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HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 1098 of 2015****Reserved on 25.11.2020****Pronounced on 01.12.2020**

1. Ku. Disha Tamrakar D/o Late Rampal Tamrakar, Aged About 6 Years Minor Through Legal Guardian Mother Smt. Rashmi Tamrakar Appellant No. 3 R/o Village - Gandai, Post Office And Police Station - Gandai, Tahsil - Khairagarh, District - Rajnandgaon Chhattisgarh.
2. Minor Abhyav Tamrakar, S/o Late Rampal Tamrakar, Aged About 2 Years Minor Through Legal Guardian Mother Smt. Rashmi Tamrakar Appellant No. 3 R/o Village - Gandai, Post Office And Police Station - Gandai, Tahsil - Khairagarh, District - Rajnandgaon Chhattisgarh.
3. Smt. Rashmi Tamrakar, W/o Late Rampal Tamrakar, Aged About 35 Years R/o Village - Gandai, Post Office And Police Station - Gandai, Tahsil - Khairagarh, District - Rajnandgaon Chhattisgarh
4. Smt. Rampyari Tamrakar, W/o Late Madhav Prasad Tamrakar, Aged About 60 Years R/o Village - Gandai, Post Office And Police Station - Gandai, Tahsil - Khairagarh, District - Rajnandgaon Chhattisgarh.

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1. The Future Generally Insurance Company Limited Head Office Mumbai, At Present Through Branch Manager, Branch Office, Shop No. 03, 2nd Floor, Maruti Business Park, Near Dhupad Petrol Pump, Raipur, Post Office- Raipur, Police Station - Azad Chowk, Raipur, District - Raipur Chhattisgarh Insurer Of Vehicle Motorcycle Bearing Registration No. C. G. 08 / N A / 7843.
2. The Oriental Insurance Company Limited, Through Branch Manager, Branch Office, Station Road, Rajnandgaon, District - Rajnandgaon Chhattisgarh Insurer Of Vehicle Hyundai Car Bearing Registration No. C.G. 09 / J / 0568.

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For Appellants:	Shri Shivendu Pandya, Advocate.
For Respondent No.1:	Shri N. K. Thakur, Advocate.
For Respondent No.2:	Shri Sandeep Shrivastava, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**CAV Award/Order**

1. The Claimants have preferred this appeal for enhancement of the award impugned dated 13.02.2015 passed in Claim Case No.19/2014,

whereby, the learned Tribunal has awarded a total amount of compensation to the tune of Rs.28,18,000/- with 8% interest per annum from the date of filing of the claim petition till the date of actual payment, while fastening the liability upon the Future Generally Insurance Company Ltd. The parties to this appeal shall be referred hereinafter as per their description in the Tribunal.

2. Briefly stated the facts of the case are that on 04.06.2013, deceased Rampal was going by his motorcycle from Pandariya to Kawardha and as soon as he reached near the village Bijajhori, the offending vehicle "Honda Car", bearing Registration No. C.G.-09-90368, which was being driven rashly and negligently by its owner-cum-driver, namely, Dujendra Verma, dashed him vehemently from his backside. As a result of the alleged accident, he (Rampal) injured badly and died on the spot and the owner of the alleged offending vehicle has also died, giving rise to the institution of the claim petition under Section 166 of the Act, 1988 by the Claimants, who are the legal representatives of deceased Rampal Tamrakar. According to the Claimants, the deceased, a 39 years old, was a Sub-Engineer in PWD department and used to earn Rs.23,820/- and thus claimed total amount of compensation to the tune of Rs.70,10,400/- under various heads.

3. The aforesaid claim has been contested by the Non-applicants and the Tribunal, after considering the evidence led by the Claimants, arrived at a conclusion that the alleged accident occurred due to rash and negligent driving by the owner-cum-driver of the alleged offending vehicle "Honda Car" where both Rampal and the driver of it, i.e., Dujendra died. It held further that the vehicle in question was not being used in violation of

the insurance policy and that by considering the net monthly income of the deceased as Rs.21,442/- awarded a total amount of compensation as mentioned herein above while fastening the liability upon the insurer of the alleged offending vehicle, i.e., Future General Insurance Company Limited.

4. According to Shri Shivendu Pandya, learned counsel appearing for the Appellants/Claimants, the Tribunal, while determining the amount of compensation, ought to have considered the gross monthly income of the deceased at Rs.23,820/- as mentioned in the pay slip (Ex.A.22) and that by considering the future prospects of his income, ought to have awarded the proper amount of compensation. It is contended further that a meagre amount of compensation of Rs.17,500/- has been awarded under the conventional heads, which is liable to be increased in the light of the dictum laid down by the Supreme Court and has placed his reliance in this regard upon the decision rendered in the matters of ***Magma General Insurance Company Limited*** vs. ***Nanu Ram Alias Chuhru Ram and others*** and ***National Insurance Co. Ltd.*** vs. ***Pranay Sethi*** reported respectively in **(2018) 18 SCC 130** and **(2017) 16 SCC 680**.

5. On the other hand, Shri N. K. Thakur, learned counsel for Respondent No.1 has supported the award impugned as passed by the Tribunal.

6. I have heard learned Counsel for the parties and perused the entire record carefully.

7. From perusal of the record, it appears that the gross monthly salary of the deceased was at Rs.23,820/- as evidenced by his pay slip (Ex.A.22) and the Tribunal has, therefore, erred in considering the same only at

Rs.21,442/-. It appears further that, while assessing the amount of compensation, the Tribunal has committed an illegality in refusing to consider the future prospects of his income and erred further in not awarding the proper amount of compensation towards the conventional heads. The award impugned, therefore, deserves to be modified.

8. Considering the monthly take home salary of the deceased to the tune of Rs.23,820/- as depicted from his pay slip (Ex.A.22), yearly Rs.2,85,840/- and for determining his actual salary, 10% of taxable amount of Rs.85,840/- (As there is exemption in tax upto Rs.2,00,000/-), i.e., Rs.8,584/- is to be deducted in the light of the principles laid down by the Supreme Court in the matter of Pranay Sethi (supra). Thus, the actual annual salary of the deceased for determining the amount of compensation would be Rs.2,77,256/- (Rs.2,85,840 – Rs.8,584) and that by deducting one-fourth of it, i.e., Rs.69,314/- towards his personal and living expenses as the number of dependents upon him was four, the yearly dependency would come to Rs.2,07,942/- (Rs.2,77,256 – Rs.69,314). Since the deceased was 45 years old as evidenced by the Postmortem report (Ex.A.-7), therefore, while determining his actual income, an addition of 30% of it, i.e., Rs.62,383/- towards future prospects of his income, is to be made in the light of the decision rendered in the said matter of Pranay Sethi (supra). It would, thus, come to Rs.2,70,325/- (Rs.2,07,942 + Rs.62,383/-). By applying the multiplier of 14, looking to the age of the deceased, the total dependency would, thus, work out at Rs.37,84,550/- (Rs.2,70,325/- x 14).

9. Besides, the widow and two minors 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 Alias 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:-

Mode of compensation		Amount Rs.	
(i)	Loss of spousal consortium to wife	-	40,000/-
(ii)	Loss of parental consortium to children	-	40,000/-
(iii)	For Funeral expenses	-	15,000/-
(iv)	Loss of estate	-	15,000/-
Total		-	1,10,000/- =====

and, it is to be increased by 10% in the light of the dictum of the Constitution Bench of the Supreme Court as laid down at para 59.8 of the said matter of Pranay Sethi(supra). Consequently, the Claimants would be entitled to a sum of Rs.1,21,000/- (Rs.1,10,000 + 10% of it) under the conventional heads.

10. In view of above, the Claimants would be entitled to a total amount of compensation to the tune of Rs.39,05,550/- (Rs.37,84,550 + Rs.1,21,000) with 8% interest per annum from the date of filing of the claim petition till the date of actual payment.

11. The appeal is accordingly allowed in part to the extent indicated herein above. Rest of the observations as made by the Tribunal shall remain intact. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE