NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.655 of 2015

1. Smt. Rewati Bai W/o Shri Uday @ Uderam Sahu Aged About 35 Years.
2. Uday @ Uderam Sahu S/o Shri Punauram Sahu Aged About 36 Years.

   Boath are by Caste- Sahu, R/o Village- Palari, Thana and Tahsil- Gurur, Civil and Revenue Distt. Balod Chhattisgarh.

---- Appellants

Versus

1. Gopal S/o Jiten Mishra Aged About 40 Years, by Caste- Mishra, R/o Near Shiv Mandir Risali, Thana - Newai, Civil and Revenue Distt. Durg Chhattisgarh.
2. Devesh S/o Vishnu Dutta Mishra Aged About 35 Years, by Caste- Mishra, R/o. Quarter No. 2/F. St No. 86 Sector 06 Bhilai, P.S. Bhilai, Civil and Revenue Distt. Durg Chhattisgarh.
3. Megma Hdl General Insurance Com. Ltd. Through Branch Manager, Divisional Office Hotel Amantran Satya, Shanti Complex GE Road Supela Bhilai, Distt. Durg, Present Address-Second Floor South Gangotri Supela Chowk Bhilai, Distt. Durg Chhattisgarh.

---- Respondents

Appellants	:	Shri Sunil Sahu, Advocate.
Respondent No.1 & 2	:	None.
Respondent No.3	:	Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

31.01.2020

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 23.02.2015 passed by learned 2nd Additional Motor Accident Claims Tribunal, Balod, District Balod (in short 'the Tribunal') in Claim Case No.37/2014, whereby the Tribunal allowed claim application in part and awarded a total sum of Rs.2,97,500/-, along with interest @ 6% p.a., as compensation in a death case.

2. Brief facts, in nutshell, are that on 24.11.2013, Nanita (deceased) was traveling as a labour on Tractor bearing registration No.CG05-B-1214 and had gone to village Jewartara for the purpose of bringing paddy.

Said tractor was driven by one Punarad Ram Sahu. When they were returning to their village, on the way near village Armarikala, their tractor dashed with one truck bearing registration No.CG07-CA-9055 (for short 'the offending vehicle') as a result said Nanita sustained grievous injuries on various parts of her body including head and succumbed to those injuries on spot. Accident was reported to Police Station- Gurur, based upon which, crime bearing No.221/13 was registered against driver of offending vehicle for the offence under Sections 279, 337, 338 & 304A of IPC.

3. Claimants/appellants, who are parents of deceased filed claim application under Section 163A of the Act of 1988 before the Tribunal claiming Rs.7,98,000/- as compensation on the grounds mentioned therein.

4. Non-applicant Nos.1 & 2, driver & owner of offending vehicle, jointly submitted their reply to claim application and denied all adverse pleadings made therein including the fact of accident from their vehicle. It was pleaded that on the date of accident, offending vehicle was duly insured with non-applicant No.3-Insurance Company and driver of offending vehicle was having valid & effective driving license, therefore, liability, if any, for payment of any amount of compensation would be of Insurance Company.

5. Non-applicant No.3/insurance company submitted reply to claim application and also denied all averments except admitted facts made therein. It was pleaded that on the date of accident, driver of offending vehicle was not possessing valid & effective driving license and there was no valid permit and fitness certificate, therefore, there

was violation of essential conditions of insurance policy. It was also pleaded that on the date of accident, offending vehicle was driven by some other person and not by non-applicant No.1 (driver of offending vehicle). The owner, driver and Insurance Company of tractor bearing registration No.CG05-B-1214, who were necessary party to claim application, have not been impleaded as non-applicants in the claim application and thus, non-applicant No.3/Insurance Company is not liable to indemnify insured.

6. On appreciation of pleadings and evidence placed on record by the respective parties, the Tribunal arrived at a finding that accident took place on account of rash & negligent act of driver of offending vehicle and there was no violation of conditions of Insurance policy as on the date of accident, driver of offending vehicle was having valid and effective driving license. On the basis of above findings, the Tribunal allowed claim application in part, awarded a total sum of Rs.2,97,500/- as compensation to the claimants and fastened liability upon Insurance Company.

7. Learned counsel appearing for claimants/appellants submits that the Tribunal committed an error in not awarding any amount towards loss of future prospects. The amount awarded towards other conventional heads is also on lower side. Though the deceased was considered to be of 18 years of age on the date of accident, the Tribunal has applied multiplier of 16, instead of 18 which is applicable to the age group between 15 to 20 years. Hence, he submitted that impugned award be suitably enhanced.

8. Per contra, learned counsel for respondent No.3/Insurance Company submits that the Tribunal has rightly appreciated the evidence and materials placed on record by appellants and awarded just & proper amount of compensation to them. He further submits that appellants would not be entitled for any amount towards loss of future prospects as by adding loss of future prospects in the income of deceased, it will exceed maximum limit of Rs.40,000/- per annum, and in such a situation, claim application filed by appellants under Section 163A of the Act of 1988 will not be maintainable. Application under Section 163A of the Act of 1988 would lie only when the income of deceased is less than Rs.40,000/- per annum.

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

10. So far as the objection raised by learned counsel for respondent No.3/ Insurance Company that claimants/appellants are not entitled for any amount of compensation towards loss of future prospects is concerned, true it is that the Second Schedule appended to Section 163A of the Act of 1988 provides that for maintaining a claim application under Section 163A, maximum annual income of deceased or injured should not exceed Rs.40,000/-. In case at hand, claimant/appellants have pleaded that on the date of accident, income of deceased was Rs.3,000/- per month i.e. Rs.36,000/- per annum, which is within the maximum income prescribed under Second Schedule appended to Section 163A. Maximum income as fixed for maintaining clam application under Section 163A is only to be considered on the date of accident and not for considering the total income by adding future income of deceased in view of the

object of the provisions of the Act. Loss of future income is added in the income of deceased/injured only to award just and proper amount of compensation to claimant. If the claimants have pleaded income of deceased to be less than Rs.40,000/- p.a. then claim application is maintainable and it is for the Tribunal or Court to see that just & proper amount of compensation is awarded to the claimants. Needless to say, the Act of 1988 is a beneficial piece of legislation, prime object of which is to provide succor to the victims of motor accidents and to the dependents of the deceased and the Tribunals/Courts are not required to adopt a hyper technical approach.

11. For the foregoing reason, the objection raised by the learned counsel for respondent No.3/Insurance company that the appellants are not entitled for any amount of compensation towards loss of future prospects is not sustainable and is hereby repelled.

12. Coming to next submission of learned counsel for appellants that the Tribunal committed error in not awarding any amount towards future prospects. Issue with respect of award of future prospects has been dealt with and decided by Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680,** wherein it has been held that in case the deceased was below the age of 40 years and not in permanent employment, an addition of 40% of actual income of deceased towards future prospects should be awarded. Relevant paragraph of the said judgment 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."

13. Indisputably, in case at hand, on the date of accident, deceased was aged about 18 years of age, as is evident from post mortem report (Ex-P/8), hence, this Court is of the considered opinion that appellants/ claimants are entitled for an addition of 40% of established income i.e. Rs.3,000/-. At the time of accident, deceased was aged about 18 years as mentioned in the post mortem report Ex-P/8, therefore, in view of ratio laid down in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and Anr** reported in **(2009) 6 SCC 121,** multiplier of 18 would be applicable in the present case instead of 16.

14. As regards the submission of learned counsel for appellants that the amount awarded by the Tribunal towards other conventional heads is on lower side. Since the appellants have approached the Tribunal by filing claim application under Section 163A of the Act of 1988, I am of the considered view that the Tribunal has not committed any error in awarding the amount towards other conventional head and the same are hereby confirmed.

15. In view of above discussions, the impugned award passed by the Tribunal requires reconsideration and recalculation:

16. For the purpose of calculating compensation, income of deceased is taken as Rs.3,000/- per month, as held by the Tribunal, and by adding 40% of the income towards future prospects, in view of the guidelines issued by the Hon'ble Supreme Court in the matter of Pranay Sethi (supra), total monthly income of deceased would come to Rs.4,200/- (3000+1200) and yearly income would be Rs.50,400/- (4200X12). As the deceased was bachelor on the date of accident, 50% amount is to be deducted towards his personal and living expenses. After deducting 50%, the annual loss of dependency comes to Rs.25,200/- (50,400 – ½). On the date of accident, the deceased was 18 years old, therefore, multiplier of 18 would be and accordingly, total loss of dependency comes to Rs.4,53,600/- (25200x18). Besides this, appellants will also be entitled for a sum of Rs.9,500/- towards other conventional heads, as awarded by the Tribunal.

17. In view of the above, now appellant/claimant will be entitled for total sum of **Rs.4,63,100-** (453600+9500) instead of **Rs.2,97,500//-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rests of the conditions of impugned award shall remain intact.

18. In the result, appeal is allowed in part and the impugned award stands modified to the extent as indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Jamal