NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 500 of 2015

1. Smt. Maheshwari W/o Late Shri Ganeshwar, aged about 23 years
2. Shatrughan S/o Shri Jhururam, aged about 42 years
3. Smt. Radha Bai W/o Shri Shatrughan aged about 40 years
   All are Residence of Village-Limtara, Thana and Tahsil Dhamtari, Civil and Revenue Distt. Dhamtari C.G.

----Appellants/Claimants

VERSUS

1. Kapoor Ram Soni S/o Tilak Ram Soni R/o Baniyapara Dhamtari, Thana and Tahsil Dhamtari, Civil and Revenue Distt. Dhamtari C.G.
2. Dinesh Kumar S/o Bhan Singh, aged about 42 years, R/o Village Chatoud Thana and Tahsil-Kurud, Civil and Revenue Distt. Dhamtari, C.G.
3. The Oriental Insurance Company Limited, through Branch Manager Regional Office in front of Adarsh Bal Mandir, behind Amar Talkies Dhamtari, Thana and Tahsil Dhamtari, Civil and Revenue Distt. Dhamtari, C.G.
4. Ramnarayan Pandey S/o Chunwad Prasad Pandey, aged about 44 years, R/o Jail Road Bathenapara Dhamtari, Thana and Tahsil Dhamtari, Civil and Revenue Distt. Dhamtari, C.G.

-----------Respondents

For Appellants	:	Mr. Sunil Sahu, Advocate
For Respondent No. 3	:	Mr. N.K. Malviya, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

09/11/2020

1. Appellants-claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short “Act of 1988”) seeking enhancement of the amount of compensation awarded by Additional Motor Accident Claims Tribunal (FTC), Dhamtari, in claim case no. 13/2013 vide impugned award

dated 31-01-2015 whereby learned Claims Tribunal allowed the application under Section 166 of the Act of 1988 in part and awarded Rs. 4,43,000/- as total compensation in a fatal motor accident case.

2. Facts relevant for disposal of this appeal are that on 30-10-2011, Ganeshwar was traveling on a motor cycle bearing registration no. CG 05C 4110 along with Parmeshwar and returning to village Limtara. Motor cycle was driven by Ganeshwar on his own side with a normal speed. When they reached near Chhattisgarh Rice Mill at village Sambalpur at about 2:30 P.M., one jeep bearing registration no. CG 05ZA 2028 (referred to as "offending vehicle") driven by Respondent 1/ Non-applicant 1 rashly and negligently dashed the motor cycle driven by Ganeshwar. In the said accident, both the riders of the motor cycle fell down. They were taken to Christian hospital, Dhamtari where during the course of treatment, Ganeshwar succumbed to injuries. Accident was reported to concerned police station based on which crime bearing no. 267/2011 was registered against non-applicant 1.

3. Appellants-claimants who are widow and parents of the deceased filed an application under Section 166 and Section 140 of the Act of 1988 seeking compensation of Rs. 26,60,000/- pleading therein that on the date of accident, deceased was an able-bodied person aged about 20 years, earning Rs. 150-200 per day as labourer.

4. Non-applicant 1/ Respondent 1 submitted reply to claim application, while denying the pleadings made therein further pleaded that on the date of accident, he was possessed with valid and effective driving licence. The accident was a result of negligence on the part of driver of motor cycle. There was non-joinder of necessary parties. Offending vehicle was

insured with Non-applicant 3/ Respondent 3-Insurance Company and the liability, if any, to pay the amount of compensation would be of Non-applicant 3-Insurance Company.

5. Non-applicant 2 submitted reply to the claim application, while denying the pleading made therein further pleaded that the accident took place on account of rash and negligent driving of the motor cycle by the deceased driver. The owner, driver and insurer of the motor cycle have not been arrayed as party non-applicants, hence the claim application is liable to be dismissed. Offending vehicle was sold to non-applicant 4/ Respondent 4, possession of the vehicle was also handed over on the same date after executing of the sale letter. After execution of sale letter and handing over the possession of offending vehicle, all the liability was of Non-applicant 4/ Respondent 4. It was further pleaded that if the Tribunal found Non-applicant 1 and 2 to be liable then the liability would be upon Non-applicant 3 as on the date of accident, the offending vehicle was insured with Non-applicant 3-Insurance Company.

6. Non-applicant 3/ Respondent 3-Insurance Company submitted reply to the claim application, while denying the pleadings made therein further pleaded that the accident was a result of head-on-collision between two vehicles. Deceased himself was rash and negligent and liable for the accident. There was no valid and effective driving licence with the deceased. Non-applicant 1 also not possessed with valid and effective driving licence. Offending vehicle was driven without valid permit and fitness, as such, there was breach of policy conditions.

7. Non-applicant 4 submitted reply to the claim application, denying entire pleadings made therein. It was further pleaded that non-applicant 1 was

possessed with valid and effective driving licence and there was no breach of policy conditions.

8. Learned Claims Tribunal, on appreciation of pleadings and evidence brought on record by the respective parties held that non-applicant 1 while driving the offending vehicle rashly and negligently dashed the motor cycle driven by late Ganeshwar and caused accident. Ganeshwar died due to motor accidental injuries suffered by him and awarded Rs. 4,43,000/- as total compensation. Liability to satisfy the amount of compensation was fastened upon non-applicants jointly and severally, further held that, first, liability to satisfy the amount of compensation, is upon Non-applicant 3-Insurance Company.

9. Mr. Sunil Sahu, learned counsel for the appellants submits that learned Claims Tribunal erred in awarding meagre amount of compensation. He submits that the Claims Tribunal assessed income of the deceased as Rs. 3,000/- per month from the work of Mason. He submits that the Claims Tribunal has not awarded any amount towards future prospects as held by Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. v. Pranay Sethi*** reported in ***(2017) 16 SCC 680***. He further contended that the Claims Tribunal erred in applying the multiplier of 17 in place of 18 even after considering the age of the deceased as in between 20-25 years contrary to the case of ***Sarla Verma & others v. Delhi Transport Corp. & anr.*** reported in ***(2009) 6 SCC 121***. The amount of compensation awarded on other conventional heads is also very meagre in view of the dictum of Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** and ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in ***(2018) 18 SCC 130***.

10. Mr. N.K. Malviya, learned counsel for Respondent 3-Insurance company submits that the Claims Tribunal upon taking into consideration the date of accident, the appellants-claimants failed to prove the income of the deceased by placing any admissible piece of evidence, has reckoned the income of the deceased as Rs. 3,000/- per month which cannot be said on lower side. He further contended that the amount of compensation awarded by the Claims Tribunal is just and proper which does not call for any interference.

11. I have heard learned counsel for the respective parties and also perused the record.

12. The Claims Tribunal awarded Rs. 4,43,000/- to the appellants-claimants as compensation, liability to satisfy the amount of compensation was fastened upon the non-applicants jointly and severally and further it is specifically mentioned that first liability to satisfy the amount of compensation is upon Non-applicant 3-Insurance Company. The Insurance Company has not filed any appeal challenging the impugned award.

13. This appeal filed by the claimants is only with regard to enhancement of the amount of compensation awarded by the Claims Tribunal. The first ground raised by the learned counsel for the appellants with regard to the assessment of the income on lower side is concerned. Perusal of the pleadings made in the claim application would show that the deceased has been shown to be working as Mason and earning Rs. 200/- per day. Appellant no. 2 (father of the deceased) entered into witness box as AW-2 and Appellant 1 (widow of deceased) was examined as AW-1. In evidence, AW-1 widow of deceased has denied the suggestion given to

her that the deceased was not working as Mason. These witnesses in their evidence have stated that the wage rate in their village for the manual labourer was in between Rs. 100-150 per day. Deceased has been shown to be working as Mason, hence, in the opinion of this Court, looking to the date of accident, the income of the deceased is to be assessed on notional basis, taking into consideration the wage structure, cost of living, price index etc. Age of the deceased on the date of accident has been shown to be 20 years. Taking into consideration the relevant factors as discussed above, I find it appropriate to assess the income of the deceased as Rs. 4,000/- per month. Claims Tribunal has not awarded any amount towards future prospects. The issue with regard to award of future prospects to the person who are in permanent employment or self-employment has been considered by Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** and held 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."

14. In the case at hand, deceased was aged about 24 years i.e. in between 21-25 years, hence, there will be addition of 40% of the established income in the income of the deceased to calculate the total income for the purpose of calculating the amount of compensation. Tribunal has applied deduction of 1/3rd which is in consonance with the guidelines issued by the Hon'ble Supreme court in the case of **Sarla Verma (supra)**. The Tribunal has applied the multiplier of 17 whereas the Supreme Court in

Sarla Verma's case has stated that where the age of a person or deceased is in between 21-25 years, appropriate multiplier would be 18. For the foregoing reasons, I find it appropriate to apply the multiplier as 18 instead of 17 as applied by the Claims Tribunal. The Tribunal has awarded a sum of Rs. 35,000/- towards other conventional heads i.e. Rs. 25,000/- towards loss of estate and Rs. 10,000/- towards funeral expenses though the amount on the head of loss of estate is little more than what is held by the Supreme Court in the case of **Pranay Sethi (supra)** but overall the Tribunal has awarded much less amount on the head of other conventional heads than what the claimants are entitled for in accordance with the law.

15. For the foregoing reasons, I find it appropriate to recompute and recalculate the amount of compensation as under.

16. Income of the deceased has been assessed as Rs. 4,000/- per month i.e. Rs. 48,000/- per annum. By adding 40% of the income towards future prospects, total yearly income of the deceased will come to Rs.67,200/- [Rs.48000+40% of Rs.48000/-]. After deducting 1/3rd towards personal and living expenses, yearly loss of dependency will come to Rs.44,800/-. After applying the multiplier of 18 with yearly loss of dependency, total yearly loss of dependency will come to Rs. 8,06,400/- [Rs.44800x18]. Apart from the above, the claimants will further be entitled for Rs. 40,000/- towards spousal consortium to the widow, Rs. 40,000/- towards filial consortium to the parents and Rs. 15,000/- each on the head of loss of estate and funeral expenses.

17. Now the appellants-claimants are entitled for **Rs. 9,16,400/-** [Rs.806400+Rs.40000+Rs.40000+Rs.15000+Rs.15000] as total amount

of compensation instead of Rs. 4,43,000/- as awarded by learned Claims Tribunal. The aforementioned amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions imposed by the Tribunal will remain intact.

18. In the result, appeal filed by the claimants is allowed in part and impugned awarded passed by the Claims Tribunal is hereby modified to the extent as indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Pawan