

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 135 of 2016

1. Smt. Ramsheela Verma W/o Late Ramratan Verma, Aged About 45 Years.
 2. Jitendra Verma S/o Late Ramratan Verma, Aged About 26 Years.
 3. Narendra Verma S/o Late Ramratan Verma, Aged About 24 Years.
- All are R/o Shukrawari Bazar, Indira Nagar, Birgaon, Thana Urla District Raipur, Chhattisgarh.

---- Appellants

Versus

1. Umesh Yadav S/o Shri Bhrigunath Yadav, Kamal Transport Vyas Talab, Birgaon, Tahsil and District Raipur Chhattisgarh. **(Driver)**.
2. Anjani Kumar Singh S/o Late Ram Sewak Singh, R/o Gazi Nagar Birgaon, Thana Urla District Raipur Chhattisgarh. **(Owner)**.
3. The Oriental Insurance Company Limited Through Regional Manager, Co. Ltd. Branch No. 01, Kachari Chowk, Jail Road Raipur Chhattisgarh.

--- Non-applicant Nos.1 to 3/Respondents

For Appellants	: Mr. Priyanshdeep Singh, Advocate.
For Respondent Nos.1 and 2	: None.
For Respondent No.3	: Mr. Sudhir Agrawal, Advocate.

(Proceedings through video conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

31/08/2021

1. Claimants-appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of compensation awarded by Chief Motor Accident Claims Tribunal, Raipur, (CG) (for short 'Tribunal') vide award dated 30.10.2015 in Claim Case No.154/2012, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of **Rs.6,40,000/-** in a fatal accident case.
2. Facts relevant for disposal of this appeal are that on 23.02.12 Ramratan Verma was traveling on motorcycle. At about 04:30 pm, when he reached near Binu Petrol Pump, Khamtarai, one Truck bearing registration No. CG-04-DX-3801, (for short 'offending vehicle') driven rashly and negligently by non-applicant No.1 dashed motorcycle and caused

accident. In the aforementioned accident, Ramratan Verma suffered grievous injuries and died on spot.

3. Appellants/claimants, who are widow and children of deceased, filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs. 22,54,000/- pleading therein that on the date of accident, deceased was running grocery shop and earning Rs.20,000/- per month. They were dependent upon income of deceased.
4. Non-applicant Nos.1 & 2/owner and driver of offending vehicle, submitted reply, denying facts pleaded in claim application. It was further pleaded that on the date of accident, non-applicant No.1 was possessed with valid and effective driving license and offending vehicle was insured with non-applicant No.3, hence liability, if any, to pay amount of compensation would be of non-applicant No.3/Insurance Company.
5. Non-applicant No.3/Insurance Company also submitted its reply and resisted the claim. It was further pleaded that accident was result of negligent driving of motorcycle by deceased. There was contributory negligent on the part of deceased. On the date of accident, non-applicant No.1 was not possessed with valid and effective driving license to drive offending vehicle. There was no valid permit and fitness certificate of offending vehicle. As such, there was breach of policy conditions, Insurance Company is not liable to indemnify the insured.
6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Ramratan Verma died on account of motor-accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1. Contributory negligence and breach of Policy conditions were not found to be proved. Accordingly,

Tribunal allowed application in part, assessed income of deceased as Rs.5,000/- per month, awarded total compensation of **Rs.6,40,000/-** along with interest @ 6% per annum, and fastened liability upon non-applicant Nos.1 to 3, to pay the amount of compensation, jointly and severally.

7. Learned counsel for appellants/claimants submits that claimants have filed this appeal only on two grounds (i) non-award of compensation towards future prospects, (ii) amount awarded under other conventional heads is on lower side. In support of his submissions, he relied upon judgments passed by Hon'ble Supreme Court in cases of **National Insurance Company Ltd. vs. Pranay Sethi¹** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors²**.
8. Learned counsel for respondent No.3-Insurance Company submits that Tribunal assessed age of deceased to be 40-50 years on the date of accident which is erroneous. Tribunal has reckoned age of deceased based on age mentioned in Post-Mortem report as '50' years. Appellants placed on record documents including copy of license of deceased wherein Date of Birth is mentioned as 08.11.1959, date of accident is 23.02.12, hence on the date of accident, deceased was more than 52 years of age. Tribunal overlooked said document and erroneously reckoned age of deceased in between 45-50 years. If this Court is re-computing the amount of compensation then age of deceased is to be properly reckoned to award just and proper compensation. Award of compensation cannot be Bonanza to claimants. Tribunal has awarded Rs.1,20,000/- under other conventional heads out of which Rs.1 lac is awarded towards consortium. Amount of compensation under other heads is much more than what is held to be awarded by Supreme Court in

1 (2017) 16 SCC 680

2 (2018) 18 SCC 130.

cases of **Pranay Sethi** (supra) and **Nanu Ram** (supra). Amount awarded by the Tribunal to claimants cannot be said to be on lower side, hence, it does not call for any interference.

9. I have heard learned counsel for the parties and perused record of claim case.
10. So far as submission with regard to age of deceased on the date of accident is concerned, perusal of record shows that claimants in their claim application have pleaded that on the date of accident age of deceased was of 48 years. In Merg Intimation and post-mortem report, age of deceased is mentioned as '50' years. Claimants placed on record copy of license of deceased along-with other documents which is available at page No.3 along with un-exhibited documents in which DOB is mentioned as 08.11.1959.
11. Respondent No.3-Insurance Company along-with application for taking documents on record submitted driving license of deceased which is available on record and further extract of license issued by Licensing Authority, Raipur.
12. In view of aforementioned documents available on record, I find it appropriate to reckon age of deceased in between 50-60 years.
13. Coming to next argument advanced by learned counsel for appellants that Tribunal erred in not awarding any amount towards future prospects. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that in case deceased/victim of motor accident, was not in permanent employment and comes in age group of 50-60, an addition of 10% of establish income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus :-

“59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

14. As on the date of accident, deceased was in age group of 50-60 years, as held above, and not in permanent employment, therefore, there shall be an addition of 10% of established income of deceased towards future prospects for assessing total income for the purpose of calculating compensation.
15. As per guidelines issued by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**³, appropriate multiplier would be “11” instead of ‘13’ as applied by Tribunal. It is ordered accordingly.
16. As regard excessive amount of compensation of Rs.1 lacs for consortium and Rs.20,000/- towards funeral expenses is concerned, in case of **Pranay Sethi** (supra) Hon'ble Supreme Court has specified the heads for awarding compensation on other conventional heads and also quantified the amount for those heads. The heads on which compensation is to be awarded are loss of consortium, estate and funeral expenses. In case of **Nanu Ram** (supra), Hon'ble Supreme Court has explained the types of consortium and held that there are three types of consortium ie loss of spousal consortium to wife or husband, loss of parental consortium to children and loss of filial consortium to parents of deceased.
17. In view of aforementioned facts and ruling rendered by Hon'ble Supreme Court in cases of **Pranay Sethi** (supra) and **Nanu Ram** (supra), I am of

the considered view that award of compensation of Rs.1 lacs is much on higher side.

18. For the foregoing reasons and to appreciate the submissions made by learned counsel for the appellants for enhancement of amount of compensation, I find appropriate to recalculate the amount of compensation.
19. Income of deceased is taken as Rs.5,000/- per month as assessed by Tribunal. By adding 10% of established income towards future prospects, total monthly income of deceased comes to Rs.5,500/- (Rs.5,000 + 10% of 5,000) and annual income as Rs.66,000/- (12 X 5500). Number of dependents on the date of accident were '3', therefore, there will be deduction of 1/3rd of income towards personal and living expenses as per decision of Hon'ble Supreme Court in case of **Sarla Verma (Supra)**. After deducting 1/3rd towards personal & living expenses, yearly loss of dependency will come to Rs.44,000/- (Rs.66,000/- - 1/3 of Rs.66,000/-). By applying multiplier of 11 to annual loss of dependency, total loss of dependency will be Rs.4,84,000/- (Rs.44,000/- X 11).
20. Apart from this, appellants are also entitled for a sum of Rs.40,000/- towards loss of spousal consortium to wife, Rs.40,000/- towards loss of parental consortium to child, Rs. 15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate, as held by Hon'ble Supreme Court in case of **Nanu Ram** (supra).
21. Total amount of compensation calculated by this Court is **Rs.5,94,000/-** whereas Tribunal has awarded **Rs.6,40,000/-**. Hence, compensation awarded by Tribunal to the tune of **Rs.6,40,000/-** is more than recalculated compensation by this Court in preceding paragraphs. There

is no scope for enhancement of amount of compensation. As this is an appeal for enhancement of the amount of compensation, compensation already awarded and not challenged cannot be reduced.

22. For the foregoing reasons, I do not find any ground to interfere with the amount of compensation awarded by Tribunal. Appeal being devoid of substance is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-