NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.52 of 2016

United India Insurance Company Limited, Policy issuing office Rajkamal Complex, Kamthi Line, Rajnandgaon, Chhattisgarh, Through its Authorized Authority Divisional Manager, Divisional Office 2nd Floor Gurukripa Towers, Vyapar Vihar Road, Bilaspur, District Bilaspur, Chhattisgarh (Non-Applicant No.3).

---- Appellant

Versus

1. Smt. Bhujeshwari Deshmukh, W/o Goverdhan Prasad Deshmukh, Aged About 48 Years, R/o Naya Aamapara, Mohan Nagar, Durg, Tahsil & District Durg, Chhattisgarh (Applicant No.1).

2. Goverdhan Prasad Deshmukh, S/o B.S. Deshmukh, Aged About 53 Years, R/o Naya Aamapara, Mohan Nagar, Durg, Tahsil & District Durg, Chhattisgarh (Applicant No.2).

3. Hiralal Sahu, S/o Ranjeet Sahu, Aged About 32 Years, R/o Sanjay Nagar, Balod, Tahsil & District Balod, Chhattisgarh (Driver of Vehicle Truck No. C.G./04/ZC/4534 (Non-Applicant No.1).

4. Ghanshyam Sahu, S/o Late Bartiya Ram Sahu, Aged About 59 Years, R/o Balod, Tahsil & District Balod, Chhattisgarh (Owner of Vehicle Truck No. C.G./04/ZC/4534) (Non-Applicant No.2).

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For Respondent Nos.1 & 2	:	None, though served.
For Respondent Nos.3 & 4	:	Shri Avinash Chaubey appears on behalf of Shri Malay Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal

Award/Order on Board

29.01.2020

1. This Miscellaneous Appeal has been preferred by the Non-Applicant No.3/United India Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') questioning the legality and propriety of the award dated 02.09.2015 passed by the 6th Additional Motor Accident Claims Tribunal, District Durg (C.G.) (for short 'the Claims Tribunal') in Claim Case No.69/2014, whereby, the learned Claims Tribunal while allowing the claim in part has awarded the total amount of compensation to the tune of Rs.40,90,800/- with 6% interest per annum from the date of filing of the claim petition till its realization while fastening the liability upon the Insurance Company. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 16.09.2013, deceased Vikas Deshmukh was going to Tehsil Office, Balod for attending the election meeting by his motorcycle. At the relevant time he was dashed vehemently by the offending vehicle *'Truck'* bearing Registration No.CG 04 ZC 4534, which was owned by Non-Applicant No.2/Ghanshyan Sahu, insured with the Non-Applicant No.3/United India Insurance Company Limited. At the relevant time, the vehicle in question was being driven rashly and negligently by its driver Heeralal Sahu/Non-Applicant No.1, as a

result of which, deceased injured badly and was admitted immediately, into the Government Hospital, Balod and from there he was referred to Apollo BSR Hospital at Bhilai, where he expired during the course of his treatment.

3. On account of the aforesaid accident, the claimants being legal representatives of the deceased, instituted a claim petition enumerated under Section 166 of the Act of 1988, alleging *inter alia* that the deceased, a 26 years old, was working as a Rural Agriculture Extension Officer (RAEO) in Amora, (Balod) and used to earn Rs.18,951/- per month and, thus, total amount of compensation to the tune of Rs.52,45,652/- has been claimed under various heads.

4. The aforesaid claim has been contested by the Non-Applicants and by considering the evidence led by the claimants, it has been held by the Claims Tribunal that the alleged accident occurred on 16.09.2013 due to rash and negligent driving of the driver of the offending vehicle *'Truck'*, resulting into the sad demise of deceased Vikas Deshmukh. It held further that vehicle in question was not being used in violation of the insurance policy and that by considering the monthly income of the deceased to the tune of Rs.18,951/- and by applying the multiplier of 17, awarded total amount of compensation as mentioned hereinabove while fastening the liability upon the insurance company.

5. Being aggrieved, the Non-Applicant No.3/Insurer has preferred this appeal. Shri Dashrath Gupta, learned counsel for the Appellant, submits that the amount of compensation as assessed

by the Claims Tribunal by adding 100% of the income of the deceased towards his future prospects is apparently contrary to law. While inviting attention to the paragraphs 19 & 20 of the award impugned, it is contended further that the amount of Rs.2,25,000/- as assessed towards conventional heads is extremely on higher side and deserves to be reduced. In support, he placed his reliance upon the principles laid down in the matter of ***National Insurance Company Limited Versus Pranay Sethi and Others*** reported **in (2017) 16 SCC 680.**

6. On the other hand, learned counsel for the Respondent Nos.3 & 4, has supported the award impugned.

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

8. The only contention as raised herein, by the learned counsel for the Appellant is that the Claims Tribunal has erred in awarding the huge amount of compensation by adding 100% of the income of the deceased towards his future prospects and for, the manner in which, the amount of compensation as assessed towards conventional heads, is totally unjustified.

9. In order to consider the aforesaid contention, I examined the entire record and from perusal of it, it appears that the Claims Tribunal has certainly committed an illegality while awarding the amount of compensation by adding 100% of deceased's income towards his future prospects, as the same is unjustified and contrary to the principles laid down in the matter of

<u>National Insurance Company Limited Versus Pranay Sethi and Others</u> *(supra)*. It appears further as evidenced by paragraphs 19 & 20 of the award impugned that the amount of Rs.2,25,000/- as assessed towards conventional heads is also not justified, based upon the the principles laid down in the above mentioned judgment.

10. Considering the facts and circumstances of the case, I deem it proper to re-assess the amount of compensation payable to the claimants with regard to the accident occurred on 16.09.2013, where deceased Vikas Deshmukh, who was working as a Rural Agriculture Extension Officer (RAEO) in Amora, (Balod) has expired.

11. Considering the monthly income of the deceased, as evidenced by the pay slip marked as (Ex.P/17-A), as Rs.18,951/-, yearly Rs.2,27,412/- and since the deceased was unmarried, therefore, while deducting half of it, i.e., Rs.1,13,706/- towards his personal and living expenses and that by adding 50% of it i.e., Rs.56,853/- towards future prospects of his income, it would then be worked out at Rs.1,70,559/-. At the time of the accident, the deceased was 26 years old, therefore, the proper multiplier applicable would be 17, as rightly applied by the Claims Tribunal. By applying the multiplier of 17, the total dependency would, thus, arrived at Rs.28,99,503/- (Rs.1,70,559 X 17). In addition to this, the claimants would be entitled to a sum of Rs.1,10,000/- towards conventional heads, instead of Rs.2,25,000/- as awarded by the Claims Tribunal, as under:-

S.No.	Modes of Compensation	Amount
1.	For loss of funeral expenses	Rs.15,000/-
2.	For loss of estate	Rs.15,000/-
3.	For loss of filial consortium to parents (mother and father) @ of Rs.40,000/- each	Rs.80,000/-
	Total	Rs.1,10,000/-

12. The claimants would, thus, be entitled to a total sum of Rs.30,09,503/- (Thirty Lakhs Nine Thousand Five Hundred and Three Only), instead of Rs.40,90,800/- as awarded by the Claims Tribunal, along with 6% interest per annum from the date of filing of the claim petition till its realisation.

13. The appeal is accordingly allowed in part to the extent indicated hereinabove. As far as, the other conditions as observed by the Claims Tribunal are concerned, they shall remain intact. No order as to costs.

Sd/-
(**Sanjay S. Agrawal**)
Judge

Deepti Jha