

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 194 of 2016**

1. Gyanvati @ Gyanmati wd/o late Shersingh, aged about 22 years
2. Vijay Kumar S/o late Shersingh, aged about 01 month (at present near about 1 year) minor through his natural guardian mother Gyanvati @ Gyanmati

Both R/o village Padariya Nawapara, P.S. Pendra, Distt. Bilaspur
Chhattisgarh

---Appellants/claimants**VERSUS**

1. Kamlesh Kumar Yadav S/o Jagdish Yadav S/o Jagdish Yadav, aged about 25 years, R/o Village Amaru (Yadavpara) P.S. Pendra, Dist. Bilaspur Chhattisgarh (Driver of Truck No. CG 13ZB0171)
2. Chhote Lal Sahu @ Chhatelal S/o Mithailal, aged about 55 years, R/o near new bus stand Pendra P.S. Pendra Distt. Bilaspur Chhattisgarh - **-----Owner**
3. The Oriental Insurance Company Ltd. Branch Bilaspur Chhattisgarh.

----Respondents

For Appellants	: Mr. F.S. Khare, Advocate
For Respondent 3	: Mr. S.S. Marhas, Advocate

*(proceedings through Video Conferencing)***Hon'ble Shri Justice Parth Prateem Sahu****Order on Board****02/09/2021**

1. Challenge in this appeal is to the award dated 31.10.2015 passed by learned Additional Motor Accident Claims Tribunal, Pendra Road, district Bilaspur C.G. (for short "Claims Tribunal") in claim case no. 25/2014, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "Act of 1988") in part, awarded Rs. 6,45,000/- as total compensation in fatal accident case with interest @ 6% per annum

from the date of filing of claim application till its realization.

2. Facts relevant for disposal of this appeal are, that on 03.01.2014 Sher Singh was travelling on truck bearing registration number CG13 ZB 0171 (henceforth "offending truck"). On the way non-applicant 1 drove the offending truck rashly and negligently and caused accident with tree standing on road side. In the said accident, Sher Singh suffered grievous injuries on his person and succumbed to those injuries on spot.
3. Appellants-claimants who are widow and child of late Sher Singh filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 25 Lakh on the grounds that deceased on the date of accident was working as helper and coolie thereby earning Rs. 9,000/- per month. They were dependent upon the income of deceased.
4. Non-applicant 1 submitted reply to the claim application resisting the claim, it was further pleaded that the accident was not as a result of negligent driving of non-applicant 1. He was possessed with valid and effective driving licence on the date of accident and the offending truck was insured with non-applicant 3-Insurance Company.
5. Non-applicant 2 owner of the offending truck submitted its reply separately pleading therein that on the date of accident, offending truck was insured with non-applicant 3. Non-applicant 1 was possessed with valid and effective driving licence, as such, liability to satisfy the amount of compensation would be of non-applicant 3/ Insurance Company.

6. Non-applicant 3/ Insurance Company submitted reply resisting the claim, it was further pleaded that offending vehicle was being plied in breach of policy conditions. Income of the deceased pleaded in the claim application is highly exaggerated.
7. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by the respective parties held that late Sher Singh died on account of motor accidental injuries due to rash and negligent driving of offending truck by non-applicant 1. Breach of policy conditions was not found to be proved, while assessing monthly income of deceased as Rs. 3,000/-, calculated the amount of compensation and awarded total sum of Rs. 6,45,000/-.
8. Mr. F.S. Khare, learned counsel for the appellants- claimants would submit that income of the deceased as assessed by the Tribunal is much on lower side. Deceased on the date of accident was an able-bodied person aged about 25 years and looking to the date of accident Claims Tribunal ought to have accepted income of deceased as pleaded in the claim application and stated by witnesses examined on behalf of claimants. He further pointed out that the Claims Tribunal has not awarded any amount of compensation towards future prospects and awarded meagre amount of compensation on other conventional heads. He submits that the Tribunal has not awarded any amount towards loss of estate and meagre sum of Rs. 5000/- towards funeral expenses is awarded. He submits that amount of compensation be suitably enhanced.
9. Mr. S.S. Marhas, learned counsel for Respondent 3-Insurance Company would submit that appellants-claimants failed to produced

any reliable piece of evidence to prove income of deceased, in absence of any admissible piece of evidence, Claims Tribunal justified in assessing income of deceased on notional basis. Tribunal has not deducted any amount towards personal and living expenses of the deceased. He submits that the amount of compensation towards loss of consortium awarded by the Tribunal is much on higher side. Learned counsel, placing reliance upon the judgment of Hon'ble Supreme Court in the case of **National Insurance Company Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** submits that Hon'ble Supreme Court has quantified the amount of compensation towards loss of consortium to be Rs. 40,000/-. Claimants have been suitably compensated, hence, the impugned award does not call for any interference.

10. I have heard learned counsel for the respective parties and also perused the record of claim case.
11. So far as, the submission of learned counsel for the appellants with regard to assessment of income of the deceased is concerned, accident was of 03.01.2014, occupation of deceased is pleaded as helper and loader (coolie). True it is that the appellants-claimants failed to produce any admissible piece of evidence to prove income of deceased but for assessing income on notional basis, factors like date of accident, age of deceased, wage structure, price index etc. are to be taken into consideration. Upon taking into consideration the aforementioned factors, particularly the date of accident, age of deceased and nature of occupation as pleaded and stated by claimants in their evidence, I find it appropriate to assess income of deceased as Rs. 4,500/- per month instead of Rs. 3000/- per month.

It is ordered accordingly.

12. In the case of **Pranay sethi (supra)**, Hon'ble Supreme Court has held that in case deceased was below 40 years of age and not in permanent employment, there will be addition of 40% of the established income in the income of deceased. In the case at hand, deceased was 25 years of age on the date of accident as held by Tribunal, hence, there will be addition of 40% of established income in the income of deceased for assessing total income of deceased for purpose of calculating compensation. Tribunal has not deducted any amount towards personal and living expenses of deceased ie. the expenses which is to be incurred for survival of deceased. Hon'ble Supreme Court in case of **Sarla Verma & others v. Delhi Transport Corp. & anr.** reported in **(2009) 6 SCC 121** has issued guidelines for deducting personal and living expenses based on number of dependents upon deceased and held that where the dependents are three, there will be deduction of 1/3rd and where the number of dependents are 4 to 6 there will be deduction of 1/4th as the case may be. In the instant case, there are 2 dependents, hence, there will be deduction of 1/3rd of the income of deceased towards personal and living expenses. It is ordered accordingly. Appellants-claimants shall further be entitled for amount of compensation on other conventional heads as held by Hon'ble Supreme Court in case of **Pranay Sethi (supra)** and **Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others** reported in **(2018) 18 SCC 130**.
13. For the foregoing reasons, I find it appropriate to recompute the amount of compensation to be awarded to the claimants as under.

14. Income of deceased is assessed as Rs. 4,500/- per month ie. Rs. 54,000/- per annum. Upon adding 40% of the income of the deceased towards future prospects, yearly income of deceased on the date of accident will come to Rs. 75,600/-. After deducting 1/3rd towards personal and living expenses, annual loss of dependency will come to Rs.50,400/-. Upon applying multiplier of 18 to the annual loss of dependency, total loss of dependency will come to Rs. 9,07,200/- [Rs.50400x18]. Besides the amount of compensation towards loss of dependency, appellants-claimants shall further be entitled for Rs. 40,000/- towards loss of spousal consortium, Rs. 40,000/- towards loss of parental consortium, Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses.
15. Now the appellants-claimants shall be entitled for total sum of compensation of **Rs. 10,17,200/-** [Rs.9,07,200+ Rs.40,000+ Rs.40,000+ Rs.15,000+ Rs.15,000] instead of Rs.6,45,000/- as awarded by learned Claims Tribunal. 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 impugned award shall remain intact.
16. In the result, appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge