NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 114 of 2016

1. Smt. Hemlata Joshi Wd/o Late Bedram @ Dhannu Joshi, aged about 24 years
2. Ku. Akanksha Joshi D/o Late Bedram @ Dhannu Joshi, aged about 08 years
3. Aakash Kumar Joshi S/o Late Bedram @ Dhannu Joshi, aged about 06 years
4. Vikas Kumar Joshi S/o Late Bedram @ Dhannu Joshi, aged about 05 years
   No.2 to 4 are minor through his guardian mother Smt. Hemlata Joshi Wd/o Late Bedram @ Dhannu Joshi
5. Smt. Budhariya Bai W/o Late Bulvaram Joshi, aged about 55 years
   All are R/o Village Mohbhatta, Post Sargaon, Thana Hirri, District Bilaspur, Chhattisgarh.

---- Appellants

Versus

1. Janak Singh S/o Aadhar Singh Gond, aged about 35 years, R/o Village Harratola, Pendraroad, Thana Gaurela, District Bilaspur, Chhattisgarh.
2. Abhishek Singh Rajput S/o Bharat Singh Rajput, R/o Sanjay Chauk, Pendraroad, Thana Gaurela, District Bilaspur, Chhattisgarh.
3. Branch Manager, The Oriental Insurance Company Limited, Regional Office 1st Floor, Rama Tread Center, In front of Rajeev Plaza, Bus Stand, Bilaspur, District Bilaspur, Chhattisgarh.
4. Branch Manager, Shriram General Insurance Company Limited, Regional Office E/8, EPIP, RIICO, Industrial Aria, Sitapura, Revenue/Civil District Jaipur (Rajasthan) 302022.

---- Respondents

For Appellants : Shri Samir Singh, Advocate
For Respondents 1 & 2 : None
For Respondent No. 3 : Shri Ghanshyam Patel, Advocate
For Respondent No.4 : Shri Sangeet K. Kushwaha, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

16.09.2021

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 19.10.2015 passed by 4th Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.121 of 2013 whereby learned Claims Tribunal allowed an application filed under Section 166 of the M.V. Act in part and awarded Rs.4,99,000/- as total compensation along with interest at the rate of 6% per annum from the date of filing of claim application till its realization in a fatal accident case and fastened liability to satisfy the amount of compensation upon non-applicant No.4.

2. Brief facts relevant for disposal of this appeal, are that, on 22.12.2011, Bedram @ Dhannu Joshi was travelling on motorcycle of Sandeep Joshi bearing No.CG-10/EE/7983 and going to hospital to see his relative, situated at Mangla Chowk, Bilaspur. While so, when he reached near electricity office main road Sakri, one Scorpio vehicle bearing No.CG-10/H/5533 (hereinafter referred to as 'offending vehicle') driven rashly and negligently by non-applicant No.1, dashed the motorcycle and caused accident. On account of serious motor accidental injuries, Bedram @ Dhannu Joshi died on spot and Sandeep Joshi died during the course of treatment in the hospital.

3. Appellants/claimants, who are widow, children and widowed mother of Late Bedram @ Dhannu Joshi filed an application

under Section 166 of M.V. Act pleading therein that on the date of accident, deceased was able-bodied person, aged about 25 years, working as Mason and earning Rs.200/- per day. It was further pleaded that claimants were dependent upon income of deceased and claimed Rs.12,70,000/- as compensation.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply to the claim application denying the facts pleaded therein. It was further pleaded that on the date of accident, non-applicant No.1 was possessed with valid and effective driving licence and offending vehicle was insured with non-applicant No.4. Accident was a result of rash and negligent driving of driver of motorcycle i.e. Sandeep Joshi, there was contributory negligence on the part of driver of motorcycle, hence, non-applicants No.1 and 2 are not liable to pay any amount of compensation.

5. Non-applicant No.3/insurer of offending vehicle submitted reply to claim application and denied the facts pleaded therein. It was fuhrer pleaded that offending vehicle was not insured from 15.10.2011 to 14.10.2012, owner of offending vehicle/non-applicant No.2 issued cheque of State Bank of India, which was dishonored upon depositing in the account of insurer, cover note issued in favour of offending vehicle was cancelled on 08.11.2011 and cancellation of policy was

intimated to non-applicant No.2/owner of offending vehicle by registered post.

6. Non-applicant No.4/subsequent insurer of offending vehicle submitted reply to claim application; denying the facts placed therein and it was pleaded that accident was a result of sole negligence on the part of driver of motorcycle i.e. Sandeep Joshi. Owner and insurer of motorcycle were not arrayed as party non-applicants, hence there was non-joinder of necessary party. As there was head on collision between two vehicles, there was contributory negligence on the part of drivers of both the vehicles. On the date of accident, non-applicant No.1 was not possessed with valid and effective driving licence, hence, Insurance Company is not liable to satisfy any amount of compensation.

7. On appreciation of pleadings and evidence brought on record by respective parties, learned Claims Tribunal held that Bedram @ Dhannu Joshi died on account of motor accidental injures, due to rash and negligent driving of offending vehicle by non-applicant No.1, breach of policy conditions was not found to be proved. Upon assessing income of deceased as Rs.3,000/- per month, calculated compensation and awarded Rs.4,99,000/-.

8. Shri Samir Singh, learned counsel for the appellants/claimants would submit that learned Claims Tribunal erred in assessing income of deceased as

Rs.3000/- per month only overlooking the date of accident and occupation of deceased as Mason; not awarding any compensation towards future prospects overlooking the age of deceased to be 30 years as mentioned in postmortem report (Ex.A/5) and amount of compensation awarded on other conventional heads to be on lower side. Amount of compensation be suitably enhanced in the facts and circumstances of the case. He places reliance on the judgments of Hon'ble Supreme Court in case of **National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130** in support of his contention.

9. Per contra, Shri Ghanshyam Patel, learned counsel for respondent No.3 submits that liability to satisfy the amount of compensation is upon respondent No.4 being insurer of offending vehicle.

10. Shri Sangeet K. Kushwaha, learned counsel for respondent No.4 would submit that except the pleading and oral submission of Smt. Hemlata Joshi (AW-1), no other admissible piece of evidence is brought on record by appellants/claimants to prove the occupation and income of deceased. In absence of admissible piece of evidence, Claims Tribunal justified in assessing income of the

deceased on notional basis. He further submits that amount of compensation awarded by Claims Tribunal is just and proper, which does not call for any interference.

11. I have heard learned counsel for the respective parties and perused the record carefully.

12. So far as the submission of learned counsel for appellants/claimants with regard to assessment of income of deceased is concerned, claimants in their claim application have pleaded occupation of deceased as Mason and his earning as Rs.6,000/- per month. In support of pleadings, claimants have examined appellant No.1-Smt. Hemlata Joshi as AW-1, who in her examination-in-chief i.e. affidavit filed under Order XVIII Rule 4 CPC stated the income of deceased to be Rs.200/- per day. Pramod Kurre was examined as AW-2, who also stated, income of deceased as Rs.200/- per day form his work of Mason.

13. True it is that except oral evidence, claimants have not brought on record any admissible piece of evidence like evidence of person, under whom, deceased was working or person, who at any point of time, engaged the deceased for work of Mason and paid wages to him. In absence of admissible evidence, income of deceased is to be assessed on notional basis keeping in mind the nature of occupation, date of accident, wage structure prevailing on the date of accident, price index and cost of living etc. Upon considering

the aforementioned factors, I find it appropriate to reckon income of deceased as Rs.4,500/- per month treating him to be a semi skilled labourer. It is ordered accordingly.

14. So far as the award of compensation towards future prospects is concerned, Hon'ble Supreme Court in case of **National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** considered the award of future prospects. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that addition of 40% of established income where the victim/deceased is below the age of 40 years and not in permanent employment. In the case at hand, deceased was 30 years of age based on postmortem report, hence, there will be an addition of 40% of established income to the established income of deceased towards future prospects for computing total income of deceased on the date of accident. It is ordered accordingly.

15. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has specified the head on which compensation under other conventional heads is to be awarded, such as, loss of consortium, funeral expenses and loss of estate, further quantified the compensation for each head as Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. Types of 'consortium' has been subsequently explained by the Apex Court in **Magma General Insurance Company Limited v.**

Nanu Ram Alias Chuhru Ram and Others reported in **(2018) 18 SCC 130**, to be of three types; (i) loss of spousal consortium (payable to the surviving spouse because of the death of the partner); (ii) loss of parental consortium (payable to children because of the death of parents) and (iii) loss of filial consortium (payable to the parents because of the death of children). Hence, appellants/claimants will be entitled for the compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.

16. For the aforementioned reasons and discussions, amount of compensation awarded by learned Claims Tribunal to the claimants requires re-computation, which is as under :

Income of the deceased is taken as Rs.4,500/- per month i.e. Rs.54,000/-. By adding 40% of income towards future prospects, total annual income of deceased will come to Rs.75,600/- (54,000 x 40% = 21,600 and 54,000 + 21,600). After deducting 1/4th towards personal and living expenses, annual loss of dependency will be Rs.56,700/- (75,600 / 4 = 18,900 and 75,600 – 18,900). On applying the multiplier of 17 to annual loss of dependency, total loss of dependency will come to Rs.9,63,900/- (56,700 x 17).

Apart from above amount of compensation towards loss of dependency, appellants/claimants are further entitled for a sum of Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.40,000/- towards loss of filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of funeral expenses.

17. Now, appellants/claimants are entitled for total compensation of Rs.11,13,900/- (9,63,900 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.4,99,000/- as awarded by learned Claims Tribunal. Amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. Liability to satisfy the amount of compensation shall be upon non-applicant No.4/respondent No.4. Other conditions of impugned award shall remain intact.

18. In the result, appeal is allowed in part. Impugned award is modified to the extent as indicated herein above.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh