

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1207 of 2017

1. Smt. Rukhmani Bai Wd/o Late Mohan Lal Sahu, Aged About 38 Years.
2. Ku. Bhawna Sahu D/o Late Mohan Lal Sahu, Aged About 17 Years.
3. Ku. Reshma Sahu, D/o Late Mohan Lal Sahu, Aged About 15 Years.
4. Naveen Kumar Sahu S/o Late Mohan Lal Sahu, Aged About 13 Years.
 Appellant Nos.2 to 4 are minor hence represented by their natural guardian Mother Smt. Rukhamani Bai Wd/o Late Mohan Lal Sahu.
 All are R/o Village Gatapara, Post Korra, Tahsil Kurud, District Dhamtari Chhattisgarh.
5. Dhaniram Sahu S/o Bisouha Ram, Aged About 65 Years.
6. Smt. Budhiya Bai Sahu, W/o Shri Dhaniram Sahu, Aged About 60 Years.
 Appellant No.5 and 6 are R/o Village Mandroud, Tahsil Kurud, District Dhamtari Chhattisgarh.

---- Appellants

Versus

1. Gokul Trisath S/o Bishatram Sahu, Aged About 47 Years R/o Rakhi, Post Bagoud, Tahsil Kurud, District Dhamtari Chhattisgarh. (Driver).
2. Branch Manager, Iffco Tokyo General Insurance Company Limited, 205 2nd Floor, Infront of M. M. Silver Plaza, Udyog Bhawan, Ring Road No. 1, Raipur, Tahsil and District Raipur Chhattisgarh.

--- Non-applicant Nos.1 to 2/Respondents

For Appellants	: Mr. Anil Gulati, Advocate.
For Respondent Nos.1	: None.
For Respondent No.2	: Mr. Vaibhav Dhardiwan, Advocate alongwith Mr. P R.Patankar, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

17/09/2021

1. Appellants/claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of amount of compensation awarded by learned Additional Motor Accident Claims Tribunal, Dhamtari, (CG) (for short, 'Tribunal') vide award dated 17.03.2017 in Claim Case No.68/2016, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of Rs.7,73,575/- in fatal accident case.
2. Facts relevant for disposal of this appeal are that on 03.01.2016 Mohan Lal Sahu along-with his wife was going to village Gatapara from Kurud on motorcycle, while so, when reached near village -Bagaud, one another motor cycle bearing registration No.CG/05/X/8265 (for short, 'offending

vehicle), driven by non-applicant No.1 rashly and negligently dashed motorcycle of Mohan Lal Sahu and caused accident. In aforementioned accident, he suffered grievous injuries on his head and became unconscious. He was taken to Community Health Centre, Kurud, he was referred to Ramkrishna Care Hospital, Raipur. During the course of treatment, he succumbed to injuries on 13.01.2016.

3. Claimants, who are widow, minor child and parents of deceased, filed an application under Section 166 the Act of 1988 seeking compensation of Rs.28,62,000/- pleading therein that on the date of accident, deceased was working as 'Tailor' and earning Rs.500/- to 600/- per day. They expended Rs.2,50,000/- towards treatment of deceased. They were dependent upon income of deceased.
4. Non-applicant No.1/owner-driver of offending vehicle, submitted reply to application, denied the facts pleaded therein. It was further pleaded that on the date of accident, non-applicant No.1 was possessed with valid and effective driving license. Offending vehicle was insured with respondent No.2/Insurance Company. Hence, liability if any to pay the amount of compensation would be of Insurance company.
5. Non-applicant No.2/Insurance Company submitted its reply and resisted the claim. It was further pleaded that accident was a result of head on collision between two motorcycles claim application is not maintainable. Non-applicant No.1 was not possessed with valid and effective driving license, as such there was breach of policy conditions. Hence, 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 Mohan Lal Sahu died on account of

motor accidental injuries, due to rash and negligent driving of offending vehicle by non-applicant No.1. Breach of policy condition was not found to be proved. Tribunal while assessing income of deceased as Rs.3,000/- per month, awarded total compensation of Rs.7,75,575/- along with interest at the rate of 6% p.a and fastened liability upon non-applicant Nos. 1 to 3 jointly and severally to satisfy the amount of compensation.

7. Learned counsel for appellants/claimants would submit that Tribunal erred in awarding meager amount of compensation. Tribunal erred in assessing monthly income of deceased as Rs.3,000/- per month only, overlooking the nature of occupation, date of accident and statement made by claimants and their witnesses that deceased was working as 'Tailor'. Tribunal not awarded any amount towards future prospects, as held by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**¹, amount awarded under other conventional heads is also on lower side and needs to be enhanced in light of decision of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors**².
8. Learned counsel for respondent No.3/Insurance Company submits that claimants failed to prove nature of occupation and income of deceased by placing admissible piece of evidence on record. In absence of any proof of income, Tribunal justified in assessing income of deceased as Rs.3,000/- per month on notional basis. Amount of compensation awarded by Tribunal cannot be said to be on lower side, it is just and proper in the given facts and circumstances of the case and does not call for any interference.
9. I heard learned counsel for the parties and perused record.

1 (2017) 16 SCC 680

2 (2018) 18 SCC 130.

10. So far as submission of learned counsel for appellant with regard to assessment of income of deceased is concerned, perusal of record shows that to prove income and occupation of deceased claimants have examined Smt Rukmani Bai as AW/1 & Shri Chunni Lal as AW/2 resident of village Gatapara. They have stated that deceased prior to the accident was working as Tailor. AW-2 also stated that he got his clothes stretch from deceased. Claimants have not placed on record any documentary evidence to show that deceased was doing business of tailoring. It cannot be ignored that deceased was resident of village Gatapara and as per evidence of AW/2 he was doing work of tailor in his village. Evidence of AW/2 shows that he himself has got stitched his clothes from deceased. Even if claimants failed to prove income of deceased by placing admissible piece of evidence then also income of deceased is to be assessed on notional basis keeping in mind nature of occupation, date of accident, cost of living etc. Considering the aforementioned facts and evidence of AW/1 & 2, I find it appropriate to assess income of deceased as Rs.5,500/- per month in the year 2016 instead of Rs.3,000/- per month. It is ordered accordingly.

11. Coming to next argument advanced by learned counsel for appellant that Tribunal erred in not awarding any amount towards future prospects. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held where deceased/victim of motor accident was not in permanent employment and in the age group below 40 to 50 years, an addition of 25% 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.”

12. Indisputably, in case at hand, on the date of accident, deceased was aged about 42 years and not in permanent employment, therefore, there shall be an addition of 25% of established income towards future prospects to income of deceased for assessing total income for purpose of calculating compensation.

13. 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, loss of estate and funeral expenses. In case of **Nanu Ram** (supra), Hon'ble Supreme Court 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.

14. Accident took place near village Bagaud, after accident deceased was brought to the Community Health Centre, Kurud, thereafter he was shifted to Ramkrishna Hospital Raipur. Deceased took treatment as in-patient from 03.01.2016 to 13.01.2016. Tribunal overlooking the facts of the case has not awarded any amount towards conveyance expenses, pains and suffering, attendant and his diet. Considering the aforementioned facts, I find it proper to award Rs.10,000/- towards pains and suffering, Rs.5,000/- towards attendant and his diet and Rs.10,000/- towards conveyance expenses.

15. For the foregoing reasons, I propose to recompute the amount of compensation :

16. Income of deceased is taken as Rs.5,500/- per month. By adding 25% of established income towards future prospects, total monthly income of deceased

comes to Rs.6,875/- (Rs.5,500 + 25% of 5,500) and annual income as Rs.82,500/- (12 X 6875). Number of dependents on the date of accident were '6', therefore, there will be deduction of 1/4th of the income towards personal and living expenses as per decision of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**³. After deducting 1/4th towards personal & living expenses, yearly loss of dependency will come to Rs.61,875/- (Rs.82500/- - ¼ of Rs.82500/-). Upon applying multiplier of '14' to annual loss of dependency, total loss of dependency will come to Rs.8,66,250/- (Rs.61,875/- X 14). Besides loss of dependency, appellants are also entitled for a sum of Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of filial consortium to parents, Rs.40,000/- towards loss of parental consortium to child, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Claimants shall also be entitled for Rs.2,44,575/- towards medical expenses as awarded by Tribunal.

17. Now, appellants/claimants will be entitled for a total compensation of **Rs.12,85,825/-** (Rs.8,66,250/- + Rs.10,000/- + Rs.5,000/- + Rs.10,000/- + Rs.40,000/- + Rs.2,44,575/- + Rs.40,000/- + Rs.40,000/- + Rs. 15,000/- + Rs.15,000/-) instead of **Rs.7,73,575/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-