NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 412 of 2015

1. Smt. Champi Bai, W/o Lajeshwar @ Rajeshwar Mandle Aged About 29 Years
2. Ku. Payal D/o Lajeshwar @ Rajeshwar Mandle Aged About 7 Years Minor
3. Roshan Mandle S/o Lajeshwar @ Rajeshwar Mandle Aged About 5 Years Minor
4. Smt. Nirasha Bai W/o Munnadas Mandle Aged About 50 Years
5. Munnadas Mandle S/o Devadas Mandle Aged About 52 Years

Appellants 2 and 3 are minors through natural guardian mother Smt Champi Bai, appellant-1. All are R/o Village Litiya Post Bajrangpur, Tahsil And District Rajnandgaon Chhattisgarh

---- Appellants

Versus

1. Kejuram Deshmukh, S/o Jhumuklal Deshmukh, Aged About 38 Years Occupation- Driver, R/o Niyapar Lamni, Police Station-Parpa, District Bastar Chhattisgarh
2. Vijay Soni, S/o Satya Narayan Soni Aged About 44 Years R/o Radhika Tent House, Main Market Ward No. 6, Kirandul, District Dantewada Chhattisgarh
3. Shriram General Finance Insurance Company E/8 E.P.I.P.R.R. I.C.O. Industrial Area, Sitapur, District Jaipur Rajasthan
4. Smt. Madhuri Thakur Wd/o late Chandrakant Thakur Aged About 55 Years R/o Bramhanpara, Ward No. 33, District : Rajnandgaon, Chhattisgarh
5. The New India Insurance Company Ltd. W/o Registered And Head Office 1215, 15th Floor, Navrang House, 21 Kasturba Gandhi Road, New Delhi 110091 Divisional Office Through Divisional Manager Through Power House Bhilai, District : Durg, Chhattisgarh

---- Respondents

For Appellants	:	Shri Goutam Khetrapal, Advocate
For Respondent- 5	:	Shri Dashrath Gupta, Advocate
For other Respondents	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

27.10.2020

1. Claimants have preferred this appeal under Section 173 of the Motor Vehicle Act, 1988 challenging the impugned award dated 23.12.2014 passed by the Second Additional Claims Tribunal, Rajnandgaon (for short, 'Claims Tribunal') in Clam Case-60 of 2013,

whereby learned Claims Tribunal allowed the claim application in part and awarded Rs.4,20,000/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 14.05.2012, Lajeshwar @ Rajeshwar (since deceased) was travelling in Maruti Van bearing No.CG 08 K 1018 and returning along with his friends and relatives from village Dashapal (Bastar) to his residence at village Litiya. When they reached near village Bapukohka, at that relevant time, one Truck bearing No.CG 18 H0487 (for short, 'offending vehicle'), driven rashly and negligently by NA1, dashed Maruti Van. In the said accident, Lajeshwar suffered grievous injuries on his person and died on spot. In the said accident, driver of Maruti Van Bhuneshwar and Johan Kurre also died and other passengers suffered grievous injuries.

3. The claimants who are widow, children and parents of deceased Lajeshwar filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.17,40,000/- pleading therein that the deceased, who was an able bodied person, aged about 30 years, working as labourer and earning Rs.200/- per day.

4. Non-applicant No.1, driver of the offending vehicle did not appear before the learned Claims Tribunal.

5. Non-applicant No.2, submitted reply to the claim application and denied the pleadings made therein. Though on the date of accident, NA1 was driving the offending vehicle, but there was no negligence on his part. Accident was not the result of negligence on the part of NA1. Amount of compensation claimed is highly exaggerated. On the date of accident,

offending vehicle was insured with Non-applicant No.3, Insurance Company, hence liability, if any, to satisfy the amount of compensation, it would be upon Non-applicant No.3, Insurance Company.

6. Non-applicant No.3/Insurance Company of the offending vehicle submitted reply to claim application denying the fact of accident. It was further pleaded that the amount of compensation claimed is highly exaggerated. It is the driver of Maruti Van, on which deceased was travelling, was negligent. There was no valid and effective driving license with Non-applicant No.1, there was no valid permit and fitness with the offending vehicle. There was breach of Policy conditions.

7. Non-applicant No.4, owner of the Maruti Van submitted reply to the claim application pleading therein that accident was result of rash and negligent driving of offending vehicle by Non-applicant No.1. Deceased on the date of accident went for some family work along with his friends and relatives. On the date of accident, Maruti Van was insured with Non-applicant No.5, The New India Insurance Company Limited and liability, if any, would be upon Non-applicant No.5 for satisfying the amount of compensation.

8. Non-applicant No.5/Insurance Company of Maruti Van submitted its reply pleading therein that the accident was result of rash and negligent driving of offending vehicle by Non-applicant No.1. Maruti Van was being driven at balanced speed and the driver of Maruti Van was not possessing valid and effective driving license.

9. Learned Claims Tribunal on appreciation of pleading and evidence placed on record, held that Non-applicant No.1 while driving the offending vehicle rashly and negligently, dashed Maruti Van and caused accident; in the said accident, Lajeshwar @ Rajeshwar Mandle, one of the occupants of Maruti Van died. Breach of Policy conditions was not found to be proved; contributory negligence was also not found to be proved and awarded total sum of Rs.4,20,000/- as compensation.

10. Shri Goutam Khetrapal, learned counsel for the appellants/claimants submits that learned Claims Tribunal erred in assessing the income of deceased, aged about 30 years as Rs.3,000/- per month only on notional basis, overlooking the date of accident, ie 14.05.2012, which is on lower side. It is further contended that the Tribunal has not awarded any amount towards future prospects and compensation on other conventional heads as per law laid down by Hon'ble Supreme Court in cases of **National Insurance Company Limited Vs Pranay Sethi and others** reported in (2017) 16 SCC 680,**and Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram & others reported in (2018) 18 SCC 130**; deducted 1/3 towards personal and living expenses, ignoring the fact that claimants are 5 in number contrary to ruling in case of **Sarla Verma (Smt) and Others Vs Delhi Transport Corporation and Another** reported in **(2009) 6 Supreme Court Cases 121**. He further submits that Claims Tribunal has awarded Rs.12,000/- on other conventional heads, which is also on lower side in view of law laid down by Hon'ble Supreme Court in the above cited cases.

11. Shri Dashrath Gupta, learned counsel for respondent-5 Insurance Company submits that he is appearing for the Insurance Company of Maruti Van. Liability is fastened upon the owner, driver and Insurance Company of the offending vehicle.

12. No one appeared for respondents-1, 2 and 3. Notice sent to respondent-3 on 17.03.2019 by register post has not been received back. Looking to the challenge made by learned counsel for the appellants with regard to fixation of amount of income, award of future prospects and compensation on other conventional heads, I am proceeding to decide this case in absence of counsel for respondents-1, 2 and 3.

13. To appreciate the submissions of learned counsel for the appellants with regard to assessing the income on lower side, the claimants have pleaded that the deceased was working as labourer and date of accident is 14.05.2012. In absence of any evidence with regard to proof of income of the deceased, income is required to be assessed on notional basis. While assessing the income of deceased on notional basis, several factors like occupation of the deceased, wage structure, cost of living and price index are to be taken into consideration. Learned Claims Tribunal without taking into note of the aforementioned aspects, assessed income of the deceased as Rs.3,000/- per month, which is on lower side. Taking into consideration the age of deceased and date of accident, I find it appropriate to reckon the income of deceased as Rs.4,000/- per month and Rs.48,000/- per annum.

14. Learned Claims Tribunal has not added any amount towards future prospects as per the law laid down by Hon'ble Supreme Court in case of **Pranay Sethi** (supra). The deceased was not in permanent employment and was less than 40 years of age. Therefore, there will be an addition of 40% of established income towards future prospects for ascertaining total income.

15. There are total five claimants including father of deceased. Even if father of deceased is not taken as dependant upon his son, the deceased then also, number of claimants will be four. Hon'ble Supreme Court in case of **Sarla Verma and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121. (supra) has held that appropriate deduction towards personal and living expenses of the deceased in case where number of claimants are 4-6, to be 1/4th and not 1/3rd as it was taken by Claims Tribunal. For the foregoing reasons, appropriate deduction shall be 1/4thand it is ordered accordingly.

16. In view of above, the amount of compensation to be awarded to the claimants requires re-consideration and re-computation which is as under:

a) Income of the deceased is taken as Rs.4,000/- per month and Rs.48,000/- per annum.

b) By adding 40% of the established income of the deceased towards future prospects, total income comes to Rs.67,200/- {48000 + (48000 x 40/100)}

c) After deducting 1/4th towards personal and living expenses, yearly loss of dependency comes to Rs.50,400/- {67200 — (67200 x 1/4)}.

d) By multiplying yearly loss of dependency with multiplier of 17, total loss of dependency comes to Rs.8,56,800/- (50400 x 17).

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

17. Now the claimants are entitled for **Rs.10,06,800/-** (856800 + 40000 + 40000 + 40000 + 15000 + 15000) as compensation instead of Rs.4,20,000/-, as awarded by the Claims Tribunal.

18. The aforementioned amount of compensation shall carry interest @ 6% from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

19. Appeal is allowed in part. Liability to satisfy the amount of compensation will be upon NA-1 to 3/respondents-1 to 3.

20. Appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma