NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 398 of 2015

1. Smt. Meena Sonber Wd/o late Nemuram, aged about 48 years
2. Shailendra Kumjar Sonber S/o late Nemuram Sonber, aged about 25 years
3. Rajkumar Sonber S/o late Nemuram Sonber, aged about 23 years
4. Heera Lal Sonber S/o late Budhu Ram Sonber, aged about 75 years
5. Smt. Hembati Sonber W/o Heera Lal Sonber, aged about 70 years.

All are R/o village Parastarai, Post Potiyadih, Tahsil and District Dhamtari Chhattisgarh

------Appellants/ Claimants

VERSUS

1. Rooplal Chandel S/o Shyamlal Chandel, aged about 23 years, R/o Kanwar, Chowki Kanwar, Police Station Gurur, District Balod Chhattisgarh **-----Driver**
2. Ajendra Kumar S/o Ghanaram Sahu, aged about 29 years, R/o Khordo, Police Station Gurur, District Durg Chhattisgarh and Chandidih, Raipur, Tahsil and District Raipur Chhattisgarh **------Owner**
3. Branch Manager, The Chola M.S. Company Private Limited, Raipur Branch Dhamtari, infront of Christian Hospital Dhamtari, Tahsil and District Dhamtari Chhattisgarh

-------**Respondents**

For Appellant : Ms. Nandkumari Kashyap, Advocate
For Respondent 1 & 2 : Mr. Samir Singh, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J.

25/01/2021

1. Appellants/ Claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short “ Act of 1988”) challenging the impugned award dated 12.03.2015 passed by learned Additional Motor Accident Claims Tribunal (F.T.C.), Dhamtari, District Dhamtari C.G. (for short “the Claims Tribunal”) in claim case no. 15/2013, whereby learned Claims Tribunal awarded Rs. 30,02,976/- as total compensation in a fatal accident case.

2. Facts of the case in nutshell are that, on 30.06.2012, at about 07:30 am,

Nemuram Sonber was travelling on motor cycle bearing registration no. CG05-A-0486 and going to Amlidih School for teaching. While so, when he reached near Ratnabandha main road, one pick-up vehicle bearing registration no. CG04-JB-6693 (henceforth “offending vehicle”) driven by non-applicant 1/ Respondent 1 rashly and negligently, dashed the motor cycle of Nemuram and caused accident. On account of motor accidental injuries, Nemuram died on spot.

3. Appellants/ claimants who are widow, children and parents of deceased Nemuram filed an application under Section 166 of the Act of 1988, sought compensation of Rs. 42,29,370/-, pleading therein that on the date of accident, deceased was working as Upper Division Teacher and earning Rs. 32,301/- per month. They were dependents upon the income of deceased.

4. Non-applicants 1 and 2 who are driver and owner of offending vehicle resisted the claim, pleading therein that, on the date of accident, non-applicant 1/ Respondent 1 was possessed with valid and effective driving licence. There was no breach of policy conditions. Offending vehicle was insured with non-applicant 3 and also resisted the claim on quantum.

5. Non-applicant 3/ Insurance Company submitted its separate reply, while denying the pleadings made therein, further pleaded that on the date of accident, non-applicant 1 was not possessed with valid and effective driving licence. There was breach of policy conditions, hence, Insurance Company is not liable to pay any amount of compensation.

6. Claims Tribunal, upon appreciation of pleadings and evidence brought on record by the respective parties, held that late Nemuram died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant 1. Breach of policy conditions was not found to be proved and awarded Rs. 30,02,976/- as total compensation and fastened liability upon non-applicants 1 to 3 jointly and severally.

7. Ms. Nandkumari Kashyap, learned counsel for the appellants/ claimants submits that the Claims Tribunal erred in awarding meagre amount of compensation. She further contended that the income of deceased assessed by the Claims Tribunal is on lower side. No compensation is awarded towards future prospects. Deduction and application of multiplier are erroneous. Amount of compensation awarded on other conventional heads is also on lower side. She submits that the Claims Tribunal has erroneously awarded amount of compensation on lower side, overlooking the documentary and oral evidence available on record. She submits that the amount of compensation be suitably enhanced.

8. Mr. Samir Singh, learned counsel for Respondents 1 and 2/ driver and owner of offending vehicle, supported the award passed by Claims Tribunal. He further contended that the Claims Tribunal has reckoned the income as proved by claimants by examining Block Education Officer (BEO) as AW-3. Award passed by Tribunal is just and proper which does not call for any interference.

9. No one appeared on behalf of non-applicant 3/ Insurance Company. Office note shows that the notice sent to Respondent 3 was returned with a note 'refused to accept'.

10. We have heard learned counsel for the respective parties and also perused the record of claim case.

11. This appeal is only for enhancement of amount of compensation. To appreciate the submission made by learned counsel for the appellants that the amount of compensation awarded is on lower side, we have gone through the documents placed on record in proof of income of deceased who was a government servant, working as Upper Division Teacher and posted at Government Higher Secondary School, Khartuli. Claimants have filed extract of Register of salary paid to deceased for the year 2011-12. Claimants have examined one Yashkaran Singh Gajendra, in-charge, Block

Education Officer, Dhamtari as AW-3. In his evidence in chief, he stated that Gross Salary of deceased, at the time of accident, was Rs. 33,727/- and net salary as Rs. 27,577/-. Tribunal while considering the income of deceased as per evidence placed on record has assessed income as Rs. 33,727 per month and yearly income as Rs. 4,04,724/-. Tribunal has accepted the income as pleaded and proved by AW-3 in his evidence, hence, the submission made by learned counsel for appellants with regard to income of deceased assessed on lower side by the Tribunal is not sustainable, we affirm the income of deceased as Rs. 33,727/- per month ie. Rs. 4,04,724/- per annum.

