NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 147 of 2015

- The Manager, New India Assurance Company Ltd., 1st Floor of Dena Bank, Nandini Road, Bhilai (CG) 491 001, District Durg.

---- Appellant (Insurer)

Versus

1. Smt. Ambika Patel, W/o Late Shri Laxmichand Patel, aged about 36 years.
2. Raj Kunwar Patel, W/o Late Shri Ravilal Patel, aged about 65 years.
3. Minor Pankaj Patel S/o Late Laxmichand Patel, aged about 17 years
4. Minor Niraj Patel, S/o Late Laxmichan Patel, aged about 11 Years

   No.3 & 4 minor through natural guardian mother Smt. Ambika Patel W/o Late Laxmichand Patel, (the present respondent No.1) All are R/o Village Jagat, P.S. & Tahsil Basna, District Mahasamund (CG) (Claimants)
5. Harendar Singh, S/o Nathni Singh, aged about 30 years, R/o Village Amai P.S. - Piro, District Aara (Bihar), Present address Transport Nagar Bhilai (Hatkhoj), P.S.-Bhilai, District Durg (CG) (Driver)
6. Smt. Rajvinder Kaur, W/o Shri Jaswant Singh, R/o MIG-197, MPHB. Bhilai, District: Durg (CG) (Owner)

---- Respondents

For Appellant	:	Mr. Raj Awasthi, Advocate
For Respondent No.1 to 4	:	Mr. Sunil Sahu, Advocate
For Respondent No.5 & 6	:	None

Hon'ble Shri PR Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

12/04/2021

1. Appellant-non-applicant No.3 Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the award dated 18.11.2014 passed by the learned Motor Accident

Claims Tribunal, Mahasamund in Claim Case No.70/2013 thereby allowing application for grant of compensation in part and awarding Rs.24,55,000/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal, in brief, are that on 29.11.2012 Laxmichand was returning to his village Jagat from Raipur in his Alto Car bearing registration number CG06-L-0592, when he reached in between Baldidih & Bhokludih, one Truck Trailer bearing registration number CG07-E-3255 (henceforth 'the offending vehicle'), driven by non-applicant No.1 in a rash and negligent manner, dashed the car of Laxmichand and caused accident. In the aforementioned accident, Laxmichand suffered grievous injuries on various parts of body and succumbed thereto on the spot.

3. Respondents No.1 to 4-claimants filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.58,00,000/- pleading therein that at the time of accident, the deceased was earning Rs.20,000/- per month from the work of sale & purchase of land. The deceased was also having 4.37 hectare (12 acres) of agriculture land from which he was earning Rs.10,00,000/- per annum. Claimants were dependent on the income of the deceased.

4. Non-applicant No.1 & 2, driver & owner of offending vehicle, refused to accept notice, therefore, they have been proceeded ex-parte.

5. Non-applicant No.3-Insurance Company filed its reply to application denying the entire pleadings made therein. It was pleaded that driver of both the vehicles involved in the accident were not having valid and effective driving license; there was contributory negligence on the part of deceased; there was breach of condition of insurance policy as on the date of accident there was no valid permit and fitness certificate in favour of offending vehicle.

6. The Claims Tribunal upon appreciation of pleadings and evidence brought on record by respective parties held that the deceased died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No.1. Contributory negligence on the part of the deceased was not found to be proved as also it was not found proved that offending vehicle was plied in breach of conditions of insurance policy. The Claims Tribunal has awarded total compensation of Rs.24,55,000/- by assessing monthly income of deceased at Rs.20,000/-.

7. Mr. Raj Awasthi, learned counsel for appellant submits that challenge in this appeal is only with regard to quantum of compensation awarded. It is contended that the Claims Tribunal without there being any piece of documentary evidence on record establishing income of the deceased, has erroneously determined income of deceased as Rs.20,000/- p.m. He further submits that the claimants have not produced any document but for pleadings and oral statement that prior

to date of accident, the deceased was working as a Land Broker and also having agriculture income. He also submits that the Claims Tribunal erred in awarding Rs.3,75,000/- under other conventional heads which is more than what is allowed by the Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130**. Lastly, he submits that the Claims Tribunal erred in awarding penal interest @ 9% p.a. if the amount of compensation is not deposited within one month from the date of passing of the impugned award. He submits that under the Act of 1988 there is no provision to award penal interest, hence the said finding is not sustainable.

8. Mr. Sunil Sahu, learned counsel for claimants/respondent Nos.1 to 4 submits that the Claims Tribunal taking into consideration the entire facts, pleadings and evidence brought on record by claimants, has rightly held income of deceased to be Rs.20,000/- per month. He submits that the Claimants have very categorically pleaded that Alto Car which deceased was driving at the time of accident, was owned by the deceased, hence income of a person maintaining a car cannot be equated with an ordinary or skilled labourer. He further pointed out that apart from income as Land Broker, the deceased was also having agriculture property of about 12 acres. The claimants have suffered loss of income which the

deceased was earning from agriculture property and from his work of Land Broker during his lifetime. He submits that amount of compensation awarded by the Claims Tribuna is just and proper in the given facts and circumstances of the case.

9. We have heard learned counsel for the parties.

10. So far as first ground raised by learned counsel for appellant with regard to fixation of monthly income of deceased at Rs.20,000/- by the Claims Tribunal is concerned, appellant Insurance Company has not brought any evidence to controvert the pleadings made in claim application by claimants. Perusal of memo of appeal would show that in Para-1 claimants have pleaded that deceased met with an accident while driving Alto Car owned by him. Appellant Insurance Company has not obtained copy of registration certificate of the car from the Competent Authority concerned when there is specific mention of registration number of car and pleading that deceased was owner of Alto Car. Hence, we are of the view that the deceased was maintaining Alto Car and income of a person maintaining a four wheeler cannot be equated with the income of an ordinary or skilled labourer, as argued by Mr. Raj Awasthi, learned counsel for appellant. True it is that claimants/respondents No.1 to 4 have not placed any documentary evidence on record showing income of deceased, but at the same time for the purpose of calculating the amount of compensation under the Act of

1988, income of deceased is to be ascertained on notional basis, considering the relevant factors like, cost of living, nature of work, standard of living.

11. In the case at hand, appellant has not disputed before this Court that the deceased was owner of Alto Car. Maintaining a care itself is sufficient to presume income of deceased to be much more than the income of an ordinary person. The deceased was maintaining family of four persons apart from himself. This is also one of the factors to be kept in mind while considering the ground of income raised by the appellant.

12. Taking into consideration the entire facts and evidence available on record, particularly the fact that deceased was maintaining a four wheeler, no amount has been added towards future prospects (25% in the facts of case) and standard deduction from the income towards personal and living expenses of deceased has also been made overlooking the number of dependent, which is 4 in case at hand, we are not inclined to interfere with income of the deceased as assessed by the Claims Tribunal i.e. Rs.20,000/- per month. However, statutory deduction towards income tax is to be deducted as per slab prevailing on the date of accident.

13. Second ground raised by learned counsel for appellant is that the Claims Tribunal erred in awarding excessive amount under the other conventional heads. Hon'ble Supreme Court

in the matter of **Pranay Sethi (supra)** has considered the issue of award of compensation under other conventional heads and held that amount of compensation under other conventional heads to be awarded under the loss of consortium, loss of estate and funeral expenses, as mentioned in Second Schedule under the Act of 1988. Hon'ble Supreme Court has also quantified the amount of compensation to be awarded under the above three heads i.e. Rs.40,000/-, Rs.15,000/- & Rs.15,000/- respectively. Hon'ble Supreme Court in its subsequent decision in **Nanu Ram (supra)** has further explained the type of consotrium, which are loss of spousal consortium, parental consortium and filial consortium. The Claims Tribunal has awarded Rs.1,00,000/- each to respondent Nos.1, 3 & 4 towards pain & sufferings, loss of consortium and loss of love & affection; Rs.50,000/- to respondent No.2 towards pain & suffering and loss of love & affection and Rs.25,000/- towards funeral expenses. The Claims Tribunal awarded Rs.3,75,000/- as compensation on other conventional heads, which is not sustainable and is hereby scaled down.

14. Upon considering the facts of case at hand, where the claimants are widow, children and mother of deceased, we are of the view that claimant widow is entitled for Rs.40,000/- for spousal consortium; claimant children are entitled for Rs.40,000/- for parental consortium and claimant mother of deceased is entitled for Rs.40,000/- for filial consortium, in

addition to Rs.15,000/- towards loss of estate and Rs.15,000/- for funeral expenses. In other words, the total amount of compensation for which claimants are entitled to receive under other conventional heads is Rs.1,50,000/-.

15. Third ground raised by learned counsel for appellant is with regard to award of penal interest @ 9% p.a. Award of interest is provided under Section 171 of the Act of 1988 which provides for award of simple interest not earlier than the date of making of the claim application. As under the Act of 1988 there is no provision to award penal interest, we are of the considered view that the Claims Tribunal erred in awarding penal interest @ 9% p.a. if the amount of compensation is not deposited within one month from the date of impugned award. Accordingly, the same is hereby set aside.

16. For the purpose of calculation of amount of compensation the 'income' means income minus statutory deduction towards income tax. The Claims Tribunal has assessed income of deceased as Rs.2,40,000/- per annum but not considered whether the income of deceased assessed by it is taxable or not. Date of accident is 29.11.2012 and as per income tax slab prevailing on the date of accident, income upto Rs.2,00,000/- was exempted and income above Rs.2,00,000/- upto 5,00,000/- is taxable at the rate of 10%. Hence, the income of deceased exceeding Rs.2,00,000/- i.e. Rs.40,000/-, is taxable at the rate of 10%, which comes to Rs.4,000/-, as held by Hon'ble Supreme Court in case of **National Insurance**

Company Ltd. vs. Indira Shrivastava reported in **(2008) 2 SCC 763** and **Oriental Insurance Company Ltd. vs. Ram Prasad Verma & ors** reported in **(2009) 2 SCC 712**. After deducting income tax from the income of deceased, the net income comes to Rs.2,36,000/- (240000-4000).

17. For the foregoing reasons, this Court proposes to recalculate and recompute the amount of compensation payable to claimants/respondents No.1 to 4.

18. Accordingly, annual income of deceased after deducting income tax, as calculated above, will be Rs.2,36,000/- (240000-4000). and after deducting one-third from the annual income of deceased towards his personal & living expenses, as done by the Claims Tribunal, annual loss of dependency would come to Rs.1,57,334/- (236000-78666). By applying multiplier of 13, as applied by the Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.20,45,342/- (157334x13).

In view of above, the claimants/respondents No.1 is entitled for Rs.40,000/- towards spousal consortium, respondent Nos.3 & 4 are entitled for Rs.40,000/- towards parental consortium and respondent No.2 is entitled for Rs.40,000/- towards filial consortium, as held by Hon'ble Supreme Court in the matters of **Nanu Ram (supra)** & **Pranay Sethi (supra)**. Besides this, the claimants/respondent Nos.1 to 4 are also entitled for Rs.15,000/- towards loss of estate and Rs.15,000/- for funeral expenses. In all, the claimants/ respondents No.1 to 4 are entitled for a total sum of 1,50,000/- under the other conventional heads in place of Rs.3,75,000/- as awarded by the Claims Tribunal. Now the claimants/respondents No.1 to 4 are entitled for total amount of compensation of Rs.21,95,342/- (2045342+150000) instead of Rs.24,55,000/- as awarded by the Claims Tribunal. The amount of compensation shall carry simple interest @ 6% p.a. from the date of filing of application till actual realization. The appellant is not required to pay any penal interest.

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

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-