NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1289 of 2015

1. Smt. Meena Bai Wd/o Late Bishat Pardhi, aged about 43 Years.
2. Chandan Pardhi S/o Late Bishat Pardhi, aged about 23 Years.
3. Ku. Laxmi Pardhi D/o Late Bishat Pardhi, aged about 15 Years Minor Through Natural Guardian Mother Smt. Meena Bai,

All R/o Village Sivnikhurd, Police Station Arjuni, Tahsil and District Dhamtari, Chhattisgarh

---Appellants/claimants

VERSUS

1. Basant Kumar Sahu S/o Late Shri Pyari Lal Sahu, aged about 27 Years R/o Village Sarangpuri, Police Station Arjuni, Tahsil and District Dhamtari, Chhattisgarh Driver of alleged vehicle Tata Magic Bearing Registration CG05 S 3457.

2. Rohit Kumar Kanwar S/o Shri Douwa Ram Kanwar, aged about 22 Years R/o Village Sarangpuri, Police Station Arjuni, Tahsil and District Dhamtari, Chhattisgarh Owner of alleged Vehicle Tata Magic Bearing Registration CG05 S 3457

3. I. C. I. C. I. Lombard Insurance Company Limited, Head Office House No. 414, Veer Sawarkar Marg Near Siddhi Vinayak Mandir, Prabha Devi Mumbai, Through Branch Manager, Branch Office Ground Floor, Vanijya Bhawan Devendra Nagar, Raipur, District-Raipur, Chhattisgarh Insurer of alleged vehicle Tata Magic Bearing Registration CG05 S 3457.

----Respondents

For Appellants	:	Mr. Anil Gulati, Advocate
For Respondent 3	:	Mr. Tessy Abraham, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

10/09/2021

1. Challenge in this appeal is to the award dated 12.08.2015 passed by Learned Chief Motor Accident Claims Tribunal, Dhamtari, Chhattisgarh (for short “Claims Tribunal”) in Claim Case no. 97/2014, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 (for short

"Act of 1988") in part and awarded total sum of Rs. 3,42,000/- as compensation in a fatal accident case with interest @ 6% pa from the date of filing of claim application till its realization.

2. Facts of the case relevant for disposal of this appeal are that on 18.03.2014 Bishatram was returning on bicycle from Donar-Navagaon forest. On the way at about 06:00 pm one Tata Magic vehicle bearing registration no. CG05 S 3457 (henceforth "offending vehicle") driven rashly and negligently by non-applicant 1 dashed bicycle of Bishatram and caused accident, due to which he suffered grievous injuries and died during the course of treatment.

3. Claimants who are widow, children and her old age mother filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs. 10,00,500/- pleading therein that deceased was working as hunter, earning Rs. 500/- per day. Claimants were dependents upon the income of deceased.

4. During the pendency of claim application non-applicant 4 mother of deceased died.

5. Non-applicants 1 and 2 (driver and owner of offending vehicle) submitted reply to claim application denying the pleadings of claim application, it was further pleaded that the accident was not a result of rash and negligent driving of offending vehicle by non-applicant 1 but, deceased met with an accident due to his own negligence. Non-applicant 1 on the date of accident was possessed with valid and effective driving licence, offending vehicle was insured with non-applicant 3/ Insurance Company, as such, liability to satisfy the amount of compensation would be upon Insurance Company.

6. Insurance Company/ Non-applicant 3 submitted its separate reply

resisting the claim, it was further pleaded that the amount of compensation claimed is highly exaggerated. Non-applicant 1 was not possessed with valid and effective driving licence, as such, there was breach of policy conditions and insurance company is not liable to satisfy any amount of compensation if awarded by learned Claims Tribunal.

7. Learned Claims Tribunal, upon appreciation of pleadings and evidence placed on record by respective parties has held that Bishatram died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by non-applicant 1. Income of the deceased and breach of policy conditions was not found to be proved. Tribunal upon assessing income of deceased as Rs. 3,000/- per month on notional basis, calculated the amount of compensation and awarded Rs. 3,42,000/- as total compensation with interest @ 6% p.a. from the date of filing of claim application.

8. Mr. Anil Gulati, learned counsel for appellants submits that learned Claims Tribunal erred in assessing income of deceased as Rs. 3,000/- per month only, overlooking the date of accident and age of deceased. He submits that if the occupation of deceased is to be considered as labourer then also on the date of accident deceased could have earned more wages than what is assessed by the Claims Tribunal. He further submits that the Tribunal has not awarded any amount of compensation towards future prospects and meagre sum is awarded on other conventional heads ie. Rs. 30,000/- only. He submits that the amount of compensation be suitably enhanced in the facts of the case.

9. Mr. Tessy Abraham, learned counsel for Respondent 3/ Insurance

Company opposes the submissions made by learned counsel for appellants and submits that the claimants have not proved income of deceased by placing any acceptable piece of evidence before the Claims Tribunal. In absence of any acceptable evidence with regard to income, Tribunal justified in assessing income of deceased on notional basis at Rs. 3,000/- per month. Amount of compensation awarded by Claims Tribunal is just and proper which 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. Sofar as, the submission made by learned counsel for appellants with regard to assessment of income of deceased by the Claims Tribunal, the date of accident is of 18.03.2014, Claims Tribunal has assessed income of Rs. 3,000/- per month on notional basis. For assessing income on notional basis factors like wage structure prevailing at the time of accident, cost of living, age of deceased etc. are to be taken into consideration. In the year 2014 even if the deceased who was aged about 47 years working as labourer then also he could have earned more wages than Rs. 100/- per day as assessed by Claims Tribunal. Taking into consideration the aforementioned factors, I find it appropriate to assess income of deceased as Rs. 4500/- per month instead of Rs. 3,000/- per month. It is ordered accordingly.

12. Award of compensation towards future prospects has been very well considered by Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. v. Pranay Sethi*** reported in ***(2017) 16 SCC 680***. In the aforesaid rulings, Hon'ble Supreme Court has

held that there will be addition of 25% of established income where the deceased/ victim was not in permanent employment and in the age group of 40-50 years, hence, there shall be addition of 25% of the established income in the income of deceased. It is ordered accordingly. Claims Tribunal has correctly applied the deduction towards personal and living expenses and multiplier for calculating the amount of compensation which is in-consonance with the judgment passed by Hon'ble Supreme Court in the case of ***Sarla Verma & others v. Delhi Transport Corp. & anr.*** reported in **(2009) 6 SCC 121.** Tribunal has awarded only Rs. 30,000/- on other conventional heads. Award of compensation on other conventional heads has been dealt with by Hon’ble Supreme Court in the case of **Pranay Sethi (supra)**. In the said rulings, Hon’ble Supreme Court has specified the heads on which the amount of compensation is to be awarded and also quantified the amount of compensation which are loss of consortium, loss of estate and funeral expenses. The types of consortium have further been explained by the Supreme Court in the case of ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in ***(2018) 18 SCC 130*** to be of three types of consortium ie. Loss of spousal consortium, loss of parental consortium and loss of filial consortium. Claimants shall be entitled for amount of compensation on other conventional heads as held by Hon’ble Supreme Court in the aforementioned rulings.

13. For the foregoing reasons, I find it appropriate to re-compute 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 25% of established income towards future prospects total yearly income of deceased will come to Rs. 67500/- [Rs.54000+25% of Rs.54000]. Upon deducting 1/3rd towards personal and living expenses from annual income of deceased, total loss of dependency will come to Rs. 45,000/- [Rs.67,500-1/3rd of Rs. 67,500]. By applying multiplier of 13 to the annual loss of dependency total loss of dependency will come to Rs. 5,85,000/- [Rs.45,000x13]. Besides the amount of compensation towards loss of dependency, 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 **Rs. 6,95,000/- [Rs.5,85,000+ Rs.40,000+ Rs.40,000+ Rs.15,000+ Rs.15,000]** as compensation instead of Rs. 3,42,000/- as awarded by learned Claims Tribunal. The aforementioned amount of total compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Liability to satisfy the amount of compensation will be upon Non-applicants 1 to 3 jointly and severally. Other conditions imposed the learned Claims Tribunal will 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

Pawan