NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 37 of 2016

1. Kamta Patel, S/o Shri Pilaram Patel, Aged About 45 Years
2. Smt. Ganeshi Bai Patel, W/o Shri Kamta Patel, Aged About 43 Years
3. Ku. Shail D/o Shri Kamta Patel, Aged About 16 Years Appellant No. 03, Through Her Father Appellant No. 1, Kamta Patel

   All R/o House of Jayant Sahu, Santoshi Nagar, Tikrapara, Civil And Revenue District Raipur Chhattisgarh.........Claimants

---- Appellants

Versus

1. Bisauharam Sahu S/o Tiharuram Sahu, Aged About 50 Years R/o Village Choube Bandha, P. S. Rajim, District Gariyaband Chhattisgarh.......Owner, Tractor No. C G 04 D M 0123
2. The National Insurance Company Limited, Through Zonal Manager, Zonal Office, Mobin Mahal, G. E. Road, Raipur, Civil And Revenue District Raipur Chhattisgarh........Insurer Vehicle No. C G 04 D M 0123

---- Respondents

For Appellants	:	Shri Satyendra Shrivas, Advocate on behalf of Shri Devershi Thakur, Advocate
For Respondent-1	:	None appears
For Respondent- 2	:	Shri BN Nande, Advocate

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

25.08.2021

1. Challenge in this appeal is to the award dated 02.11.2015 passed by the 9th Additional Motor Accidents Claims Tribunal, Raipur (for short, 'Claims Tribunal') in Claim Case-196 of 2014, whereby learned Claims Tribunal allowed application filed under Section 163A of the Motor Vehicle Act, 1988, awarded total sum of Rs.4,15,000/- as compensation with interest @ 6% per annum from the date of filing of claim application till its realization in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 29.06.2013, Shekhar Patel (since deceased) was driving Tractor bearing No.CG04DM-0123 (hereafter, referred to as 'offending vehicle') and returning to his house at about

8.30 pm after ploughing agricultural fields. On the way, near agriculture field of Omlal Chelak, offending vehicle turned turtle and Shekhar Patel suffered grievous injuries in the accident and died on the spot.

3. Appellants/claimants who are parents and sister of deceased filed application under Section 163A of the Act of 1988 pleading therein that on the date of accident deceased was an able bodied person, aged about 22 years. He was working as Driver of offending vehicle and earning Rs.3,000/-per month. Claimants were dependent upon deceased.

4. NA1/Owner of offending vehicle did not appear before Claims Tribunal even after service of notice.

5. NA2/Insurance Company submitted reply to claim application pleading therein that on the date of accident driver of Tractor was not possessed with valid and effective license. There was no fitness and permit, as such, there was breach of policy conditions.

6. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties, held that deceased died on account of motor accidental injuries suffered by him while driving offending Tractor bearing No. No.CG04DM-0123. Breach of policy conditions was not found to be proved, awarded Rs.4,15,000/- as total compensation with interest @ 6% from the date of filing of claim application and fastened liability to satisfy the amount of compensation upon NA1 and 2 jointly and severally.

7. Shri Satyendra Shrivas, learned counsel for the appellants would submit that learned Claims Tribunal erred in not awarding 50% of assessed income of deceased towards future prospects. Income of deceased assessed by the Tribunal is erroneous. Tribunal ought to have assessed income of deceased as Rs.155/- per day. Amount of compensation awarded on other conventional heads is on lower side. In support of his contention, learned counsel placed reliance on judgments passed by Hon'ble Supreme Court in cases of **Sarla Verma (Smt.) and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121, **National Insurance Company Vs Pranay Sethi** reported in 2017 16 SCC 680, **Brajesh and others Vs Rajbir Singh and others** reported in (2013) 9 SCC 54 and **Munna Lal Jain and another Vs Vipin Kumar Sharma and others** reported in (2015)6 SCC 347.

8. Shri BN Nande, learned counsel for respondent/Insurance Company would submit that learned Tribunal has assessed income of deceased as pleaded and proved by the claimants. Tribunal has taken income of deceased as pleaded in claim application and stated by witnesses in their evidence, which cannot be said to be erroneous in any manner. He further contended that application for grant of compensation is filed under Section 163A of the Act of 1988, hence, amount of compensation is required to be computed/calculated on structural formula basis as provided under 2nd Schedule, formulated under Section 163A of 1988. Under 2nd Schedule of the Act of 1988, there is no provision of awarding any amount of compensation towards future prospects. Even the heads on which amount of compensation on other conventional heads to be awarded are mentioned under the head of general damages like funeral

expenses, loss of consortium, if beneficiary is spouse, and loss of estate. Tribunal has calculated and awarded amount of compensation strictly in accordance with 2nd Schedule which does not call for any interference.

9. I have heard learned counsel for the parties and perused record of claim case.

10. Undisputedly, application seeking compensation filed by claimants is under Section 163A of the Act of 1988 and not under Section 166. Section 163A is a special provision for payment of compensation on structured formula basis. It is made for the persons of category ie whose annual income is Rs.40,000/- or less and further, claimants are not required to prove negligence or wrongful act or negligence or default of owner of offending vehicle. When once claimants/appellants have chosen to file application under Section 163A of the Act of 1988, taking benefit of special provisions, then amount of compensation is to be calculated strictly in accordance with provisions of Section 163A, wherein for calculating amount of compensation, formula is prescribed under 2nd Schedule.

11. Learned Claims Tribunal assessed income of deceased as Rs.3,000/- per month as pleaded in claim application which in considered opinion of this Court, cannot be said to be erroneous. The Tribunal further deducted 1/ 3rd from annual income towards personal and living expenses of deceased and applied multiplier of 17, which is absolutely correct and proper. Tribunal awarded Rs.2,500/- towards love and affection, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate.

12. Under 2nd Schedule, there is no provision to award amount of compensation towards loss of love and affection under general damages. As this is an appeal filed by claimants for seeking enhancement of the amount of compensation, amount already awarded to claimants, in considered opinion of this Court cannot be reduced when there is no scope of enhancement of compensation on any other ground. Claims Tribunal upon assessing income of deceased as Rs.3,000/- per month and Rs.36,000/- per annum, deducted 1/ 3rd towards personal and living expenses and upon applying multiplier of 17, calculated total loss of dependency as Rs.4,08,000/- and further awarded Rs.7,000/- on other conventional heads. Tribunal has calculated loss of dependency strictly as per 2nd Schedule, awarded more amount on other conventional heads than the compensation for which claimants are entitled for, under general damages and awarded total sum of Rs.4,15,000/- as compensation.

13. For the foregoing reasons, amount of compensation awarded to claimants cannot be said to be less or improper.

14. In view of above, I do not find any merit in this appeal. Appeal being devoid of any substance, it is liable to be and it is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma