tuleshwar Singh came under the vehicle and suffered grievous injuries. On the way to hospital at Udaipur, he succumbed to the injuries. Accident was reported to concerned Police Station, based upon which Crime was registered against NA1 and after completion of investigation, charge-sheet was filed before the Court of Jurisdictional Magistrate.

3. Claimants, who are siblings of deceased filed application under Section 166 seeking compensation of Rs.7,76,000/- pleading therein that on the date of accident, deceased was earning Rs.5,000/- per month from the agriculture work and by providing tuition.

4. NA1 and 2, driver and owner of offending vehicle submitted reply to the claim application denying the facts pleaded therein. It was further pleaded that on the date of accident, deceased was only 14-15 years of age; no accident was caused with the offending vehicle; and the case filed is on fabricated grounds.

5. Upon appreciation of pleadings and evidence by respective parties, learned Claims Tribunal held that the deceased died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by NA1 and awarded Rs.3,49,000/- as compensation.

6. Shri AN Pandey, learned counsel for the appellant/Owner of offending vehicle submits that learned Claims Tribunal erred in holding that the deceased died on account of motor accidental injuries suffered by him with the offending vehicle. He contended that the Tribunal has not considered the evidence of DW1 Narayan Singh and DW 2 Durga Prasad Yadav and arrived at a wrong finding. He further submits that there is no involvement of offending vehicle, owned by the appellant in the accident. He next contended that learned Claims Tribunal erred in assessing income of deceased, who is stated to be aged 17 years as Rs.3,000/- per month. He submits that the appellants in their reply very specifically pleaded age of the deceased to be 14-15 years only and lastly, he contended that out of four claimants, two are siblings of deceased, who cannot said to be dependants upon the deceased, as they are dependants on their parents, who are already arrayed as claimants in the claim application. Tribunal erred in applying deduction of ½ towards personal and living expenses.

7. Per contra, Shri Samir Singh, learned counsel for the claimants/respondents 1 to 4 opposes the submission made by learned counsel for the appellant. He contended that after the accident, FIR was filed against NA1, driver of offending vehicle, after investigation of crime, the investigating officials have found that the accident took place on account of rash and negligent driving and consequently, charge-sheet was filed against him before the Court of Jurisdictional Magistrate. He fairly submits that the Tribunal in fact, erred in assessing less income of the deceased but has rightly applied deduction of ½, as on the date of accident, deceased was bachelor, which is in accordance with law laid

down by Hon'ble Supreme Court in case of **Sarla Verma and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121. Lastly, he contended that the submission of learned counsel for the appellant that income assessed by the Claims Tribunal is on higher side is also not sustainable, rather it is much on lower side and the claimants preferred cross-objection for enhancement of amount of compensation awarded by the Claims Tribunal. No amount of compensation towards future prospects has been awarded and meagre amount has been awarded on other conventional heads. He also contended that as per ruling of Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in (2017) 16 SCC 680, there will be increase of 10% on the amount to be awarded under other conventional heads. He referred Paragraphs-59.4 & 59.8 of the said judgment in support of his contention.

8. I have heard learned counsel for the parties and perused the record of claim case.

9. To appreciate the submissions of learned counsel for the appellant/ owner, have perused record of claim case, wherein the claimants in support of their claim application, placed on record copy of documents of Criminal case. Final report is placed on record as Ex.A1, FIR as Ex.A2, Morgue intimation as Ex.A3 and A4, Crime detail form as Ex.A5, Post-mortem report as Ex.A11 and Supurd Gyapan as Ex.A13, apart from other documents.

10. Perusal of aforementioned documents would show, in the FIR, which was registered against driver of offending vehicle, the contents of FIR mentions that near village Phulchuhiya, offending vehicle turned turtle and deceased who was occupant of the vehicle came under it. Crime detail Form Ex.A5 shows the Spot Map in which it is also mentioned that at place 'C' the offending vehicle turned turtle. After completion of investigation, Police submitted Final Report/Charge-sheet against driver of offending vehicle vide Ex.A1. The proceeding of registration of Criminal Case and trial of Nai before the Court of Jurisdictional Magistrate was not put to challenge before any higher Police Office or authority or before any Court of law.

11. In view of aforementioned facts of the case, submission of learned counsel for the appellant that the offending vehicle was not involved in the accident and it was falsely implicated, is not sustainable and it is hereby repelled.

12. The finding recorded by the Tribunal with regard to the involvement of offending vehicle and negligence on the part of NA1 is based on facts and evidence available on record and I do not find any infirmity in the finding recorded by the Claims Tribunal in this regard.

