

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 955 of 2015**

1. Smt. D. Rajeshwari wife of late D. Venkat Ramanna, aged about 60 years
2. D. Surya Praksh Rao son of late D. Venkat Ramanna, aged about 43 years,
Both R/o Jagdamba Chowk Purena, P.S. Bhilai-3, Tahsil Patan, District Durg (C.G.)

---- Appellant**Versus**

1. Vishal Nishad son of Shri Sukhram Nishad, aged about 56 years, R/o. Ward No. 40, Subhash Nagar, Kasaridih, Near Munshi Badi, Durg, District Durg (C.G.) (Driver)
2. Abdul Safique son of Shri Abdul Kakim, R/o Near Sahara Betray, K.K. Road, Moudhapara, Raipur, Tahsil and District Raipur (C.G.) (Owner)
3. Bajaj Alliance General Insurance Company Limited, Branch Office, Shiv Mohan Bhawan, Vidhan Sabha Raod, Pandary, Raipur District Raipur (C.G.) (Insurer)

---- Respondents

For Appellants	: Shri T.K. Tiwari, Advocate
For Respondent No.3	: Shri D. L. Dewangan, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****29/10/2020**

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 10/03/2015 passed by Third Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.82 of 2012 whereby learned Claims Tribunal allowed the claim application filed under

Section 163A of the M.V. Act in part and awarded Rs.1,32,000/- as compensation in fatal accident case.

2. Facts of the case in nutshell, are that, on 28/08/2010 at about 1.00 PM, D. Venket Rammana was standing on side of intersection at G.E. Road Charoda, Bhilai at that relevant time, a Bus bearing No.CG-04/E/1892 (hereinafter referred to as "offending vehicle") of Sai Travels driven by non-applicant No.1 rashly and negligently, dashed D. Venket Rammana. In the said accident, he suffered grievous injuries, he was taken to Sector-9 Hospital Bhilai. During the course of treatment, he succumbed to injuries. The accident was reported to concerned Police Station, based upon which, criminal case was registered against non-applicant No.1, after investigation, charge-sheet was submitted before the Court of Judicial Magistrate First Class, Patan, District Durg, Chhattisgarh.
3. Claimants who are widow and son of deceased filed an application under Section 163A of the M.V. Act seeking compensation of Rs.12,44,500/- pleading therein that deceased was retired Railway employee, aged about 66 years, working as Technical Advisor and earning Rs.6,000/- per month, also drawing pension of Rs.5,245/- per month.
4. Non-applicants No.1 and 2 submitted their reply separately and denied the facts pleaded in claim application. They have

denied the fact of accident and pleaded that non-applicant No.1/driver of offending vehicle has been falsely implicated, amount of compensation claimed is highly exaggerated as deceased was a retired Government employee of 66 years, hence his earning as pleaded by the claimants is wrong. It was further pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3, hence, liability, if any, to satisfy the amount of compensation will be upon Insurance Company.

5. Non-applicant No.3/Insurance Company admitted the insurance of offending vehicle for a period from 27/07/2010 to 26/07/2011 as Commercial Vehicle. It was pleaded that place of accident is a four-lane road in between Durg to Raipur. Accident was on account of negligence of deceased himself, no document has been placed on record with regard to income of deceased. It was further pleaded that there was no valid and effective driving licence with non-applicant No.1/driver of offending vehicle, there was no valid fitness and permit of vehicle thereby there was breach of policy conditions, hence, Insurance Company is not liable to pay any amount of compensation.
6. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal arrived at a finding that death of late D. Venket Ramanna was on account of motor accidental injuries suffered by him

due to rash and negligent driving of offending vehicle by non-applicant No.1. Assessing income of the deceased as Rs.3,000/- per month, awarded Rs.1,32,000/- as total compensation.

7. Shri T. K. Tiwari, learned counsel for appellants/claimants submits that learned Claims Tribunal had not considered the pleadings and evidence placed on record by appellants before the Claims Tribunal with regard to income of deceased and erroneously assessed Rs.3,000/- per month as income of deceased. He further argued that learned Claims Tribunal has not awarded the amount on other conventional heads as per the judgment passed by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and submits that amount of compensation to be suitable enhanced.
8. Per contra, Shri D.L. Dewangan, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal had assessed the income of deceased as Rs.3,000/- per month which in fact was on higher side. He further submits that learned Claims Tribunal had awarded just amount of compensation taking into consideration the amount as fixed for other conventional heads under Second Schedule of the M.V. Act, which does not call for any interference.

9. I have heard learned counsel for the respective parties and perused the record carefully.
10. Admittedly the application filed by appellants was under Section 163A of the M.V. Act. Section 163A of the M.V. Act is a special provision formulated by law makers under the M.V. Act for particular class of persons whose income is less than Rs.40,000/- per annum.
11. As maintainability of claim application is not put to challenge by respondents, I am not making any observation with regard to sustainability of the award, but looking to the fact that application is filed under Section 163A of the M.V. Act as of deceased to be 66 years and is a pensioner, I do not find any reason to interfere with the quantum of compensation awarded by learned claims Tribunal in the facts and circumstances of the case.
12. In the result, appeal being devoid of substance, is liable to be and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh