NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 301 of 2016

1. Preeti Banerjee, W/o Late Ashish Kumar Banerjee, Aged About 52 Years
2. Kunal Banerjee, S/o Late Ashish Kumar Banerjee, Aged About 21 Years Both R/o Vrindavan Colony, Jagdalpur, District Bastar, Chhattisgarh

---- Appellants

Versus

1. Sonu Kashyap, S/o Kamlu Kashyap, Aged About 28 Years R/o Chondiguda, Panchayat Singanpur, P.S. Badanji, District Bastar, Chhattisgarh ....Non-Applicant No.1
2. Tanay Chaudhari S/o Tapan Choudhari, Aged About 27 Years R/o Bodhghat Colony, Jagdalpur, District Bastar, Chhattisgarh ....Non-Applicant No.2
3. United India Insurance Company Limited, Through Its Branch Manager, Anupama Talkies, Chowk, District Jagdalpur, Chhattisgarh ....Non-Applicant No.3

---- Respondents/Non-Applicants

For Appellants	:	Ms Pragya Pandey, Advocate
For Respondents- 1 and 2	:	None appears
For Respondent-3	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

08.09.2021

1. Appellants have preferred this appeal under Section 173 of Motor Vehicle Act, 1988 challenging the impugned award dated 24.11.2015 passed by the 3rd Additional Motor Accident Claims Tribunal, Bastar (For short, 'Claims Tribunal') in Claim Case- 60 of 2015, whereby learned Claims Tribunal allowed application filed under Section 166 r/w Section 140 of the Act of 1988 in part, awarded Rs.5,34,000/- as compensation in a fatal accident case with interest @ 9% per annum from the date of filing of application till its realisation and fastened liability to satisfy compensation upon NA3/Insurance Company.

2. Facts relevant for disposal of this appeal are that, on 04.12.2014 at about 6.45 pm, when Ashish Kumar Banerjee (since deceased) was travelling on his Motorcycle and returning from Lohandiguda to Jagdalpur, at that relevant time, in between Naman Bastar resort and Agriculture College, Truck /Tipper bearing No.CG07C-7859 (hereafter, referred to as 'offending vehicle') driven by NA1 rashly and negligently, dashed Motorcycle of Ashish Kumar Banerjee and caused accident. In motor accident, he suffered grievous injuries and succumbed to those injuries on the spot.

3. Appellants/ claimants, who are widow and child of deceased filed an application under Section 166 of the act of 1988 seeking compensation of Rs.16,75,000/- pleading therein that on the date of accident, deceased was aged about 62 years, working as Advocate Notary and was earning Rs.25,000/- per month. Claimants were dependant upon income of deceased.

4. NA1, Driver of offending vehicle submitted reply to claim application, denying claim of appellants. On the date of accident, offending vehicle was insured with NA3, Insurance Company and driver of offending vehicle was possessed with valid and effective driving license. There was valid permit and fitness of offending vehicle, hence, liability if any, would be upon Insurance Company for payment of amount of compensation.

5. NA3 / Insurance Company of offending vehicle also submitted its separate reply resisting claim pleading therein that deceased was driving Motorcycle without valid and effective driving license. Accident was result

of rash and negligent driving of Motorcycle by the deceased. There was contributory negligence on the part of deceased. NA1 was not possessed with valid and effective driving license, there was no valid permit and fitness of offending vehicle, as such, there was breach of policy conditions.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that late Ashish Kumar Banerjee died on account of motor accidental injuries, due to rash and negligent driving of offending vehicle by NA1; breach of policy conditions and non-joinder of necessary parties was not found to be proved; awarded total sum of Rs.5,34,000/- as compensation with interest @ 9% from the date of filing of application till its realisation and fastened liability upon NA3/Insurance Company.

7. Ms Pragya Pandey, learned counsel for the appellants would submit that learned Tribunal erred in awarding meagre amount of compensation, overlooking the facts and circumstances, as well as profession of deceased on the date of accident. She submits that deceased on the date of accident, was an Advocate Notary, aged about 62 years. His Notary certificate was renewed by competent authority w.e.f. 18.08.2014 for a period of five years. She submits that copy of order of renewal of Notary Certificate is placed on record as Ex.A8. Income of an advocate increases by his experience. Apart from profession of Advocate, he was also working as Notary. Hence, Tribunal ought to have assessed income of Rs.25,000/- per month as pleaded and stated by claimants in their evidence. She further submits that learned Tribunal not awarded appropriate amount of compensation on other conventional heads. Only

Rs.3,000/- is awarded towards other conventional heads. She submits that compensation be enhanced suitably. Learned counsel placed reliance upon judgments of Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others reported in** (2017) 16 SCC 680, **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others,** (2018) 18 SCC 130 and in case of **Ashvinbhai Jayantilal Modi Vs Ramkaran Ramchandra Sharma and another** reported in (2015) 2 SCC 180.

8. Shri Pankaj Agrawal, learned counsel appearing for Insurance Company/respondent-3 opposing submissions of learned counsel for appellants' would submit that except the pleading and oral evidence with respect to income of deceased, claimants have not placed on record any documentary and admissible piece of evidence. In absence of any clinching evidence, learned Tribunal justified in assessing income of deceased as Rs.9,000/- per month, which cannot be said to be on lower side in facts and circumstances of the case. He further contended that amount of compensation awarded is just and proper, which does not call for any interference.

9. I have heard learned counsel for the parties and also perused the record of the claim case.

10. So far as submission with regard to assessing income of deceased on lower side, perusal of record would show and appellants in their claim application have pleaded occupation of deceased to be Advocate Notary and his income as Rs.25,000/- per month. In support of their pleadings,

appellants have placed on record copy of renewal certificate of Notary dated 18.09.2014, wherein it is mentioned that certificate was renewed w.e.f. 18.08.2014 for further period of 5 years. Document of renewal certificate is placed on record as Ex.A8. By this document, it is apparent that deceased was working as professional Advocate Notary, prior to his death ie in 2014. Income of an Advocate increases upon gaining experience. It is undisputed fact that deceased was an Advocate and there is license in his favour for working as Notary also. Age of deceased on the date of accident was 62 years. Considering totality of facts and circumstances of the case, nature of profession in which deceased was engaged prior to his death, learned Claims Tribunal erred in assessing his income. Deceased has been shown to be resident of Jagdalpur, which is a District head quarter, hence, in the opinion of this Court, learned Claims Tribunal erred in assessing income of deceased as Rs.9,000/- per month only. Even if acceptable documentary evidence with regard to income has not been placed, but then also, looking to nature of occupation as proved by claimants by producing Ex.P8 ie Advocate Notary renewal certificate, and his age as 62 years, I find it appropriate to reckon income of deceased as Rs.15,000/- per month instead Rs.9,000/- as assessed by Tribunal. It is ordered accordingly.

11. So far as submission of learned counsel for the appellants with regard to award of compensation on other conventional heads to be on lower side is concerned, issue with regard to award of compensation on other conventional heads has been considered by Hon'ble Supreme Court in cases of **Pranay Sethi** (supra) and **Nanuram** (supra). Hon'ble

Supreme Court in case of **Pranay Sethi** has considered heads for awarding amount of compensation, ie loss of consortium, loss of estate and funeral expenses. Further, in case of **Nanuram**, Hon'ble Supreme Court has explained types of loss of consortium as loss of spousal consortium, loss of parental consortium and loss of fillial consortium. Claimants will be entitled for award of amount of compensation on other conventional heads, as explained above.

12. For the foregoing reasons, amount of compensation to be awarded to the claimants requires re-computation and re-calculation which is as under:

(a) Income of deceased has been taken as Rs.15,000/- per month and Rs.1,80,000/- per annum.

(b) After deducting 1/3rd from the annual income of deceased towards his personal and living expenses, annual loss of dependency comes to Rs.1,20,000/- {180000 — (180000 x 1/3)}.

(c) Upon applying multiplier of 7 to the annual loss of dependency, total loss of dependency comes to Rs.8,40,000/- (120000 X 7).

(d) Apart from above, claimants are further 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.

13. Now the appellants/claimants are entitled for a total sum of **Rs.9,50,000/-** (840000 + 40000 + 40000 + 15000 + 15000) as compensation instead of Rs.5,34,000/-, awarded by Claims Tribunal. The amount of compensation shall carry interest @ 9% from the date of filing

of the claim application till its realization. Other conditions of award shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
JUDGE

padma