Claims Tribunal calculated the amount of compensation considering the income as Rs. 4,04,724/- p.a., without adding any amount towards future prospects though holding the age of deceased in between 50-55 years. Addition of amount in the established income of victim, for the purpose of calculation of compensation, has been dealt with by Hon'ble Supreme Court in case of ***National Insurance Company Limited v. Pranay Sethi*** reported in **(2017) 16 SCC 680**, wherein it has been categorically held that there shall be addition of 15% of the established income towards future prospects where the victim was in the age group of 50-60 years and in permanent employment.

12. In the case at hand, deceased was a government servant, in permanent employment and in between age group of 50-55 years, hence there shall be addition of 15% of the established income towards future prospects. Claims Tribunal deducted 1/3rd towards personal and living expenses of deceased. Number of claimants is five. As per the evidence available on record age of two sons has been shown as 25 years and 27 years and one of them has also been provided with compassionate appointment. Even after making exception of one of the sons to be not dependent then also the number of dependents/ Legal Representatives would be four, hence, as per the

guidelines issued by Hon'ble Supreme Court in case of ***<u>Sarla Verma & others v. Delhi Transport Corp. & anr.</u>*** reported in **(2009) 6 SCC 121**, appropriate deduction towards personal and living expenses would be 1/4th, it is ordered accordingly.

13. Claims Tribunal arrived at a finding with regard to age of deceased to be in between 50-55 years. Date of birth of deceased, as per the copy of driving licence available on record, has been shown as 13.09.1960, on the date of accident ie. 30.06.2012, deceased was aged about 51 years 9 months and 17 days. Age of deceased has been rightly reckoned by Tribunal. As per guidelines of Hon'ble Supreme Court in case of **Sarla Verma (supra)**, appropriate multiplier would be 11, which has been rightly applied by the Tribunal. Tribunal has awarded only Rs. 35,000/- towards other conventional heads which, in the opinion of this Court, in the light of rulings of the Supreme Court in case of **Pranay Sethi (supra)** and ***<u>Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others</u>*** reported in ***(2018) 18 SCC 130***, is on lower side. Claims Tribunal though reckoned the income as Rs. 4,04,724/- per annum but has not deducted income tax which is a statutory deduction as held by the Supreme Court in case of ***<u>National Insurance Company limited v. Indira Shrivastava and others</u>*** reported in **(2008) 2 SCC 763**. Income tax is to be deducted from the gross income of the deceased.

14. For the foregoing reasons, amount of compensation to be awarded to appellants-claimants requires re-consideration and re-computation which is as under.

15. Income of deceased is assessed as Rs. 33,727/- per month /Rs. 4,04,724/- per annum. Upon adding 15% of the established income towards future prospects, total yearly income will come to Rs.4,65,432.6/-[Rs.404724+15% of Rs.404724] rounded off to as Rs. 4,65,433/-. Now, for the purpose of calculating the compensation, net income is required to be taken into

consideration i.e. Gross Income *minus* Income Tax. Income tax slab prevailing in the financial year 2012-13, is as under:

Income up-to Rs. 1,80,000/-	-- NIL
Rs. 1,80,000/- to Rs. 5,00,000/-	-- 10% on exceeding to Rs. 1,80,000/-
Rs. 5,00,000/- to Rs. 8,00,000/-	-- Rs.32,000 +20% on exceeding Rs. 5,00,000/-

16. Gross income of the deceased is assessed as Rs. 4,65,433/-, hence, taxable income will be Rs. 2,85,433/- [Rs.4,65,433-Rs.1,80,000]. Income tax levied @10% on Rs. 2,85,433/-, which comes to Rs. 28,543.4/- rounded off to Rs. 28,543/-. Net income will be Rs.4,36,890/-[Rs.4,65,433-Rs.28,543]. After deducting 1/4th towards personal and living expenses, yearly loss of dependency will come to Rs.3,27,667.5/- [Rs.4,36,890–1/4th of Rs.4,36,890] rounded off to Rs. 3,27,668/-. Upon applying multiplier of 11, yearly loss of dependency will come to Rs.36,04,348/- [Rs.327668x11]. Apart from the above, appellants are also entitled for Rs. 40,000/- towards loss of spousal consortium, Rs. 40,000/- towards loss of parental consortium, Rs. 40,000/- towards filial consortium, Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses.

17. Now the appellants-claimants are entitled for sum of **Rs. 37,54,348/-** [Rs.3604348+Rs.40000+Rs.40000+Rs.40000+Rs.15000+Rs.15000] as total compensation instead of Rs.30,02,976/- as awarded by the Claims Tribunal. The aforesaid amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions of the award passed by the Tribunal shall remain intact.

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

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

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