NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.289 of 2015

Reserved on 10.12.2020
Pronounced on 15.12.2020

1. Smt. Dujjo bai, wd/o late Moolchand Sao, aged about 48 years.

2. Dhirendra Kumar Sao, S/o late Moolchand Sao, aged about 26 years;

All are Residents of village Bhatipara, Bastar, Tahsil and Post Bastar, District Bastar (C.G.) **---- Appellants/Claimants**

Versus

1. Anup Kumar Kashyap, S/o Bhagiram Kashyap, Near F.C.I.Godown, Geedam, P.S. and Post Geedam, District South Bastar Dantewada (C.G.) (Driver)

2. Jaganlal Jhanwar, S/o Late Chaturbhuj Jhanwar, aged about 32 years, R/o Opposite F.C.I. Office, Bopdhghat, Jagdalpur, District Bastar (C.G. (Owner)

3. Branch Manager, Through the Reliance General Insurance Co. Ltd. Shop No. 412-413, Fouth Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur, District Raipur (C.G.) (Insurer)

---- Respondents/ Non-Claimants

For Appellants	:	Shri Pravin Kumar Tulsyan, Advocate
For Respondent No.1	:	Notice upon him is dispensed with.
For Respondent No.2	:	None, though served.
For Respondent No. 3	:	Shri Rohitashwa Singh appears on behalf of Shri N. K. Thakur, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal

C.A.V. Award / Order

1. This miscellaneous appeal has been preferred by the claimants 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 22.01.2015 passed by the Motor Accident Claims Tribunal, Bastar place at Jagdalpur (C.G.) in Claim Case No.04/2013, whereby the Tribunal, while allowing the claim in part, awarded total amount of compensation to the tune of

Rs.2,17,000/- with 6% interest per annum from the date of filing of the claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description before the Tribunal.

2. Briefly stated the facts of the case are that on 02.05.2012, the deceased Moolchand Sao was returning from Bastar to Jagdalpur while sitting as pillion rider on the motorcycle of his friend Bohran Lal Gendre and as soon as they reached near the village Metawada, it was dashed from its backside by the offending vehicle "Truck" bearing Registration No.C.G.-17/H/1361, which was being driven rashly and negligently by its driver, namely, Anup Kumar Kashyap. As a result of the alleged accident, the deceased sustained serious injuries and died on the spot, giving rise to the institution of claim petition by his legal representatives, who are widow and son of him, under section 166 of the Act of 1988 alleging, inter alia, that the deceased was working as a Manager in Baldev Infra Project (P) Limited and used to earn Rs.15,000/- and thus claimed total amount of compensation to the tune of Rs.7,75,000/- under various heads.

3. The Non-applicant No.1/driver was proceeded ex parte while Non-applicant No.2/owner has not submitted any reply to the claim petition, whereas the insurer of the alleged offending vehicle took a defence that since the driver was not possessing the effective and valid driving license, therefore, no liability could be fastened upon it.

4. In support, the claimants have examined as many as three witnesses, while none was examined by the Non-applicants in rebuttal.

5. After considering the evidence led by the claimants, it has been held by the Tribunal that the alleged accident occurred on 02.05.2012 due to the

rash and negligent driving by the driver of the alleged offending resulting into the sad demise of Moolchand Sao. It held further that the vehicle in question was not being used in violation of the insurance policy and observed further that applicant No.2 Dhirendra Kumar Sao, being a major son, cannot be held to be dependent upon the deceased and that by considering the monthly income of the deceased at Rs.3,000/-, awarded total amount of compensation along with its interest, as mentioned herein above.

6. Shri Pravin Kumar Tulsyan, learned counsel appearing for the appellants/claimants, submits that while determining the amount of compensation, the Tribunal has committed an illegality in holding that applicant No.2 Dhirendra kumar Sao (son) was not dependent upon his deceased father and that by assessing the income of the deceased only to the extent of Rs.3,000/- per month, erred in awarding a meagre amount of compensation even without considering the future prospects of his income and by applying the improper multiplier of 9. It is contended further, while inviting attention to the appointment order (Ex.A.10) of the deceased and also the document, marked as Ex.A.11, showing his monthly income to the tune of Rs.15,000/-, that his income ought to have been taken into consideration as such while awarding the just and fair compensation payable to the claimants. Having failed to do so, the Tribunal has committed an illegality in awarding the meagre amount of compensation. In support, he placed his reliance upon the principles laid down by the Supreme Court in the matter of ***National Insurance Company Limited -v- Pranay Sethi, Magma General Insurance Company Limited*** vs. ***Nanu Ram @ Chuhru Ram and others*** reported in **(2017) 16 SCC 680** and **(2018) 18 SCC 130** respectively**.**

7. On the other hand, Shri Rohitashwa Singh, learned counsel appearing

for respondent No.3, has supported the award impugned as passed by the Tribunal.

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

9. On perusal of the record, it appears that Dhirendra Kumar Sao, though major son, but unrebutted statement of him (A.W.1), would reveal the fact that he was also dependent upon his father. In view of that, finding of the Tribunal holding that he was not dependent upon his father cannot be upheld. It appears further that the amount of compensation, as determined by the Tribunal, while assessing the monthly income of the deceased only to the tune of Rs.3,000/- even without considering the future prospects of his income and by applying improper multiplier are unjustified and deserve to be modified.

10. From perusal of the appointment order dated 01.06.2011 (Ex.A.10), it appears that the deceased was appointed as a Logistic Manager in Baldev Infra Projects (P) Limited. His basic salary, although shown as Rs.15,000/- per month, as per the document marked as Ex.A.11 but on a close scrutiny of it, would reveal the fact that it neither bears the date nor indicating the signature of any of the authorised officer and in absence of any particulars, it is difficult to hold that his monthly income was at Rs.15,000/-, as claimed by the claimants. It appears further that though the claimants have examined one of its witnesses, namely Manish Somani (A.W.3), who was said to have been the Managing Director of the said company in order to show the income of the deceased, however, in absence of any documentary evidence showing that he was working as such, it cannot be held that he was the Managing

Director of the said company so as to place the reliance upon his testimony in order to hold the income of the deceased as such. The Tribunal has, therefore, rightly disbelieved the income of the deceased as Rs.15,000/- per month. It is, however, to be noted at this juncture that although the monthly income of the deceased as claimed could not be established, but a perusal of his appointment order (Ex.A.10), issued much prior to the alleged accident, would reveal the fact that he was performing his duty as a Logistic Manager in the said Private Company. In view of that, the Tribunal has erred in assessing his monthly income only to the tune of Rs.3,000/- per month. As the deceased was found to be the Logistic Manager in the said Company, therefore, his income cannot be held to be less than the income of the skilled worker, as provided under the Minimum Wages Act, 1948. It can thus be presumed to be a sum of Rs.5,500/- per month, which is slightly above to the minimum wages of the skilled worker, as provided under the Minimum Wages Act, 1948.

11. Considering the monthly income of the deceased as Rs.5,500/-, yearly Rs.66,000/- and since the deceased was 55 years old, as evidenced by the Post-mortem report (Ex.A.4), therefore, while determining his actual income, an addition of 10% of it, i.e., Rs.6,600/- towards future prospects of his income, is to be made, in the light of principles laid down in the matter of **National Insurance Company Limited -v- Pranay Sethi** (supra). It would thus come to Rs.72,600/- (Rs.66,000/- + Rs.6,600/-). As the number of dependents upon the deceased were two, deduction of 1/3rd of it, i.e., Rs.24,200/- towards his personal and living expenses, would be appropriate. Accordingly, the yearly dependency would come to Rs.48,000/- (Rs.72,600/- - Rs.24,200/-). As the deceased was 55 years old, the proper multiplier

applicable would be 11, in view of the decision rendered in the matter of ***Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and another*** reported in **(2009) 6 SCC 121** instead of 9 as applied by the Tribunal. Thus, the total dependency would come to Rs.5,32,400/- (48,400/- x 11).

12. Besides, the widow and son of the deceased are entitled to be awarded loss of consortium under the head of spousal and parental consortium, as held by the Supreme Court in the matter of **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others** (supra).at the rate as held in the said matter of **Pranay Sethi** (supra). Consequently, in addition, the claimants are entitled to the following amounts towards conventional heads:

Sl. No.	Mode of Compensation	Amount in Rs.
1.	For loss of spousal consortium to wife	40,000/-
2.	For loss of parental consortium to son	40,000/-
3.	For Funeral expenses	15,000/-
4.	For loss of estate	15,000/-
	Total:	Rs.1,10,000/-

===============

13. Consequently, the claimants would be entitled to total sum of Rs.6,42,400/- (Rs.5,32,400/- + Rs.1,10,000/-) with 6% interest per annum from the date of filing of the claim petition till the date of actual payment.

13.1 Out of the aforesaid sum of Rs.6,42,400/-, claimant No.1 Smt. Dujjo Bai, wife of the deceased, would be entitled to a sum of Rs.4,42,400/-, while claimant No.2 Dhirendra Sao (son) would be entitled to a sum of Rs.2,00,000/- along with interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment and the same shall be disbursed to them as per the direction contained in the award impugned.

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

Sd/-

(Sanjay S. Agrawal)
Judge

Anjani