NAFR

HIGH COURT OF CHHATTISGARH BILASPUR
MAC No. 1368 of 2015

1. Ijharu Ram S/o Lodar Ram, Aged About 45 Years,
2. Smt. Payari W/o Ijharu Ram, Aged About 40 Years,
3. Minor Lilambar S/o Ijharu Ram, Aged About 15 Years,
4. Minor Jitni D/o Ijharu Ram, Aged About 14 Years,
   For Appellant No.3 & 4 through their next friend father Ijharu Ram Appellant No. 01.
   All R/o Village Makribandha, Tahsil Duldula, Police Station Jashpur, District Jashpur, Civil and Revenue District Jashpur, Chhattisgarh

---- