

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 706 of 2015**

1. Smt. Rubi Khatun, Wd/o Late Md. Afzal, Aged About 26 Years
2. Minor Ku. Fiza Parvin D/o Late Md. Afzal Aged About 4 Years
3. Minor Ku. Shifa Parvin D/o Late Md. Afzal Aged About 2 Years
4. Minor Ashraf Khan S/o Late Md. Afzal Aged About 3 months

Appellants 2-4 through next friend Smt Rubi Khatun, wd/o late Md Afzal (appellant-1)

All R/o Maveshi Bazar, Jashpur Nagar, District - Jashpur, Civil And Revenue District- Jashpur, Chhattisgrh

---- Appellants

Versus

1. Sunil Kumar Soni, S/o Late Vishwanath Soni, Aged About 30 Years, Occupation Business, R/o Main Chowk Jashpur Nagar, District - Jashpur, Chhattisgarh (Owner)
2. The Oriental Insurance Company Limited, Local Branch Office Raigarh, Tahsil And District- Raigarh, Chhattisgarh (Insurer)

---- Respondent

For Appellants	: Shri AK Prasad, Advocate
For Respondent-1	: None appears
For Respondent-2	: Shri Hanuman Prasad Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board
(Proceeding through Video Conferencing)

06.07.2021

1. Challenge in this appeal is to the award dated 01.08.2012 passed in Claim case-38 of 2012 passed by the Additional Motor Accident Claims Tribunal, Jashpur (for short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed the application filed by the claimants in part and awarded Rs.4,42,000/- compensation to the appellants/claimants.
2. Facts relevant for disposal of this appeal are that on 03.07.2009, Md Afzal was driving Tata-Sumo vehicle (hereafter, referred to as 'offending vehicle') and going to Rajrappa-via-Ranchi. While so, when Tata-Sumo reached in between village Sisayi and Bharno, suddenly a person on bicycle came on

road. To save the cyclist, Md Afzal turned the offending vehicle and dashed with a tree on road side. In the said accident, Mohd Afzal, driver of the motor vehicle died on the spot.

3. Appellants/claimants, who are widow and children of deceased filed an application under Section 163A of the Act of 1988 pleading therein that on the date of accident, deceased was aged about 33 years, was working as driver and claimed Rs.16,25,000/- as compensation.

4. NA2/Insurance Company submitted reply to claim application, while denying the pleadings made therein, taken ground of breach of policy conditions. Insurance Company has not raised the ground in its written statement with regard to maintainability of application filed under Section 163A of the Act 1988.

5. Learned Claims Tribunal upon considering the pleadings and evidence brought on record, allowed the application in part and awarded Rs.4,42,000/- as total compensation.

6. Shri AK Prasad, learned counsel for the appellants/claimants submits that this is an application for enhancement of amount of compensation, and liability to satisfy the amount of compensation is fastened upon the Insurance Company. He submits that learned Claims Tribunal erred in awarding meagre amount of compensation, deducted 1/3rd towards personal and living expenses overlooking the number of claimants to be 4, the Tribunal ought to have deducted 1/4th instead of 1/3rd, no amount for future prospects has been added overlooking the age of deceased on the date of accident to be 33 years. He submits that

Tribunal ought to have awarded/added 40% of his established income towards future prospects for calculating total amount of compensation. Income of deceased has been assessed on lower side. Learned Claims Tribunal has not awarded any amount towards loss of consortium and meagre amount is awarded on other conventional heads.

7. Shri Hanuman Prasad Agrawal, learned counsel for the Insurance Company would submit that the application is filed under Section 163A of the Act 1988, hence, amount of compensation is to be calculated strictly in accordance with the Second Schedule of the Act 1988, where there is no provision for awarding future prospects. Learned counsel further submits that the amount of compensation awarded by the Tribunal is just and proper.

8. I have heard learned counsel for the parties and perused the record of Tribunal.

9. Looking to the provision under which claim application for grant of compensation is filed ie 163-A of the Act, 1988, specific query has been made to learned counsel for the respondent company as to whether respondent/Insurance Company has preferred any appeal against the award or not. He submits that the impugned award is not challenged by the Insurance Company. Perusal of reply submitted by the Insurance Company before learned Claims Tribunal would also show that they have not taken any ground with regard to maintainability of claim application and award is passed in favour of appellants/claimants, awarding compensation of Rs.4,42,000/- in a death case.

10. Amount of compensation is claimed under Section 163A of the Act 1988, hence, calculation of amount of compensation is to be made in accordance with the Second Schedule appended to the Act of 1988, wherein there is no provision for awarding compensation under the head 'future prospects'. Amount of compensation to be awarded under other conventional heads is fixed under Clause-3 of Second Schedule. Deduction towards personal and living expenses has also been fixed under the 'Note' appended to Clause-1 of Second Schedule ie 1/ 3rd and learned Claims Tribunal has rightly applied deduction of 1/ 3rd. Learned Claims Tribunal has awarded Rs.10,000/- under other conventional heads ie Rs.5,000/- each towards love and affection, and funeral expenses under Clause-3 of Second Schedule.

11. In case of accidental death, compensation is specified for general damages to be paid under funeral expenses, loss of consortium, if beneficiary is spouse, loss of estate and actual medical expenses, not exceeding to Rs.15,000/-. In case at hand, Claimants have neither placed any medical document nor claimed any amount of compensation towards medical expenses, hence they are entitled for compensation only under three heads, which are quantified as Rs.2,000/-, Rs.5,000/- and Rs.2,500/- respectively. Total of three heads for which claimants are entitled comes to Rs.9,500/-, whereas, in this case, learned Claims Tribunal has already awarded Rs.10,000/- towards other conventional heads, in excess to Clause-3 under Second Schedule of the Act of 1988. But, as the respondents have not challenged the award, I do not find any ground to interfere with award of Rs.10,000/- on that head.

12. For the foregoing, the submission of learned counsel for the appellant that learned Claims Tribunal erred in not awarding any amount of compensation towards loss of estate and loss of consortium, and seeking for enhancement of amount of compensation on these heads is not sustainable.

13. So far as the submission made by learned counsel for the appellants with regard to income, taking note of the fact that application has been filed under Section 163A of the Act of 1988, whereas, in claim application, appellants have pleaded income of deceased as Rs.4,000/- per month, I do not find any good ground to consider the submission of learned counsel for the appellants that income assessed by learned Claims Tribunal to be on lower side.

14. For the foregoing reasons, I do not find any good ground to interfere with impugned award passed by learned Claims Tribunal.

15. The appeal being devoid of any substance, it is liable to be and it is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
JUDGE