

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 695 of 2015

1. Smt. Chowa Bai W/o Chinta Ram, Aged About 41 Years.
 2. Chintaram S/o Amar Singh, Aged About 43 Years.
- Both are R/o Village Ravanguda, Police Station Puri, Tahsil Dhamtari, Civil and Revenue District- Dhamtari, Chhattisgarh.

---- Appellants

Versus

1. Sombari Lal Gautam S/o Balduram Gautam, Aged About 32 Years, R/o Ambaspur, Post Moholi, Police Station Mishri, Tahsil Mishri, Civil and Revenue District- Seetapur, Uttar Pradesh.
2. Pankaj Kumar S/o Chandarpal, R/o 18/4, Mathura Road, Faridabad, Police Station and Post Faridabad, Civil and Revenue District Faridabad U.P. Pin -121001, Choudhari Charan Singh Colony Shiv Bhawan, Mazra Shamili, District- Mujaffarpur, Uttar Pradesh.
3. Divisional Manager, Tata A.I.G. General Insurance Company Limited, Lal Ganga Shopping Complex, 2nd Floor, Shop No. 223224 G.E. Road, Raipur, District : Raipur, Chhattisgarh.

--- Non-applicant Nos.1 to 3/Respondents

For Appellants	: Mr. Kunal Das, Advocate.
For Respondent Nos.1 and 2	: None.
For Respondent No.3	: Mr. Ghanshyam Patel, Advocate.

(Proceedings through video conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

27/08/2021

1. Claimants-appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of amount of compensation awarded by learned Additional Motor Accident Claims Tribunal, (FTC), Dhamtari, District Dhamtari, (CG) (for short 'Tribunal') vide award dated 27.03.2015 in Claim Case No.70/2013, whereby Tribunal allowed application filed under Section 161 of the Act of 1988 in part, awarded total compensation of **Rs.3,28,000/-** in a fatal accident.
2. Facts relevant for disposal of this appeal are that on 16.03.12 Karan was going to Dhamtari from village Ravanguda on bicycle. On the way, one Truck bearing registration No.HR-38-G-6564 (for short 'offending vehicle') driven by Non-applicant No.1 rashly and negligently dashed the bicycle

and caused accident. In the aforementioned accident, Karan suffered grievous injuries over his person and succumbed to injuries.

3. Appellants/claimants, who are parents of deceased, filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.14,20,000/- pleadings therein that on the date of accident, deceased was aged about 20 years, working as clerk with Om Naukaar Rice Mill and earning Rs.5,000/- per month. They were dependent upon income of deceased.
4. Non-applicant Nos.1 & 2/driver and owner of offending vehicle, submitted reply denying facts pleaded in claim application. It was further pleaded that non-applicant No.1 was possessed with valid and effective driving license. Offending vehicle on the date of accident was insured with non-applicant No.3, hence liability, if any, to pay amount of compensation would be on non-applicant No.3.
5. Non-applicant No.3/Insurance Company also submitted its reply to claim application resisting the claim. It was further pleaded that on the date of accident non-applicant No.1 was not having valid and effective driving license to drive offending vehicle. There was no valid permit and fitness certificate with offending vehicle to ply on road, as such there was breach of policy condition.
6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Karan died on account of motor-accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No.1. Breach of Policy condition was not found to be proved, allowed application in part, awarded total compensation of **Rs.3,28,000/-** alongwith interest @ 6% per annum.

7. Learned counsel for appellants submits that Tribunal erred in awarding very meager amount of compensation. Tribunal assessed income of deceased at Rs.3,000/- per month, overlooking the date of accident, nature of occupation of deceased to be clerk working with Rice mill, structure prevailing on the date of accident. Tribunal applied multiplier of '16', which is not proper. In view of decision of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**¹, appropriate multiplier ought to be 18 as on the date of accident deceased was in age group of 15-20 years. Tribunal has not awarded compensation adding income towards future prospects, as held by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**². Amount awarded under other conventional heads is also on lower side and needs to be enhanced in light of decision of Hon'ble Supreme Court in case of **Pranay Sethi (supra)** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors**³.
8. Learned counsel for respondent No.3/Insurance Company submits that claimants failed to prove income of deceased by placing admissible piece of evidence on record. In absence of any proof of income, Tribunal justified in assessing income of deceased as Rs.3,000/- per month on notional basis. Amount of compensation awarded to claimants is just and proper in given facts and circumstances of the case and does not call for any interference.
9. Heard learned counsel for the parties and perused record of claim case.
10. So far as submission of learned counsel for appellants, with respect to assessment of income of deceased is concerned, perusal of record would

1 (2009) 6 SCC 121

2 (2017) 16 SCC 680

3 (2018) 18 SCC 130.

show that in claim application claimants have pleaded occupation of deceased as 'clerk' working with Rice mill but except pleading with respect to income of deceased as Rs.5,000/- per month and oral statement, no admissible piece of evidence is available on record showing income of deceased as pleaded and stated by claimants. Employer was not examined. In such a situation, Tribunal justified in assessing income of deceased on notional basis, but at the same time the Tribunal has not considered the factors like age of deceased, nature of occupation, wage structure and cost of living on the date of accident. Even if the occupation of deceased is not proved by placing admissible piece of evidence than also looking to the age of deceased his occupation can be considered to be an ordinary manual labourer. Submission made by learned counsel for the appellants that on the date of accident under the Minimum Wages Act, wages of unskilled labourer was of Rs.4,270/- per month which was not disputed by respondent No.3. Hence, I find it appropriate to assess income of deceased as Rs.4,300/- per month instead of Rs.3,000/- per month. It is ordered accordingly.

11. Tribunal applied multiplier of 16 to compute amount of compensation which is less than what is prescribed in guidelines issued by Hon'ble Supreme Court in case of **Sarla Verma** (supra). While considering application of multiplier based on age group of deceased/victim has held that where deceased/victim was in age group of 15-20 years, appropriate multiplier to be 18, hence, in this case also appropriate multiplier would be 18. It is ordered accordingly.
12. Coming to next argument advanced by learned counsel for appellant that Tribunal erred in not awarding any amount towards future prospects. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that in

case deceased, victim of motor accident, not to be in permanent employment and below the age of 40 years, an addition of 40% of establish income of deceased towards future prospects should be made.

Relevant paragraph of **Pranay Sethi's** case reads thus :-

“59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

13. Indisputably, in case at hand, on the date of accident, deceased was aged about 20 years as assessed by Tribunal and was not in permanent employment, therefore, there shall be an addition of 40% of established income towards future prospects to income of deceased for assessing total income for the purpose of calculating compensation.

14. In case of **Pranay Sethi** (supra) Hon'ble Supreme Court has specified the heads for awarding compensation on other conventional heads and also quantified the amount for those heads. The heads on which compensation is to be awarded are loss of consortium, loss of estate and loss of funeral expenses. In case of **Nanu Ram** (supra), Hon'ble Supreme Court has explained the types of consortium to be of three types ie spousal consortium to wife or husband, parental consortium to children and filial consortium to parents of deceased. Claimants will be entitle for loss of consortium as held by Hon'ble Supreme Court in aforementioned two rulings.

15. For the foregoing reasons, I propose to recompute amount of compensation to be awarded to claimants.

16. Income of deceased is taken as Rs.4,300/- per month. By adding 40% of established income towards future prospects, total monthly income of deceased comes to Rs.6,020/- (Rs.4,300 + 40% of 4,300) and annual income as Rs.72,240/- (12 X 6,020). Deceased on the date of accident was bachelor, hence, there will be deduction of 1/2nd of income towards personal and living expenses. After deducting 1/2nd, yearly loss of dependency will come to Rs.36,120/- (Rs.72,240/- – ½ of Rs.72,240/-). By applying multiplier of 18 to annual loss of dependency, total loss of dependency will come to Rs.6,50,160/-- (Rs.36,120/- X 18). Apart from this, appellants are also entitled for a sum of Rs.40,000/- towards loss of filial consortium, Rs. 15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate.

17. Now, appellants/claimants will be entitled for a total compensation of **Rs.7,20,160/-** (Rs.6,50,160/- + Rs.40,000/- + Rs. 15,000/- + Rs.15,000/-) instead of **Rs.3,28,000/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

18. In result, appeal is allowed in part and impugned award stands modified to the extent as indicated above.

Sd/-
(**Parth Prateem Sahu**)
Judge

Jamal/-