

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1050 of 2015

1. Smt. Kalendri Gaikwad Wd/o Bhuvneshwar Gaikwad Aged About 35 Years
 2. Prem Ratan S/o Late Bhuvneshwar Gaikwad Aged About 15 Years
 3. Ku. Pallavi D/o Late Bhuvneshwar Gaikwad Aged About 12 Years
 4. Ku. Rupali D/o Late Bhuvneshwar Gaikwad Aged About 9 Years
 5. Kewal Chand S/o Late Bulchand Aged About 60 Years
 6. Smt. Ramkunwar W/o Kewal Chand Aged About 58 Years
- Appellants No.2 to 4 are minor hence impleaded through their natural guardian mother i.e. appellant No.1, Smt. Kalendri Gaikwad Wd/o Bhuvneshwar Gaikwad, Aged About 35 Years
 All R/o Village and Post Murmunda, P.S. Nandini, District Durg, Chhattisgarh

---- Appellants

Versus

1. Shri Pati Narayan Ojha S/o Late Kedar Nath Ojha R/o 17/B, Street No. 26, Sect.-5, P.S. Kotwali, Bhilai Nagar, District- Durg, Chhattisgarh
2. Smt. Rina Pandey S/o Ashok Pandey R/o Sangam Chowk, New Khursipar, Bhilai, District- Durg, Chhattisgarh
3. ICICI Lombard General Insurance Com. Ltd. Through In Charge Officer, ICICI Lombard Ins. Co. Ltd., Vanijy Bhawan, Devendra Nagar, Raipur, District- Raipur, Chhattisgarh

---- Respondents

For Appellants	: Shri Amiyakant Tiwari, Advocate
For Respondents 1 & 2	: None
For Respondent No. 3	: Shri Sourabh Sharma, Advocate

(Proceedings through Video Conferencing)
Hon'ble Shri Parth Prateem Sahu, Judge
Judgment on Board

25.08.2021

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 26.03.2015 passed by the Chief Motor Accident Claims Tribunal, Raipur,

Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.10 of 2012 whereby learned Claims Tribunal allowed an application filed under Section 166 of the M.V. Act in part, awarded Rs.10,72,500/- as total compensation along with interest at the rate of 6% per annum from the date of filing of claim application till its realization in a fatal accident case and fastened liability to satisfy the amount of compensation upon non-applicants No.1 to 3 jointly and severally.

2. Brief facts relevant for disposal of this appeal, are that, on 26.03.2012, at about 10.30 PM, when Bhuvneshwar Gaikwad was travelling along with Leeladhar Sahu on motorcycle bearing No.CG-07/LS/0265, one Scorpio vehicle bearing No.CG-07/NA/1666 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the motorcycle near village Kandarka. In the accident, both the riders of motorcycle suffered grievous injuries over their person and died.
3. Appellants/claimants, who are widow, children and parents of Late Bhuvneshwar Gaikwad filed an application under Section 166 of M.V. Act seeking compensation of Rs.18,72,000/- pleading therein that on the date of accident, deceased was able-bodied person, aged about 38 years, working as Jute Bag Stitcher and earning Rs.9,000/- per month. Claimants were dependent upon the income of

deceased and after his death, they were deprived of his income.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle, even after service of notice did not choose to appear before Claims Tribunal and were proceeded *ex parte*.
5. Non-applicant No.3/Insurance Company submitted reply, resisting the claim, it was further pleaded that on the date of accident, non-applicant No.1 was not possessed with valid and effective driving licence, offending vehicle was being used for commercial purpose, as such, there was breach of policy conditions. Accident was between two motor vehicles, hence, there was contributory negligence of drivers of both the vehicles. Amount of compensation claimed is highly exaggerated.
6. On appreciation of pleadings and evidence placed on record by the respective parties, Claims Tribunal held that Late Bhuvneshwar Gaikwad died on account of motor accidental injuries 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, awarded Rs.10,72,500/- as total compensation along with interest at the rate of 6% per annum from the date of filing of claim application till its realization.

7. Shri Amiyakant Tiwari, learned counsel for the appellants/claimants would submit that learned Claims Tribunal without considering the pleadings and evidence with respect to income of deceased in appropriate manner, assessed his income as Rs.6,000/- per month only instead of Rs.9,000/-. Claimants apart from the pleadings with regard to income of deceased have examined appellant No.1 Smt. Kalendri Gaikwad as AW-1, who in her statement has stated that deceased was earning Rs.9,000/- per month. It is contended that Claims Tribunal has not awarded any compensation towards future prospects as on the date of accident, deceased was held to be aged about 38 years based on the postmortem report (Ex.P/10) and his age mentioned in medical document, hence, there should have been addition of income to the income of deceased for computing total monthly income. Claims Tribunal awarded only Rs.7,000/- towards other conventional heads, which is much on lower side. In support of his contention, learned counsel places reliance upon the ruling of Hon'ble Supreme Court in case of **National Insurance Company Limited v. Pranay Sethi and Others** reported in (2017) 16 SCC 680, and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in (2018) 18 SCC 130.

8. Per contra, Shri Sourabh Sharma, learned counsel for respondent No.3/Insurance Company while supporting the award passed by Claims Tribunal, would submit that claimants failed to prove the nature of occupation, income of deceased by placing cogent and reliable piece of evidence on record. In the facts of the case, Claims Tribunal justified in assessing the income of deceased on notional basis. He further submits that learned Claims Tribunal awarded just amount of compensation, which does not call for any interference.
9. I have heard learned counsel appearing for the respective parties and perused the record carefully.
10. So far as the first submission of learned counsel for the appellants/claimants with regard to income of deceased assessed by Claims Tribunal is concerned, apart from pleadings with regard to nature of occupation and earning of deceased, claimants have examined Smt. Kalendri Gaikwad (AW-1) widow of deceased only, who in her statement has stated that deceased was working as Sack Stitcher and earning Rs.9,000/- per month. There is no other evidence or proof to show nature of occupation or income of deceased. In absence of any specific and acceptable piece of evidence, Claims Tribunal justified in assessing income on notional basis. Learned Claims Tribunal for assessing income has considered the deceased to be a daily wager employee and

assessed Rs.6,000/- per month, which in the opinion of this Court, cannot be said to be on lower side. Income assessed by Claims Tribunal as Rs.6,000/- per month is affirmed. Claims Tribunal applied the deduction of 1/4th and multiplier of 15, which is also inconsonance with law laid down by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**.

11. Learned Claims Tribunal not awarded any amount of compensation towards future prospects even after reckoning the age of deceased as 38 years. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that if victim/deceased is below 40 years of age and not in permanent employment, then there shall be addition of 40% of established income towards future prospects, hence, in the opinion of this Court, there will be an addition of 40% of established income towards future prospects for computing total income of deceased on the date of accident. It is ordered accordingly.
12. So far as the award of compensation on other conventional heads is concerned, Hon'ble Supreme Court in case of **Pranay Sethi** (supra) specified the head on which compensation under other conventional heads are to be awarded, such as, loss of consortium, funeral expenses and loss of estate, further quantified the compensation for each

head as Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. Types of 'consortium' has been subsequently explained by the Apex Court in **Nanu Ram Alias Chuhru Ram** (supra), to be of three types; (i) spousal consortium (payable to the surviving spouse because of the death of the partner), (ii) parental consortium (payable to children because of the death of parents); (iii) and filial consortium (payable to the parents because of the death of children). Hence, appellants will be entitled for the compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.

13. For the aforementioned reasons and discussions, the amount of compensation to be awarded to the claimants requires re-consideration and re-computation, which is as under :

Income of deceased as pleaded and assessed by learned Claims Tribunal is Rs.6,000/- per month i.e. Rs.72,000/- per annum. By adding 40% of income towards future prospects, total annual income of deceased will come to Rs.1,00,800/- ($72,000 \times 40\% = 28,800$ and $72,000 + 28,800$). After deducting $1/4^{\text{th}}$ towards personal and living expenses of deceased, annual loss of dependency will be Rs.75,600/- ($1,00,800 / 4 = 25,200$ and $1,00,800 - 25,200$). After applying the multiplier of 15 to annual loss of dependency, total loss of dependency will come to

Rs.11,34,000/- (75,600 x 15). Besides the amount of compensation towards loss of dependency, appellants/claimants are further entitled for a sum of Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.40,000/- towards loss of filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Appellants/claimants will be further entitled for a sum of Rs.1,92,500/- towards medical expenses as awarded by learned Claims Tribunal.

14. Now, appellants/claimants are entitled for total compensation of Rs.14,76,500/- (11,34,000 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000 + 1,92,500) instead of Rs.10,72,500/- as awarded by learned Claims Tribunal. Amount of compensation will carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. Other conditions of award shall remain intact.
15. In the result, appeal is allowed in part and impugned award is modified to the extent as indicated herein above.

Sd/-
(Parth Prateem Sahu)
Judge