NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1503 of 2015

1. Smt. Lakhmi Wd/o Late Dheluram, Aged About 38 Years
2. Miss Meena D/o Late Dheluram, Aged About 12 Years
3. Master Krishna S/o Late Dheluram, Aged About 9 Years
4. Miss Jyoti D/o Late Dheluram, Aged About 4 Years

   Appellants 2 to 4 are minors through their mother Smt Lakhmi (Appellant-1)

   All R/o Village Sivani, P. S. Bhanpuri, District Bastar Chhattisgarh.........Claimants

---- Appellants

Versus

1. Loknath Sidar S/o Bhagat Ram Sidar, Aged About 32 Years Through Saiyyad Azhar Ali, S/o Saiyyad Akbar Ali, Aged About 43 Years, R/o House Of R. D. Prasad Hikamipara Jagdalpur, District Bastar Chhattisgarh.....Driver
2. Saiyyad Azhar Ali S/o Saiyyad Akbar Ali, Aged About 43 Years R/o House Of R. D. Prasad Hikamipara Jagdalpur, District Bastar Chhattisgarh.......Owner
3. Shriram General Insurance Company Limited Through Branch Manager, E-8, Ricko Industrial Area Seetapur Jaipur Rajasthan Pin 302022......Insurer

---- Respondents/Non-Applicants

For Appellants	:	Shri Pravin Kumar Tulsyan, Advocate
For Respondent- 1	:	None appears
For Respondent-2	:	Shri Vikash A Shrivastava, Advocate
For Respondent-3	:	Shri Deepak Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

29.10.2020

1. Claimants have preferred this appeal under section 173 of Motor Vehicle Act challenging the impugned award dated 26.08.2015 passed by MACT, Bastar at Jagdalpur (For short, 'Claims Tribunal') in Claim Case No.233 of 2014 whereby learned Claims Tribunal allowed application under Section 166 of the Act of 1988 in part and awarded Rs.3,16,000/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 10.07.2013 Dheluram (since deceased) was travelling on a Truck bearing No.CG07-C-5298 (hereafter, referred to as 'offending vehicle') along with his goods i.e. dry fish for selling the same in weekly market at Charama. When the offending vehicle reached near village Bahigaon, it dashed with a Mango tree on road side due to rash and negligent driving of the offending vehicle driven by its driver NA1. The accident was reported to concerned Police Station based upon which crime was registered against NA1 and after completion of investigation, charge-sheet was filed before the court of jurisdictional magistrate.

3. Appellants / claimants, who are widow and children of the deceased filed an application under Section 166 of this act of 1988 seeking compensation of Rs.1,96,700/- pleading therein that the deceased was engaged in business of selling dry fish and earning Rs.8,000/- per month.

4. NA1 and 2, driver and owner of offending vehicle submitted reply to the claim application, denying claim of the appellants. It was further pleaded that on the date of accident NA1 was possessed with valid and effective driving license. Offending vehicle was insured with NA3, Insurance Company, hence, liability if any, would be upon Insurance Company for payment of amount of compensation.

5. NA3 / Insurance Company did not appear before the Claims Tribunal and was proceeded *ex-parte*.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal arrived at a finding that

Dheluram died on account of motor accidental injuries suffered by him due to rash and negligent driving of the offending vehicle by NA1; NA1 was having valid and effective driving license with him on the date of accident and awarded Rs.3,16,000/- as compensation.

7. Shri Pravin Kumar Tulsyan, learned counsel for the appellants submits that appellants are seeking enhancement of the amount of compensation on the ground that tribunal has assessed age of the deceased erroneously as 50 years on the date of accident, only on the basis of age mentioned in Naksha Pacnchnama and not considered the age mentioned in the post-mortem report. Age of the deceased mentioned in the claim application, statement of the claimants, and also age of widow of the deceased shown in the claim application as 38 years is also not considered. He submits that age of the deceased in absence of any documentary evidence, has to be ascertained on the basis of other material available on record i.e. age shown of the applicant as 38 years and age of the children, age of the deceased has to be reckoned in between 40-45 years. He further contended that Tribunal erred in assessing income of the deceased on lower side, over looking occupation of the deceased to be seller of dry fish in nearby markets; Rs.1,000/- towards pocket money has been deducted erroneously, apart from deducting 1/4th towards personal and living expenses and not awarding any amount towards future prospects.

8. Shri Deepak Gupta, learned counsel for the Insurance Company supported the award and submits that claimants have not proved age of the deceased by placing any documentary evidence on record. Tribunal

while taking into consideration age mentioned in Naksha Panchnama, which was prepared by the Police, has rightly held age of the deceased to be 50 years. He further contended that claimants have not placed on record any admissible piece of evidence to prove income of the deceased and in absence of any admissible piece of evidence placed on record, the Tribunal has rightly assessed income of the deceased on notional basis, which does not call for any interference, the amount of compensation awarded, is just and proper in the facts of the case.

9. I have heard learned counsel for the parties and also perused the record of the claim case.

10. So far as the first submission raised by learned counsel for the appellants with regard to age of deceased, perusal of the claim application would show that claimants have mentioned age of the deceased as 40 years and age of widow of the deceased shown to be 38 years, further age of the children shown to be 12 years, 9 years, and 4 years. In post-mortem report Ex.A6, age of the deceased has been shown to be 40 years. Only in Naksha Panchnama Ex.A5 prepared by the police during the course of investigation, his age is mentioned as 50 years. There is no other documentary evidence available on record showing date of birth of the deceased, than the above documents. Except in one document ie Ex.A5, in all other documents, age of the deceased is mentioned as 40 years. Age mentioned in the document prepared by Police is not based on any proof of age or upon any scientific analysis but only on assumption or as stated orally by any person present there. In these circumstances, age mentioned in Ex.A5 cannot be taken as proved age but it has to be

ascertained based on considering other material and evidence available on record. Upon considering overall facts of the case, particularly taking into consideration age of claimant 1, widow of the deceased, age of children, age mentioned in post-mortem report Ex.P5, in considered opinion of this court, learned Claims Tribunal has erred in holding age of the deceased as 50 years, which is not sustainable and it is held to be in between 40-45 years.

11. The second ground raised by learned counsel for the appellants is with regard to income of the deceased, to be on lower side. Date of accident is 10.07.2013. It has been pleaded that the deceased was engaged in selling dry fish in nearby markets. Even if nature of business and occupation as pleaded in claim application and stated by the claimants witnesses is not taken into consideration, as there is no specific proof, then occupation of the deceased can be taken as a manual labourer and accordingly his income is to be assessed on notional basis. For assessing the income of any person on notional basis, several factors are required to be taken into consideration like date of accident, nature of occupation, price index, wage structure and cost of living etc. Taking note of date of accident, age of deceased, I find it appropriate to assess income of the deceased as Rs.4,500/- per month.

12. Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others reported in** (2017) 16 SCC 680, held that the deceased who is self employed or in fixed salary, and above 40 years and below 50 years, is entitled for addition of 25% of his established income towards future prospects. In view of aforementioned

law laid down by Hon'ble Supreme Court, there will be an addition of 25% towards future prospectus in the monthly wages of the deceased, assessed as Rs.4,500/- per month.

13. Learned Claims Tribunal has deducted 1/4th towards personal and living expenses which is inconsonance with the law laid down by Hon'ble Supreme Court in case of **Sarla Verma and others Vs Delhi Transport Corporation and another reported in** (2009) 6 SCC 121. But erred in further deducting Rs.1,000/- towards pocket money expenses of the deceased. Deduction of 1/4th towards personal and living expenses includes pocket money expenses of the deceased. Hon'ble Supreme Court while considering cost of living of the deceased on the date of accident has assessed the ratio of deduction towards personal and living expenses of victim in case of **Sarla Verma** (supra) taking into consideration the number of dependant family members of the deceased. In view of above, deduction towards personal and living expenses of the deceased will be only 1/4th of income of the deceased.

14. As we have assessed age of the deceased in between 40-45 years, the appropriate multiplier would be 14 and not 11 as applied by the Tribunal.

15. For the foregoing reasons, the amount of compensation to be awarded to the claimants requires re-computation and re-calculation which is as under:

(a) Income of the deceased has been taken as Rs.4,500/- per month and Rs.54,000/- per annum.

(b) By adding 25% of the established income of the deceased, yearly income of the deceased comes to Rs.67,500/- {54000 + (54000 x 25/100)}.

(c) After deducting 1/4th towards personal and living expenses, annual loss of dependency comes to Rs.50,625/- {67500— (67500 x ¼)}.

(d) Upon applying multiplier of 14 to the annual loss of dependency, total loss of dependency comes to Rs.7,08,750/- (50625 X 14).

(e) Apart from above, the claimants are further entitled for Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards parental consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

16. Now the appellants/claimants are entitled for a total sum of **Rs.8,18,750/-** (708750 + 40000 + 40000 + 15000 + 15000)as compensation instead of Rs.3,16,000/-, awarded by learned Claims Tribunal. The amount of compensation shall carry interest @ 6% from the date of filing of the claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

17. 20% Of the enhanced amount of compensation shall be kept in Fixed Deposit with any Nationalized Bank for a period of 03 years in the name of appellant-1 and 10% of compensation to be kept in the name of appellants-2 to 4 each i.e. (10000 + 10000 + 10000) separately, for a period of 03 years.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma