NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1045 of 2015

1. Smt. Giriraj Singroul, Wd/o Late Pradeep Kumar Singroul, aged about 38 years.
2. Raghvendra Kumar, S/o Late Pradeep Kumar Singroul, aged about 20 years
3. Kumari Shanta Singroul, D/o Late Pradeep Kumar Singroul, aged about 17 years/
4. Dhirendra Singroul, S/o Late Pradeep Kumar Singroul, aged about 15 years.
5. Smt. Indira Bai, Wd/o Late Chetan Ram Singroul, aged about 60 years
   No.3 & 4 are minors through natural guardian mother Smt. Giriraj Singroul, Wd/o Late Pradeep Kumar Singroul.
   All are R/o Village Mouhakhar (Rani Sagar) Tahsil and Police Station Kota, District Bilaspur (CG)

---- Appellants

Versus

1. Bajaj Allianz General Insurance Company Limited, through Branch Manager, Branch Office, Lal Ganga Shopping Mall Complex, G.E. Road, Pandri, Raipur, Tahsil and District Raipur (CG)
   (Insurer of alleged offending vehicle bearing No CG10-EP 9033)
2. Rakesh Gupta, S/o Late Lakhanlal Gupta, R/o Mahashakti Chowk, Main road Kota, Police Station and Tahsil Kota District Bilaspur (CG)
   Driver of alleged offending vehicle bearing No C.G.-10-E.P.-9033.
3. Lekhram Sahu, S/o Dwarika Prasad Sahu, R/o Village Bardwar, Post Kota, Police Station and Tahsil Kota, District Bilaspur (CG)
   Owner of alleged offending vehicle bearing No.CG-10-EP.-9033

---- Respondents

For Appellants	:	Shri PK Tulsiyan, Advocate under the authority of Shri Anil Gulati, Advocate
For Respondent No.1	:	Shri SS Rajput, Advocate.

Order On Board By Hon. Shri Justice Parth Prateem Sahu

31/01/2020

1. Appellants-claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth 'the Act of 1988') challenging award dated 27.6.2015 passed by learned 6th Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Claims Tribunal') in Claim Case No.220/14 whereby the Claims

Tribunal allowed claim application in part and awarded a total sum of Rs.7,41,200/- as compensation along with interest at the rate of 7.5% p.a., in a death case.

2. Brief facts relevant for disposal of this appeal are that on 20.2.2013 deceased Pradeep Kumar Singroul was going as pedestrian on main road, Naka Chowk, Kota Station. At about 9.00 p.m. when he reached in front of the Government Hospital, one motorcycle bearing registration No.CG10-EP-9033, driven by non-applicant No.2, dashed him as a result he suffered grievous injuries on various parts of body. He was taken taken to Care-N-Cure Hospital, Bilaspur where during the course of treatment, he died on 3.3.2013.

3. Claimants, who are widow, children & mother of deceased Pradeep Kumar Singraul, filed claim application before competent Claims Tribunal claiming compensation of Rs.33,00,000/- on account of accidental death of deceased Pradeep Kumar on the grounds mentioned therein.

4. Non-applicant No.1 Insurance Company filed its reply to claim application and denied pleadings of claim application. It was pleaded by non-applicant No.1 that accident took place due to negligence of deceased himself. The offending vehicle was being driven in violation of essential conditions of insurance policy and as such, the insurance company is not liable to indemnify the insurer. On the aforesaid grounds, the insurance company has sought dismissal of claim application.

5. Non-applicant Nos.2 & 3-driver & owner of offending vehicle did not appear before the Claims Tribunal and they were proceeded ex-parte.

6. On appreciation of pleadings and evidence brought on record by the respective parties, the Claims Tribunal held that the accident took place due to rash and negligent driving of offending vehicle by its driver i.e. non-applicant No.2; there was no violation of any of the conditions of insurance policy and accordingly awarded total sum of Rs.7,41,200/- as compensation in respect of death of

deceased Pradeep Kumar Singraul.

7. Learned counsel for claimants/appellants submits that the Claims Tribunal wrongly assessed monthly income of deceased at Rs.3,000/ on notional basis and failed to appreciate that claimants/appellants have categorically pleaded & stated that at the time of accident, deceased was working as a Petty Contractor and thereby earning Rs.10,000/- per month. He further submits that the Claims Tribunal failed to consider the legal principles laid down by Hon'ble Supreme Court with regard to calculation of future prospects in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680,** according to which 25% of the established income is to be added to the income of deceased, if deceased was self-employed and between the age group of 40 to 50 years. The amount awarded by the Claims Tribunal under other conventional heads is also on lower side. The amount of compensation, as awarded by the Claims Tribunal, deserves to be enhanced suitably in the facts and circumstances of case.

8. On the other hand, learned counsel for respondent No.1 Insurance Company submits that the Claims Tribunal has rightly assessed monthly income of deceased on notional basis because the claimants failed to bring on record any documentary evidence to prove income or engagement of the deceased as Petty Contractor. He further submits that as the claimants failed to produce documentary evidence to prove income of deceased, the Claims Tribunal has rightly not awarded any amount of compensation towards loss of future income. Lastly, he submits that the Claims Tribunal after considering overall facts, circumstances and evidence available on record, rightly awarded compensation and the same does not call for any interference.

9. I have heard learned counsel for the parties and perused the record.

10. There is no dispute with regard to accident and liability fastened on insurance company for payment of compensation and this

appeal has been filed by claimants/ appellants only challenging quantum of compensation as awarded by the Claims Tribunal.

11. As regards monthly income of the deceased which was worked out notionally at Rs.3,000/- per month by the Claims Tribunal, there is no denial of fact that claimants/appellants failed to prove by adducing cogent and concrete documentary evidence that the deceased was engaged in any field of construction work much less as a Petty Contractor and was earning regular income and in absence thereof, in the opinion of this Court, the Claims Tribunal has not committed any error in assessing monthly income of deceased on notional basis. However, the notional income fixed by the Claims Tribunal cannot be said to be adequate. The price index and inflation rate prevalent on the date of accident are relevant factors to assess income of a person, if for any reason income could not be proved by producing cogent and reliable piece of evidence. In case at hand also, considering the socio-economic situation which was prevailing in the State of Chhattisgarh during the year 2013, when the accident in question occurred, I feel that the notional income ought to have been fixed at Rs.4,000/- instead of Rs.3,000/-, as even an unskilled labourer, on those days, could easily earn Rs.4,000/- per month.

12. As regards non-grant of any compensation under the head 'loss of future prospects'. The Hon'ble Supreme Court in catena of its decisions including in **Pranay Sethi's** case (supra) has held that in case the deceased, victim of motor accident, was between the age group of 40 to 50 years and self-employed, 25% of actual income of deceased is to be added in income towards future prospects. Relevant paragraph of Pranay Sethi's case (supra) reads thus;-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50

> years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

In the present case, the deceased was 40 years old, as mentioned in the post-mortem report (Ex.A-5) and was self-employed man, therefore, claimants/appellants are entitled for an addition of 25% of the assessed income of deceased.

13. Coming to the issue of compensation awarded under the conventional heads. The amount awarded by the Claims Tribunal under conventional heads appears to be on lower side. Considering the facts and circumstances of case, this court is of the opinion, that ends of justice would meet if a lump sum amount of Rs.70,000/- is awarded to the claimants/appellants under the other conventional heads.

14. For the foregoing discussions, this Court recalculates the amount of compensation payable to claimants/ appellants.

15. Accordingly, income of deceased is taken as Rs.4,000/- per month, as held above, and since at the time of accident the deceased was between the age group of 40 to 50 years old i.e. 40 years old, and was self-employed, therefore, in view of law laid down in the matter of **Pranay Sethi's case** (supra), the income of deceased is required to be increased by 25% towards future prospects, which comes to Rs.5,000/-(1000+4000). Thus, annual income of deceased for the purpose of calculating compensation comes to Rs.60,000/-(5000x12). Out of this amount, one-fourth is to be deducted towards personal & living expenses of the deceased and after deducting one-fourth, annual loss of dependency would come to Rs.45,000/- (1/4 of 60000). By applying multiplier of 15, as applied by the Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.6,75,000/- (45000x15). In addition, the claimants/ appellants are further entitled for a lump sum compensation of Rs.70,000/- under the other conventional heads. Besides this, the

claimants/appellants are also entitled for a sum of Rs.3,01,200/- towards medical expenses, as awarded by the Claims Tribunal. Thus, the total compensation payable to claimants/appellant would become Rs.10,46,200/- (675000+70000+301200). Accordingly, claimants/ appellants are now entitled to a total compensation of Rs.10,46,200/-, instead of Rs.7,41,200/- as awarded by Claims Tribunal, recoverable from the respondents jointly & severally. This amount of compensation shall carry simple interest @ 7.5% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact.

16. Any amount already paid to claimants/appellants as compensation shall be adjusted from the total amount of compensation as calculated above.

17. The appeal is accordingly allowed in part. The award impugned stands modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-