13. So far as the next ground raised by learned counsel for the appellant regarding the assessment of income of deceased as Rs.3,000/- per month, un-disputedly, accident is of 30.12.2013. Deceased was held to be 17 years of age and resident of rural area. The person of age of 17 years like the deceased cannot be presumed to be non-working person.

14. The object of the Act is to award just compensation. Even if for any reason, claimant failed to seek compensation on any head, it is bounden duty of the Courts to award compensation on all heads which makes the total compensation to be just. Tribunal assessed income of the deceased only as Rs.3,000/- per month. The income assessed cannot be said to be on higher side. I will consider income part along with the cross-objection.

15. The submission made by learned counsel for the appellant that out of four claimants, two are siblings and dependants on father, who is impleaded as claimant-1 and therefore, deduction to be less than 1/2 is also not sustainable. Learned Claims Tribunal has considered the percentage of deduction to be made in cases of married and unmarried persons. Hon'ble Supreme Court in case of **Sarla Verma** (supra) held that in the case of unmarried/bachelor, there will be deduction of ½ only. Tribunal has deducted ½ towards personal living expenses, which cannot be said to be erroneous. Hence, this submission of learned counsel for the appellant is repelled.

16. In view of above, appeal filed by the owner being without any merit and substance, it is liable to be and it is hereby dismissed.

17. So far as the cross-objection filed by the respondents 1-4 /claimants is concerned, learned counsel for the appellant argued that claims Tribunal has assessed income as Rs.3,000/-only per month instead of Rs.5,000/- as the deceased was providing tuitions to the children. Upon going through the records of claim case, it is apparent that claimants have not placed on record any certificate or mark-sheet showing the

qualification of deceased to consider that the deceased on the date of accident was providing tuition. In absence of any material placed on record and any record showing education qualification of deceased, the submission of learned counsel for the respondents-1 to 4/claimants that the deceased was engaged in occupation of providing tuitions is not sustainable and it is hereby repelled.

18. The date of accident is of 30.12.2012. Income pleaded was nto proved by the claimant by placing on record admissible piece of evidence, hence, the income of the deceased is to be assessed on notional basis taking into consideration date of accident, price index, cost of living and wage structure. Taking into consideration overall aspect of the case, I find it appropriate to assess the income of deceased as Rs.4,000/- per month.

19. Undisputedly, the deceased was aged about 17 years on the date of accident, which is less than 40 years, hence, there will be addition of 40% of established income towards future prospects, in view of ruling of Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others reported in** (2017) 16 SCC 680.

20. The claimants are also entitled for award of Rs.40,000/- towards loss of fillial consortium and Rs.15,000/- each for loss of estate and funeral expenses. The amount of compensation fixed on other conventional heads is to be increased by 10% after every three years, as the date of pronouncement of above judgment by Hon'ble Supreme Court is of 31st October, 2017. Hence, there will be increase of 10% in the amount of compensation on other conventional heads, as quantified therein.

21. For the foregoing reasons, I propose to re-calculate/recompute the compensation as under:

a) Income of the deceased as assessed by the Tribunal is Rs.4,000/- per month and Rs.48,000/- per annum.

b) By adding 40% to the established income of the deceased, total yearly income of the deceased comes to Rs.67,200/- {48000 + (48000 x 40/100)}.

c) After deducting ½ (50%) towards his personal and living expenses from the yearly income of the deceased, yearly loss of dependency comes to Rs.33,600/- {67200 – (67200x1/2)}.

d) As the deceased on the date of accident was between 17 years of age, therefore, appropriate multiplier would be 18. By multiplying yearly loss of dependency with multiplier of 18, total loss of dependency comes to Rs.6,04,800/- (33600 x 18).

e) Apart from the above total loss of dependency, claimants are further entitled for Rs.44,000/- {40000 + (40000 x 10/100)} towards fillial consortium, Rs.16,500/- {15000 + (15000 x 10/100)} towards funeral expenses and Rs.16,500/- {15000 + (15000 x 10/100)} towards loss of estate.

22. Now, respondents-1 to 4/claimants are entitled for a total sum of **Rs.6,81,800/-** (604800 + 44000 + 16500 + 16500) instead of Rs.3,49,000/- as awarded by the learned Claims Tribunal. This amount of compensation shall carry interest @ 8% per annum from the date of filing of claim

application till its realisation. Other conditions imposed by the Claims Tribunal will remain intact.

23. In the result, appeal filed by the owner of offending vehicle is dismissed and cross-objection filed by the claimants for enhancement of compensation is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma