

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 1506 of 2015**

1. Smt. Radhika Sahu aged about 56 years wife of late Narayan Sahu
2. Chandan Lal Sahu, aged about 35 years, son of late Narayan Sahu,
3. Ghanshyam Sahu, aged about 32 years, son of late Narayan Sahu
All R/o. Sivnikala, P.S. Komakhan, District Mahasamund (C.G.) work
place College Chowk Arang, P.S. Arang, District Raipur (C.G.)

---- Appellants**Versus**

1. Manish Kumar Agrawal, aged about 26 years, son of Chhajuram
Agrawal, R/o. Village Tendukona, P.S. Tendukona, District
Mahasamund (C.G.) (Driver)
2. Ravi Kumar Agrawal, Aged about 26 years, son of Chhajuram
Agrawal, R/o. Shop No. A-24, First Floor, Hamavir Goushala,
K.K.Road, Raipur, District Raipur (C.G.) (Owner),
3. United India Insurance Company Limited, Through Divisional
Manager, Divisional Office, Krishna Complex, Katchari Chowk,
Raipur, District Raipur (C.G.) (Insurer)

---- Respondents

For Appellants	: Mr. Raghvendra Pradhan, Advocate
For Respondents No.1 and 2	: None
For Respondent No.3	: Mr. Dashrath Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

09/11/2020

1. This appeal has been filed by appellants/claimants under Section 173
of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act')
challenging the legality, validity and propriety of impugned award
dated 29/07/2015 passed by Seventh Additional Motor Accident
Claims Tribunal, Raipur, Chhattisgarh (hereinafter referred to as
'Claims Tribunal') in Claim Case No.542 of 2014 whereby learned

Claims Tribunal allowed the application filed under Section 166 of the M.V. Act in part and awarded Rs.1,72,500/- as compensation in fatal accident case.

2. Brief facts relevant for disposal of this appeal, are that, on 19/06/2014 Narayan Sahu was travelling on his bicycle from Temri to his village Sivni-Kala, District Mahasamund, when he reached near Temri Square at NH-353, one Car bearing No.CG-04/HA/6669 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed bicycle of Narayan Sahu and caused accident. In the aforementioned accident, Narayan Sahu suffered grievous injuries and succumbed to those injuries. The accident was reported to concerned Police Station, based upon which, Crime No.64 of 2014 was registered against non-applicant No.1.
3. Appellants/claimants who are widow and children filed an application under Section 166 of the M.V. Act pleading therein that deceased was an able-bodied person aged about 58 years. He was earning Rs.8,000/- per month from his work of Carpenter and claimed compensation of Rs.11,00,000/- on different heads.
4. Non-applicants No.1 and 2 filed reply to claim application, while denying the entire pleadings made therein, pleaded that amount of compensation claimed is highly exaggerated, offending vehicle was driven by non-applicant No.1 with valid and effective driving licence,

offending vehicle was insured with non-applicant No.3, thus, liability to satisfy the amount of compensation would be upon non-applicant No.3/Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying the pleading made therein, pleaded that deceased himself was liable for the accident, accident was a result of negligence on the part of deceased, deceased was aged about 62 years. Non-applicant No.1 was not possessed with valid and effective driving licence, as such, there was breach of the policy condition.
6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties held that Narayan Sahu died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1, contributory negligence and breach of policy conditions were not found to be proved and awarded Rs.1,72,500/- as compensation on different heads.
7. Mr. Raghvendra Pradhan, learned counsel for the appellants/claimants submits that learned Claims Tribunal erred in assessing the age of deceased as 65 years overlooking the pleading and age mentioned in claim application as well as age of widow, who on the date of accident, was only 56 years of age. He further contended that learned Claims Tribunal erred in awarding meager amount of compensation, by assessing the income of deceased only

as Rs.3000/- per month overlooking the date of accident i.e. 19/06/2014 and also occupation of deceased as pleaded and stated by witnesses before learned Claims Tribunal. He further contented that learned Claims Tribunal in the facts of the case has applied wrong multiplier of 5 instead of 7 and further erred in awarding only Rs.50,000/- towards on other conventional heads instead of Rs.1,10,000/- in view of judgment rendered by Hon'ble Supreme Court in case of **National Insurance Company Limited v. Pranay Sethi and others**¹. Referring to Paragraph-59.8 of the judgment of **Pranay Sethi** (supra), submits that Hon'ble Supreme Court in uncertain term has held that there will be an enhancement to the extent of 10% of the amount of compensation quantified on other conventional heads hence the amount of compensation on other conventional heads be also awarded by enhancing it by 10%.

8. Per contra, Shri Dashrath Gupta, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal taking into consideration that claimants failed to produce any clinching and admissible piece of evidence with regard to accident and income of the deceased, has rightly assessed the income of deceased on notional basis as Rs.3,000/- per month. He further submits that learned Claims Tribunal assessed the age as mentioned in Postmortem Report and applied the multiplier of 5 in view of the law

¹ AIR 2017 SC 5157

laid down by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**² for the person above 65 years of age. It is contended that learned Claims Tribunal has awarded just amount of compensation in the facts and circumstances of the case, which does not call for any interference.

9. I have heard learned counsel for the respective parties and perused the record carefully.
10. So far as the submission made by learned counsel for the appellants with regard to income of deceased as assessed by learned Claims Tribunal is concerned, appellants/claimants in Paragraph-6 of the claim application have pleaded the occupation of deceased to be 'Carpenter' and income as Rs.8,000/- per month. Upon going through the record of claim case except pleading and oral statement of claimants, no other evidence is brought on record to prove the income of deceased and occupation of deceased as Carpenter. Learned Claims Tribunal in absence of specific evidence with regard to income and occupation of deceased has assessed the income on notional basis, but learned Claims Tribunal while assessing the income of deceased on notional basis has not taken into consideration important aspects in this regard i.e. date of accident, wage structure, cost of living price index and age of deceased. In Postmortem Report (Ex.P/5), age of deceased has been mentioned

² (2009) 6 SCC 121

as 65 years, which means deceased was a very experience person. If the income assessed by learned Claims Tribunal is considered in the light of aforementioned factors, in the opinion of this Court, income of Rs.3,000/- per month for a person aged about 65 years on 19/06/2014 is on lower side and I find it appropriate to assess income of the deceased as Rs.5,000/- per month on the date of accident.

11. So far as the submission made by learned counsel for the appellants with regard to the age of the deceased assessed by learned Claims Tribunal as 65 years and application of multiplier of 5 is concerned, appellants/claimants in their claim application have shown their age as 56 years for widow, 35 years for elder son and 32 years for younger son. Age of deceased mentioned in Postmortem Report (Ex.P/5) as 65 years. The age mentioned in Postmortem Report by the doctor is not based on assessing age of deceased by applying any scientific method, but it has been mentioned on the basis of appearance of body before them or age mentioned by Police in their requisition form or age stated by any of the attendant. Taking into consideration overall facts and circumstances of the case, particularly, age of widow as mentioned in claim application, I find it appropriate to hold the age of deceased in the age group between 61-65 years and application of multiplier to be 7 instead of 5 as applied by learned Claims Tribunal.

12. The other submission made by learned counsel for the appellants with regard to enhancement of amount of compensation by 10% as held by Hon'ble Supreme Court in Paragraph-59.8 of **Pranay Sethi's** case (supra). Hon'ble Supreme Court in Paragraph-59.8 in very categorical terms after calculating the amount of compensation on other conventional heads, like loss of estate, loss of consortium and funeral expenses, held that amount on other conventional heads should be enhanced at the rate of 10% every three years. Paragraph-59.8 is extracted below for ready reference :-

“59.8 Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

13. The aforementioned judgment of Hon'ble Supreme court in case of **Pranay Sethi** (supra) was delivered on 31/10/2017 and by now, three years has already been elapsed. In view of aforementioned judgment, I find it appropriate to enhance the quantum of amount of compensation on other conventional heads by 10%. Now, appellants/claimants would be entitled for Rs.44,000/- ($40,000 \times 10\% = 4,000$ and $40,000 + 4,000$) towards loss of consortium, Rs.16,500/- ($15,000 \times 10\% = 1,500$ and $15,000 + 1,500$) towards loss of estate

and Rs.16,500/- ($15,000 \times 10\% = 1,500$ and $15,000 + 1,500$) towards funeral expenses.

14. For the foregoing reasons, the amount of award assessed and calculated by learned Claims Tribunal requires re-computation and recalculation. This Court recalculates the award in following terms :

The monthly income of deceased as assessed by this Court as Rs.5,000/- per month and Rs.60,000/- per annum. On the date of accident, the deceased was survived by three dependents, therefore, in view of dictum of Supreme Court in **Sarla Verma** (supra), appropriate deduction would be $1/3^{\text{rd}}$. After deducting $1/3^{\text{rd}}$ towards personal and living expenses of deceased, yearly loss of dependency of the claimants will come to Rs.40,000/- ($60,000 / 3 = 20,000$ and $60,000 - 20,000$). By applying the multiplier of 7, the amount of compensation towards loss of dependency will come to Rs.2,80,000 ($40,000 \times 7$). Apart from above, the claimants will be further entitled for a sum of Rs.44,000/- towards spousal consortium to the widow, Rs.44,000/- towards parental consortium to the children, Rs.16,500/- towards loss of estate and Rs.16,500/- towards funeral expenses.

15. Now, the appellants/claimants are entitled for total compensation of Rs.4,01,000/- ($2,80,000 + 44,000 + 44,000 + 16,500 + 16,500$) instead of Rs.1,72,500/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per

annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

16. In the result, the appeal is allowed in part. The impugned award is modified to the extent indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh