

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No.1162 of 2015**

1. Smt. Santoshi Bai W/o Late Sudarsan Kurre, Aged About 36 Years.
2. Ku. Pratima Kurre S/o Late Sudarsan Kurre, Aged About 17 Years.
3. Smt. Char Bai W/o Mohar Das Kurre, Aged About 60 Years.
4. Mohar Das Kurre S/o Late Sakram Kurre, Aged About 65 Years

Appellant No.2 is minor through natural guardian mother appellant No.1 Smt. Santoshi Bai. All are R/o Village Kachhar Post Sendari, P S. Koni, Tahsil & District Bilaspur Chhattisgarh.

---- Appellants/Claimants**Versus**

1. Ajay Kumar Thimothiyas S/o Late Shashi Kumar Thimothiyas, Aged About 34 Years R/o Village Bade Koni, in front of Dore of Engineering College, P.S. Koni Tahsil & District Bilaspur Chhattisgarh.(Driver & Owner).
2. The Branch Manager Royal Sundram Alliance Insurance Company Limited, 1st Floor, Rama Trade Center, Opposite to Rajive Plaza, Bus Stand, Tahsil & District Bilaspur Chhattisgarh.

--- Respondents

For Appellants	: Mr. Shri Rajesh Jain, Advocate.
For Respondent No.1	: None.
For Respondent No.2.	: Mr. N. K. Thakur, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

28/10/2020

1. Claimants/appellants has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by learned 7th Additional Motor Accident Claims Tribunal, Bilaspur, (CG) (for short, 'the Tribunal) vide award dated 22.04.2015 passed in Claim Case No.185/2014, whereby the Tribunal partly allowed application filed under Section 163 (A) of the Act of 1988 by claimants and awarded Rs.4,15,000/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 30.09.2013, deceased -Sudarsan Kurru was travelling on Auto Rickshaw bearing registration No.CG10/T/2897 and coming to Bilaspur, when he reached near village -Sendri in front of Mahamaya temple, one unknown Truck (for short 'offending vehicle') coming from back side hit the Auto Rickshaw and caused accident. In the aforesaid accident, Sudarsan Kurru suffered grievous injuries. He was brought to CIIMS Hospital, Bilaspur where during the course of treatment he died.
3. Claimants, who are widow, children & parents of deceased, filed an application under Section 163 (A) of the Act of 1988 before the Tribunal seeking compensation of Rs.14,00,000/- on the ground that on the date of accident, deceased was working as 'truck driver' with Jashpal Singh Rana Transport Company and getting Rs.3,300/- per month as salary. .
4. Non-applicant No.1, driver-owner of Auto Rickshaw, submitted reply to application and denied the pleadings made therein. It was pleaded that claimants are not entitled to get any amount of compensation from Non-applicant No.1 and if it is held that they are entitled for any amount of compensation then liability to satisfy the amount of compensation will be upon Non-applicant No.2/Insurance Company as on the date of accident his Auto Rickshaw was insured with Non-applicant No.2/Insurance Company.
5. Non-applicant No.2/Insurance Company submitted its reply to application, while denying the pleadings made therein raised a preliminary objection that application should have been filed under Section 161 and not under Section 163 (A) of the Act of 1988. Driver of unknown vehicle would be liable for accident. Accident was not reported

against non-applicant No.1-driver of Auto Rishaw, but only to take undue advantage from Insurance Company claimants have narrated a false and fabricated story and filed application under Section 163 (A). It was further pleaded that Auto Rikshaw was not involved in accident and no case was registered against him. Issuance of Insurance Policy of Auto Rikshaw was denied and pleaded that accident was not reported to Insurance Company under Section 158 (6). There was breach of policy conditions as on the date of accident, non-applicant No.1 was neither possessing valid and effective driving license nor he was authorized to drive transport vehicle. Hence, Insurance Company is not liable to indemnify the insured.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Sudarsan Kurre, passenger of Auto Rickshaw suffered motor accidental injuries on account of hitting the Auto Rickshaw by unknown truck resulting into his death. Auto Riksha was plied in breach of policy conditions was not found to be proved. Tribunal allowed application in part, awarded a sum of Rs.4,15,000/- as compensation along with interest @ 7% p.a, fastened liability upon non-applicants to satisfy the amount of compensation.
7. Learned counsel for the appellants/claimants submits that the Tribunal erred in assessing income of deceased as Rs.3,000/- per month only, overlooking the date of accident and nature of employment/occupation of deceased as 'truck driver' pleaded by claimants in their application. Tribunal has not added any amount of compensation towards future prospects even when it held that on the date of accident, deceased was in age group of 36 to 40 years. The Tribunal has not considered that total

numbers of claimants are '4' and applied wrong deduction of '1/3rd' instead of '1/4th' as held by the Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and Ors vs. Delhi Transport Corporation & Ors**¹. He further submits that looking to the age of deceased, appropriate multiplier would be '16' as per Second Schedule, whereas the Tribunal has applied '15'.

8. Learned counsel for respondent No.2/Insurance Company submits that the Tribunal has awarded just amount of compensation in the given 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 of claim case.
10. Undisputably, claim application is filed under Section 163 (A) of the Act of 1988. Section 163 (A) is a special provision as to payment of compensation on structured formula basis, as indicated under the Second Schedule, to legal heirs of deceased or victim of a motor accident. Once application is filed under Section 163(A), claimants cannot claim income of deceased/victim more than Rs.40,000/- in any case. If income is claimed more than Rs.40,000/-, application itself would not be maintainable under the provisions of Section 163(A) of the Act of 1988. In case at hand, claimants have consciously chosen to file application under Section 163(A) pleadings income of deceased as Rs.3,300/- per month. Perusal of Second Schedule would show that there is no provision regarding addition to income of deceased/victim towards future prospects. Hence, submission of learned counsel for the

¹ (2009) 6 SCC 121

claimants with regard to non-award of future prospects is not sustainable and it is hereby repelled.

11. So far as submission with regard to assessment of income is concerned, the Tribunal without any rhyme or reason has assessed income of deceased as Rs.3,000/- per month even though accident took place on 30.09.2013. Taking into consideration the date of accident, nature of employment/occupation of deceased, the Tribunal ought to have assessed income of deceased, as pleaded in application ie Rs.3,300/- per month. Accordingly, I hold income of deceased as Rs.3,300/- per month.

12. Deduction as prescribed under Second Schedule is only 1/3rd and there is no mention of application of different deduction based on numbers of claimants. For computing amount of compensation in application filed under Section 163(A), amount of compensation on other different heads are to be awarded strictly as prescribed under Second Schedule and not beyond that. In view of above, Tribunal has correctly applied deduction of 1/3rd which is affirmed by this Court.

13. So far as submission with regard to application of multiplier is concerned, the Tribunal has assessed age of deceased in between 36-40 years. In Second Schedule, multiplier of '16' is prescribed for the persons who are in the age group of 36-40 years. Thus, it is apparent that the Tribunal has erroneously applied multiplier of '15', which is not sustainable and is hereby set aside. Appropriate multiplier is '16', and it is ordered accordingly.

14. For the foregoing reasons, I propose to recompute the amount of compensation awarded by the Tribunal.

15. Income of deceased is taken as Rs.3,300/- per month, as held above and accordingly yearly income comes to Rs.39,600/- (3,300X12). After deducting 1/3rd towards personal and living expenses of deceased annual loss of yearly dependency comes to Rs.26,300/- (39600 – 1/3). By applying multiplier of 16, total loss of dependency will come to Rs.4,20,800/- (26,300 X16). Apart from this, claimants are also entitled for a sum of Rs.5,000/- towards loss of consortium, Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses.
16. Now claimants will be entitled for a total sum of **Rs.4,30,300/-** (Rs.4,20,800 + Rs.5,000 + Rs.2,500 + Rs.2,000) instead of **Rs. Rs.4,15,000/-** as awarded by the Tribunal. This amount of compensation shall carry interest @ 7% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.
17. 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/-