NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 915 of 2016

1. Smt. Vidya Vaidh, W/o Late. Virendra Vaidh, aged about 23 years
2. Aryan Vaidh, S/o Late Virendra Vaidh, aged about 03 years 06 month, S/o Late. Virendra Vaidh (Applicant No-2 Through Natural Guardian Smt. Vidya Vaidh, Mother)
3. Hemlal Vaidh, S/o Om Vaidh, aged about 63 years, (wrongly mentioned in judgment of award), All R/o Ashok Nagar, Jhadu Kharkhana ke pass, Thakkar Bapa Ward, Gudhiyari, District-Raipur (CG)

---- Appellants/Claimants

Versus

1. Akhil Rao S/o Bhaskar Rao, aged about 21 years, R/o- Sundar Nagar, VIP Chowk, P.S-Purani Basti, Raipur (CG),
   (Duster Vehicle No.CG04-KP-0847 Driver)
2. Subhash Mishra, S/o Late. Radhakisan Mishra, R/o- B-2/13, Civil Line, Raipur (CG)
   (Duster Vehicle No.CG04-KP-0847 Owner)
3. Manager, Bharti Axa General Insurance Company Ltd. Chawla Complex Devendra Nagar Road, Sai Nagar Raipur, (CG) Policy No. FPV/SO767200/C1/11/KIC11G
   Policy Limit- 10.11.2013 To 09.11.2014
4. Hemant Kumar Koshle, aged about 30 years, R/o Ice Factory Ke Pass Kota Road, Vikash Nagar, Gudhiyari, Raipur (CG)
   (Bajaj C.T.100 Motorcycle No. CG04-CN-7438 Driver)
5. Ganesh Yaadav, aged about 48 years, R/o- Churkati Mandir Ke Pass, Gulab Nagar, Gudhiyari, Raipur (CG)
   (Bajaj C.T.100 Motorcycle No. CG04-CN-7438 Owner)
6. Manager, National Insurance Company Ltd., Branch No-1, Naveen Bazar, Phool Chowk, Raipur, (CG) , Policy No. 285101/31/12/6200012002, Policy Limit- 05.03.2013 To 04.03.2014.

......Respondents

For Appellants	:	Mr. Pushkar Sinha, Advocate
For Respondent No.1 & 2	:	Mr. Akash Shrivastava, Advocate on behalf Mr. Anumeh Shrivastava, Advocate
For Respondent No.3	:	Mr. Tessy Abraham, Advocate
For Respondent No.6	:	Mr. Raj Awasthy, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Order On Board

21/9/2021

1. Claimants/appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for brevity 'the Act of 1988') seeking enhancement in compensation awarded by the learned 2nd Additional Motor Accident Claims Tribunal, Raipur vide award dated 26.2.2016 in Claim Case No.170/2014 by which the Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in part and awarded total sum of Rs.9,00,000/- as compensation in a fatal accident together with interest @ 9% p.a.

2. Facts of the case, in nutshell, are that on 27.12.2013 at about 10:00 p.m. Virendra Vaidya along with his friend Hemant Kumar Koshley was returning to his home from his work place on motor-cycle bearing registration number CG04-CN-7438. On the way, one four wheeler bearing registration number CG04-KP-0847, driven rashly and negligently by non-applicant No.1, dashed motorcycle on its rear side and caused accident. In the accident, Virendra Vaidya suffered grievous injuries. He was taken to hospital at Raipur where he succumbed to motor accidental injuries during the course of treatment.

3. Claimants-appellants, who are widow, son and father of deceased, filed an application under Section 166 of the Act of 1988 claiming Rs.22,41,600/- as total compensation pleading therein that on the date of accident, deceased was 26 years of age, working as Clerk (Munshi) with Durga Transport, Raipur and thereby earning Rs.8,000/- per month.

4. Non-applicant No.1 & 2, driver & owner of offending vehicle, resisted claim by filing reply to application. It was pleaded that offending vehicle has been falsely involved in accident; it was insured with non-applicant No.3 and in case any amount of compensation is awarded, then liability to make payment of the same would be upon non-applicant No.3-Insurance Company.

5. Non-applicant No.3 Insurance Company filed its reply to claim application denying the facts pleaded therein except that offending vehicle was insured with it. It was pleaded that amount of compensation claimed is highly exaggerated; there was contributory negligence on the part of deceased; non-applicant No.1-driver was not possessed with valid and effective driving license; and offending vehicle was being used for commercial purpose. Thus, there was breach of condition of insurance policy, hence, non-applicant No.3 is not liable to indemnify the insured.

6. Non-applicant No.4 & 5, driver and owner of motorcycle on which deceased was travelling, also filed their reply to claim application pleading that non-applicant No.4 was possessed with valid and effective driving license, he was driving motor

cycle slowly and cautiously. Accident was result of rash and negligent driving of non-applicant No.1-driver of offending vehicle. Motor cycle was insured with non-applicant No.6.

7. Non-applicant No.6, insurer of motorcycle, also submitted its reply to claim application pleading that accident was result of rash and negligent driving of offending vehicle by non-applicant No.1, hence, liability to satisfy the amount of compensation,if any awarded, would be upon non-applicant No.2 & 3.

8. The Claims Tribunal upon appreciation of pleadings and evidence brought on record by respective parties, has held that deceased Virendra Vaidh died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No.1-driver. Breach of policy condition was not found to be proved. While assessing monthly income of deceased as Rs.5,000/- on notional basis (Rs.60,000/- per annum), Tribunal calculated compensation and awarded Rs.9,00,000/- to claimants along with interest @ 9% p.a.

9. Mr. Pushkar Sinha, learned counsel for claimants-appellants would submit that the Claims Tribunal erred in assessing income of deceased at Rs.5,000/- per month, overlooking that apart from pleading that deceased was working with Durga Transport, Raipur as Clerk and earning Rs.8,000/- per month, claimants have also placed on record certificate issued by Proprietor of Durga Transport, Raipur certifying that deceased was working as Clerk and getting Rs.8,000/- per month as salary. He submits that amount of compensation awarded

under other conventional head is also on lower side. Hence, the amount of compensation may be enhanced suitably.

10. Mr. Raj Awasthi, learned counsel for respondent No.6 and Mr. Akash Shrivastava, Advocate appearing on behalf of Mr. Anumeh Shrivastava, Advocate for respondents No.1 & 2 have supported the impugned award.

11. Mr. Tessey Abraham, learned counsel appearing on behalf of Mr. Amrito Das, Advocate for respondent No.3 submits that the Claims Tribunal in the given facts and circumstances of case and in absence of proof of income of deceased, justified in assessing income of deceased as Rs.5,000/- per month. He submits that Claims Tribunal awarded excessive amount towards loss of consortium. Hence, amount of compensation awarded by Tribunal cannot be said to be on lower side. He submits that no ground exists for enhancement of amount of compensation and the appeal is liable to be dismissed.

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

13. So far as submission of learned counsel for appellants-claimants that Claims Tribunal erred in assessing monthly income of deceased as Rs.5,000/-, is concerned, appellants in their claim application have pleaded that deceased was working with Durga Transport, Raipur and earning Rs.8,000/- per month. In support of aforesaid plea, they have placed on record certificate issued by employer on letter head of Durga Transport, but to prove this document claimants have not

examined author of this document i.e. employer. On account of non-examination of employer/author of certificate, which was placed on record, certificate could not be exhibited and proved before the Claims Tribunal. In support of pleading with respect to income of deceased, claimants have only examined appellant No.1 as AW-1. No independent witness was examined to prove income and occupation of deceased. In absence of any admissible piece of evidence on record, this Court is of the opinion that the Claims Tribunal not erred in assessing income of deceased as Rs.5,000/- on notional basis taking into consideration the date of accident etc. and the same is hereby affirmed.

14. Perusal of the impugned award would show that Tribunal not awarded any amount of compensation under the head of 'future prospects'. Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra) has held that where the deceased/victim of motor accident, was not in permanent employment and was below the age of 40 years, an addition of 40% of actual income of deceased towards future prospects should be made while assessing income of deceased to calculate loss of dependency. In the present case, on the date of accident deceased was 26 years old, not in permanent employment, hence, it is held that claimants-appellants are entitled for addition of 40% of established income towards future prospects to income of deceased.

15. Tribunal deducted 'one-fourth' from the income of deceased

towards living and personal expenses, which, in the opinion of this Court, is not correct. As per decision of Hon'ble Supreme Court in case of **Sarla Verma & ors vs. Delhi Transport Corporation & anr** reported in **(2009) 6 SCC 121**, the deduction towards personal and living expenses from the income of deceased should be 'one-third' where number of dependent family members is 2 to 3. In case at hand, the deceased was survived by three dependant family members i.e. his widow, son and father, and as such, there will be deduction of 'one-third' towards personal and living expenses and not 'one-fourth' as deducted by Claims Tribunal. It is ordered accordingly.

16. As regards the award of amount of compensation under other conventional heads. In case of **Pranay Sethi's case** reported in **(2017) 16 SCC 680** Hon'ble Supreme Court considered the issue of award of compensation under other conventional heads and not only specified heads under which compensation is to be awarded but also quantified amount of compensation. Award of compensation under other conventional heads is further considered by Hon'ble Apex Court in case of **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors reported in (2018) 18 SCC 130** in which types of consortium is explained i.e. spousal, filial and parental. In case at hand, Claims Tribunal awarded Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses and Rs.10,000/- for loss of estate, which is not in consonance of dictim of Hon'ble Supreme

Court. Appellants-claimants are entitled for compensation under other conventional heads as per decision of Hon'ble Supreme Court in cases of **Pranay Sethi (supra)** & **Nanuram @ Churhu Ram (supra)**. It is ordered accordingly.

17. For the foregoing discussions, this Court proposes to recalculate/recompute amount of compensation payable to claimants/ appellants.

18. Accordingly, income of deceased is taken as Rs.5,000/- per month, as assessed by Claims Tribunal, and since at the time of accident deceased was 26 years old and was not in permanent employment, in view of law laid down in case of **Pranay Sethi's case** (supra), income of deceased is required to be enhanced by 40% towards future prospects, which comes to Rs.7,000/- (5000+2000). Annual income of deceased for the purpose of calculating compensation comes to Rs.84,000/- (7000x12). Out of this amount, one-third is to be deducted towards personal & living expenses of deceased. After deducting one-third, annual loss of dependency comes to Rs.56,000/- (84000-28000). By applying multiplier of 17, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency comes to Rs.9,52,000/- (56000x17). Besides this, appellant No.1, widow of deceased, is entitled for a sum of Rs.40,000/- towards spousal consortium, appellant No.2, son of deceased, is entitled for a sum of Rs.40,000/- towards parental consortium, and appellant No.3, father of deceased, is entitled for a sum of Rs.40,000/- towards filial

consortium. In addition to aforesaid amount, appellants are also entitled to get a sum of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Thus, total amount of compensation comes to Rs.11,02,000/-. This amount of compensation shall carry simple interest @ 9% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants/appellants as compensation shall be adjusted from total amount of compensation as calculated above.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-