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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 481 of 2016**

1. Smt. Jageshwari Mandavi, W/o Shri Satyanarayan Mandavi, aged about 45 years, R/o Village Bendranavagaon, Thana & Tahsil Dhamtari, Civil & Revenue District Dhamtari (CG)
2. Satyanarayan Mandavi, S/o Shri Pancham Singh Mandavi, aged about 49 years, R/o Village Bendranavagaon, Thana & Tahsil Dhamtari, Civil & Revenue District Dhamtari (CG)

---- Appellants/Claimants**Versus**

1. Banshilal Sinha, S/o Videshram Sinha, aged about 38 years, R/o village Birgaon, Thana Dongargaon, Distt. Rajnandgaon, at present residence of Krishna Garage, Mahoba Bajar, Raipur Thana Amanaka, Tahsil Raipur, Civil & Revenue District Raipur (CG) (Driver of Vehicle No.CG04-JC-0807)
2. Harpal Singh Baweja, S/o Gurucharan Singh Baweja, R/o MIG-74, Tatibandh, Raipur, Thana Amanaka, Tahsil Raipur, Civil & Revenue Dist. Raipur (CG) (Owner of Vehicle No.CG04-JC-0807)
3. Branch Manager, The Oriental Insurance Company Ltd. Branch Nagpur-15, A.D. Complex, Mount Road Extension Sadar Nagpur, Distt. Nagpur (Maharashtra) Pin- (Insurer of Vehicle No.CG04-JC-0807)

---- Respondents

For Appellant	:	Mr. Sunil Sahu, Advocate
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Mr. H.B. Agrawal, Sr. Advocate with Mr. Sandeep Shrivastava & Mr.Pankaj Agrawal, Advocates

Hon'ble Shri Justice Parth Prateem Sahu**Order On Board****24/9/2021**

1. Appellant-claimants have preferred this appeal under Section

173 of the Motor Vehicles Act, 1988 (for brevity 'the Act of 1988') seeking enhancement in amount of compensation awarded by the learned Additional Motor Accident Claims Tribunal (FTC), Dhamtari (for short 'the Claims Tribunal') vide award dated 30.1.2016 in Claim Case No.145/2013 by which the Claims Tribunal allowed application filed by claimants under Section 166 of the Act of 1988 in part, awarded total sum of Rs.7,64,000/- as compensation in a fatal accident case along with interest @ 6% p.a. from the date of filing application.

2. Facts of the case, in nutshell, are that on 26.11.2012 Devendra Mandavi (deceased) along with his friend Fanish was going towards Mahoba Market from Tatibandh, Raipur on motorcycle bearing registration number CG18-E-8442. Another friend of Devendra Mandavi by name Golu was travelling on motorcycle bearing No.CG19-BA-6632. When they reached near Mahoba Market bridge, one truck bearing registration number CG04-ZC-0807, driven by non-applicant No.1 rashly and negligently, dashed motorcycle on which Devendra Mandavi was travelling and caused accident. In the accident, both the riders of motorcycle suffered grievous injuries and died on spot. Accident was reported to the concerned police station based on which crime bearing No.447/12 was registered against non-applicant No.1.
3. Claimants-appellants, who are parents of deceased, have filed an application under Section 166 of the Act of 1988 claiming

total amount of Rs.40,50,000/- as compensation under different heads, pleading therein that deceased was graduate in Bachelor of Electronics & Instrumentation Engineering from National Institute of Technology, Rourkela; he was selected by Infosys Technology Company Ltd., Mysore Branch on monthly salary of Rs.23,515/- and on the date of accident, he was undergoing training.

4. Non-applicants No.1 & 2, driver & owner of offending vehicle, did not appear before the Claims Tribunal despite service of notice, hence they were proceeded ex-parte.
5. Non-applicant No.3-Insurance Company also submitted its reply to claim application and denied the facts pleaded therein. It was further pleaded that on the date of accident, non-applicant No.1, driver of offending vehicle, was not possessed with valid and effective driving license; owner & insurer of motorcycle on which deceased was travelling have not been impleaded as party non-applicants, hence there was non-joinder of necessary party. Since offending vehicle was plied in breach of conditions of insurance policy, insurance company is not liable to indemnify the insured.
6. The Claims Tribunal upon considering pleadings and evidence brought on record by respective parties, held that deceased Devendra Mandavi died on account of motor accidental injuries on account of rash and negligent driving of offending vehicle by non-applicant No.1-driver and there was no breach of any condition of insurance policy. While assessing monthly

income of deceased as Rs.4,500/- on notional basis, Tribunal computed compensation and awarded Rs.7,64,000/- under different heads along with interest @ 6% p.a. from the date of filing of application.

7. Mr. Sunil Sahu, learned counsel for appellants-claimants would submit that the Claims Tribunal awarded meagre amount as compensation. Claimants in claim application have specifically pleaded about qualification of deceased; his selection in Infosys Technology Company on monthly salary of Rs.23,551/- and that he was under training on the date of accident. In support of aforementioned pleadings, the claimants have produced documentary evidence i.e. Grade Card issued by NIT, Rourkela; list of candidates short-listed for interview and final list of candidates selected in campus selection process by Infosys Technology. He further submits that apart from aforementioned documents, claimants have also submitted that pay-package offered to deceased by Infosys Technology Ltd. Mysore Branch i.e. Compensation Details in which fixed gross salary payable to deceased is mentioned as Rs.23,551/-. However, the Claims Tribunal overlooking aforementioned documents, which were available on record, has assessed monthly income of deceased as Rs.4,500/- on notional basis treating him to be a skilled labourer, which is erroneous. Amount of compensation awarded under other conventional heads is also on lower side. In view of afore submissions, he prays that amount of compensation may be enhanced suitably.

8. On the other hand, Mr. H.B. Agrawal, learned Senior Counsel for respondent No.3 Insurance Company submits that appellants have placed on record documents showing campus selection of deceased in Infosys Technology Ltd. and monthly salary to be paid to him, but they failed to examine any witness in this regard. Claimants have not examined any official of NIT, Rourkela nor any employee/officer of Infosys Technology Ltd. Mysore Branch to prove documents placed on record. Claims Tribunal was justified in assessing income of deceased as Rs.4,500/- on notional basis. It is further contended that amount of compensation awarded to claimants, who are parents of deceased, is just, proper and it does not call for any interference.
9. I have heard learned counsel for the parties and perused the record of the Claims Tribunal.
10. So far as submission of learned counsel for appellants with respect to assessment of monthly income of deceased is concerned, perusal of claim application would show that claimants in their claim application have pleaded that deceased was engineering graduate, he was selected as System Engineer-Trainee in campus selection by Infosys Technology Ltd. on the monthly salary of Rs.23,551/-. In support of aforementioned pleadings, claimants have placed on record grade card (Ex.P-13C) of deceased issued by National Institute of Technology, Rourkela in which it is mentioned that deceased graduated in Electronics &

Instrumentation Engineering in Academic Sessions 2009-10. Ex.P-15C is receipt of payment of Hall Dues and Ex.P-16C is money receipt, both were issued by National Institute of Technology, Rourkela. Ex.P-17C is the certificate issued by Rourkela Steel Plant certifying that deceased had undergone Vocational Training in Rourkela Steel Plant, Rourkela. List of short-listed candidates for interview to be conducted by Infosys Technology Ltd., which was prepared by NIT, Rourkela, is placed on record as Article 'A'. Final list of selected candidates in interview is placed on record as Article 'B' in which name of deceased finds place at Sr. No.10. Article 'C' is Annexure-I Compensation Post Training (Compensation details) issued by Infosys Technology showing total emoluments to be payable to deceased.

11. True it is that appellants-claimants have not examined author of aforementioned documents to prove selection of deceased in Infosys or pay-package/salary offered to him, but considering documents placed on record showing educational qualification etc. of deceased, even if it is found that income / salary is not proved in accordance with law, then also income of deceased can be assessed on notional basis considering relevant factors like educational qualification, ability to earn in future etc. From the aforementioned documents it is evident that on the date of accident, deceased was an engineering graduate from well reputed institution of the country i.e. National Institute of Technology, Rourkela, and was having bright future. Even the deceased was selected as System

Engineer in Infosys Technology Ltd., Mysore on the monthly salary of Rs.23,551/-. In such circumstances, this Court is of the view that Claims Tribunal erred in assessing monthly income of deceased as Rs.4,500/-. If income of deceased is not proved by claimants, then the Claims Tribunal ought to have assessed income keeping in mind educational qualification of deceased and his ability to earn for his livelihood; date of accident, age of deceased etc.

12. For awarding just amount of compensation some guess work is also required based on the facts of each case and documentary evidence on record. Original mark sheets of Class 10th & 12th are filed as Ex.P-12 & P-13. Document Ex.P-15 and Ex.P-19 would show that deceased completed his graduation in Engineering in Electronics and Instrumentation from National Institute of Technology, Rourkela, a reputed institution. E-admit card of Union Public Service Examination is placed on record as Ex.P-18 in which category is mentioned as Electrical Engineering (3) as also the paper relating to Electrical Engineering. From the documents available on record, marked as exhibits, are sufficient to accept the pleading and evidence of the claimants, that deceased was graduate in Engineering.

13. Deceased was an engineering graduate from NIT, Rourkela and he was selected as System Engineer by Infosys Technology Ltd., Mysore, he was having bright carrier ahead. In Article 'C' (Annexure-1) deceased to be paid monthly gross

salary as Rs.23551/- including provident fund and gratuity. True it is that none of employees of employer is examined. Object under the Act of 1988 of awarding compensation to the dependants and legal representatives is to award just compensation. Income of deceased, even if it is to be calculated on notional basis, will differ based on his qualification, efficiency and also quality education which deceased was having on the date of death. Based on qualification, his ability to earn is to be considered. Straight jacket formula cannot be applied for death of higher secondary passed, simple graduate, graduate in professional course or labourer etc. For calculating amount of compensation, some guesswork is required for assessing income on notional basis. Tribunal assessed income of deceased as Rs.4,500/-, which a manual labourer could have earned. Hence, income assessed by Tribunal is not sustainable. Keeping in mind qualification of deceased, documents placed on record of his appearing in exam as also his selection in Infosys, I find it appropriate to assess income of deceased as Rs.18,000/- per month in place of Rs.4,500/-, as assessed by the Claims Tribunal.

14. So far as submission of learned counsel for appellants that the amount of compensation awarded under other conventional heads is on lower side, is concerned, Hon'ble Supreme Court in case of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, considered issue of award of compensation under 'other conventional heads' and

not only specified heads under which compensation is to be awarded but also quantified amount of compensation. Award of compensation under 'other conventional heads' is further considered by Hon'ble Apex Court in case of **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130** in which types of consortium is explained i.e. spousal, filial and parental consortium. Perusal of impugned award would show that Claims Tribunal awarded compensation of Rs.55,000/- under other conventional heads i.e. Rs.35,000/- for loss of estate and Rs.25,000/- towards funeral expenses only. The claimants, who are parents of deceased, will be entitled for amount of compensation under other conventional heads as held by Hon'ble Supreme Court in **Nanuram alias Churhu Ram (supra)**. It is ordered accordingly.

15. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to claimants/ respondents No.1 to 5 herein.
16. As discussed above, income of deceased is taken as Rs.18,000/- per month. By adding 40% towards future prospects as deceased was below 40 years of age, total monthly income of deceased would recalculate to Rs.25,200/-. Annual income of deceased for the purpose of calculating compensation comes to Rs.3,02,400/-(25200x12). Out of this amount, one-half is to be deducted towards personal & living expenses of deceased, as deducted by Claims Tribunal. After

deducting one-half, annual loss of dependency comes to Rs.1,51,200/- (302400-151200). Upon applying multiplier of 18, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency comes to Rs.27,21,600/- (151200x18). Besides this, appellants-parents of deceased, are entitled for a sum of Rs.40,000/- towards loss of filial consortium, as held by Hon'ble Supreme Court in the matters of **Pranay Sethi (supra)** and **Nanuram (supra)**. In addition to aforesaid amount, claimants/ appellants will also be entitled for Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Thus, total amount of compensation comes to Rs.27,91,600/-. Now claimants/ appellants will be entitled for total amount of compensation of Rs.27,91,600/- in place of Rs.7,64,000/-, as awarded by Claims Tribunal. This amount of compensation shall carry simple interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants/ appellants as compensation shall be adjusted from total amount of compensation as calculated above.

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

Sd/-
(Part Prateem Sahu)
Judge

roshan/-