(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1217 of 2015

1. Smt. Indrani Kaushik, Wd/o Late Dilip Kaushik, 22 years.
2. Ku. Uma, D/o Late Dilip Kaushik, aged 3 years.
3. Ku. Pooja, D/o Late Dilip Kaushik, aged 1 years.

   Appellant No.2 to 3 are minor through natural guardian of appellant No.1 Smt. Indrani Kaushik.
4. Ram Prasad Kaushik, S/o Late Shri Jailal Kaushik, aged 60 years.
5. Smt. Jugbati Kaushik, W/o Shri Ram Prasad Kaushik, aged about 58 years.

   All R/o Vill Gondpara, Talpur (Viranpur) P.S. and Tehsil Sahaspur Lohara, Civil and revenue District Kabirdham (CG)

---- Appellants (Claimants)

Versus

1. State of Chhattisgarh, through Directorate Health and Family Welfare Services, Raipur, Civil and Revenue District Raipur (CG)
2. Block Medical Officer, Public Health Centre, S. Lohara, P.S. and Tehsil Lohara, Civil and Revenue District Kabirdham (CG)
3. Rajkumar @ Raju Nishad, S/o Late Shri Nanduram Nishad, aged about 43 years, Driver, posted at Government Hospital, R/o New Hospital Colony, Village S. Lohara, P.S. and Tehsil S. Lohara, Civil and Revenue District Kabirdham (CG)

---- Respondents

For Appellants	:	Shri Keshav Dewangan, Advocate
For Respondent No.1 &2	:	Shri B.P. Banjare, Dy. Govt. Advocate
For Respondent No.3	:	Shri Vinod Kumar Tekam, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Order On Board

12/8/2021

1. Claimants/appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for brevity 'the Act of 1988') seeking enhancement in compensation awarded by the learned Additional Motor Accident Claims Tribunal, Kabirdham

(Kawardha) vide award dated 24.12.2014 in Claim Case No.6/2014 thereby allowing application filed under Section 166 of the Act of 1988 in part; awarding sum of Rs.4,82,000/- as compensation to claimants in a fatal accident with interest @ 7% p.a. and fastened liability to pay amount of compensation upon non-applicants, jointly and severally.

2. Facts of the case, in nutshell, are that on 29.11.2012 Dilip Kaushik along with his friend Mahesh Dewangan was returning to his village Gondpara Taalpur from Sahaspur Loahara on motorcycle. When he reached on Rajnandgaon-Kawardha main road, near village Shanti Nagar Lohar one Tata Spacio bearing registration number CG02/2348 (for short 'offending vehicle'), driven rashly and negligently by non-applicant No.3, dashed motorcycle of Dilip Kaushik from back side. In the aforementioned accident Dilip Kaushik suffered grievous injuries on his brain, nose, ear, both hands & legs. He was taken to the hospital where he succumbed to motor accidental injuries during the course of treatment.

3. Claimants-appellants, who are widow, children and parents of deceased, filed an application under Section 166 of the Act of 1988 claiming Rs.38,00,000/- as total compensation pleading therein that on the date of accident, deceased was 26 years of age, working as Crusher Machine Operator and thereby earning Rs.20,000/- per month.

4. Non-applicant No.1 & 2 resisted claim by filing reply to application. It was pleaded that death of Dilip Kaushik was on

account of his own negligence, hence non-applicant Nos.1 & 2 are not liable to pay compensation.

5. Non-applicant No.3, driver of offending vehicle, also filed reply to claim application denying the facts pleaded therein. It was further pleaded that on the date of accident he was possessed with valid and effective driving license. Deceased himself while driving motorcycle rashly and negligently came on wrong side and dashed against offending vehicle. Owner and insurer of motorcycle have not been arrayed as party non-applicants.

6. The Claims Tribunal upon appreciation of pleadings and evidence brought on record by respective parties, has held that deceased Dilip Kaushik died on account of motor accidental injuries suffered by him in an accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.3-driver. While assessing monthly income of deceased as Rs.3,000/- on notional basis (Rs. 36,000/- per annum), calculated total compensation and awarded Rs.3,86,000/- to claimants along with interest @ 7% p.a.

7. Shri Keshav Dewangan, learned counsel for claimants-appellants would submit that the Claims Tribunal erred in assessing income of deceased at Rs.3,000/- per month, ignoring the date of accident, pleading and evidence with respect to income of deceased. He further submits that even if claimants/appellants failed to produce any reliable piece of documentary evidence establishing income of deceased, then also the Claims Tribunal should have assessed income of

deceased on notional basis taking into consideration factors like date of accident, wage structure, price index prevailing at relevant point of time. He further submits that no amount has been awarded towards future prospects. The Claims Tribunal also erred in deducting one-third instead of one-fourth from the income of deceased towards his personal and living expenses. Meagre amount of Rs.50,000/- is awarded towards other conventional head. In these circumstances, the amount of compensation deserves to be enhanced suitably. In support of his submissions, learned counsel places his reliance on the decisions of Hon'ble Supreme Court in cases of **Sarla Verma (Smt.) & other v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**; **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.**

8. Per contra, Mr. B.P. Banjare, learned Deputy Government Advocate for respondent No.1 & 2 would submit that the claimants failed to bring on record any reliable and cogent documentary evidence establishing income of deceased as pleaded and stated by them. In absence of evidence, the Claims Tribunal is justified in assessing income of deceased as Rs.3000/- p.m. on notional basis. He further submits that amount of compensation awarded by the Claims Tribunal in the given facts and circumstances of case is just and proper and it does not call for any interference.

9. Mr. Vinod Tekam, learned counsel appearing on behalf of respondent No.3-driver, supported the impugned award passed by the Claims Tribunal.

10. I have heard learned counsel for the parties and perused the record of the Claims Tribunal.

11. Deceased Dilip Kaushik, aged about 26 years, met with accident on 29.11.2012, he was survived by his widow, two daughters and age old parents. True it is that appellants-claimants have not brought on record any admissible piece of documentary evidence establishing income of deceased, as pleaded by them in claim application as also stated in their evidence. In absence of proof of income of deceased / victim of motor accident, income is to be assessed on notional basis taking into consideration several factors like occupation of deceased, cost of living, wage structure and price index prevailing on the date of accident. In case at hand, deceased was shown to be Crusher Machine Operator. Apart from appellant No.1 (AW-1), one Ganesh Kaushik has been examined as AW-2, who also stated in his statement that deceased was working as Crusher Machine Operator. If the date of accident is taken into consideration, this Court is of the considered view that the Claims Tribunal erred in assessed income of deceased as Rs.3000/- per month and being so, the same is hereby set aside. In the given facts and circumstances of case, this Court is of the view that income of deceased can be taken as Rs.4,000/- per month (Rs.48,000/-

per annum). It is ordered accordingly.

12.So far as deduction of amount towards personal and living expenses of deceased is concerned, perusal of impugned award would show that the Claims Tribunal has deducted one-third towards personal and living expenses of deceased, which in the opinion of this Court is not correct. In case of **Sarla Verma (supra)**, Hon'ble Supreme Court has held that where deceased was married and survived by 4 to 6 dependent family members, the deduction towards personal and living expenses should be one-fourth. In case at hand, the deceased was survived by five dependent family members i.e. widow, two daughters, mother & father. Hence, as per decision of **Sarla Verma's case (supra)**, there will be deduction of one-fourth towards personal and living expenses and not one-third as done by the Claims Tribunal. It is ordered accordingly.

13. Perusal of the impugned award would show that the Claims Tribunal has not granted any compensation under the head of 'future prospects'. The Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra) has held that where the deceased, victim of motor accident, was self-employed and was below the age of 40 years, an addition of 40% of actual 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. In the present case also, the deceased was 26 years old at the time of accident and was not in permanent employment, but the Claims Tribunal while calculating compensation payable to claimants did not add any amount to annual income of deceased towards future prospects and thereby committed mistake. Hence, it is held that claimants-appellants are entitled for addition of 40% towards future prospects to the income of deceased.

15. In case of **Pranay Sethi (supra)** Hon'ble Supreme Court has considered the issue of award of compensation under other conventional heads. It not only specified the 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 **Nanuram alias Churhu Ram (supra)** in which type of consortium is explained i.e. spousal, filial and parental consortium. In case at hand, Tribunal has awarded lump sum amount of Rs.50,000/- under other conventional heads, which is not proper. Appellants-claimants are entitled for compensation under other conventional heads as per decision of Hon'ble Supreme Court in cases of Pranay Sethi

(supra) & Nanuram alias Churhu Ram (supra). It is ordered accordingly.

16. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to claimants/ appellants.

17. As discussed above, income of deceased is taken as Rs.4,000/- per month and since at the time of accident the deceased was 26 years old and was not in permanent employment, therefore, in view of law laid down in case of **Pranay Sethi's case** (supra), the income of deceased is required to be enhanced by 40% towards future prospects, which comes to Rs.5,600/- (1600+4000). Thus, annual income of deceased for the purpose of calculating compensation comes to Rs.67,200/-(5600x12). Out of this amount, one-fourth is to be deducted towards personal & living expenses of deceased, as held in preceding paragraph. After deducting one-fourth, annual loss of dependency comes to Rs.50,400/- (67200-16800). By applying multiplier of 18, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency comes to Rs.12,09,600/- (67500x18). Besides this, appellant No.1-widow of deceased is entitled for a sum of Rs.40,000/- for spousal consortium, appellant Nos.2 & 3, daughters of deceased, are entitled for a sum of Rs.40,000/- for parental consortium, and appellant No.4 & 5, parents of deceased, are entitled for a sum of Rs.40,000/- for filial consortium, as held by Hon'ble Supreme Court in the matter of

Nanuram alias Churhu (supra). In addition to aforesaid amount, appellants are also entitled to get a sum of Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. Thus, the total amount of compensation comes to Rs.13,59,600/-. This amount of compensation shall carry simple interest @ 7% 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.

18. 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/-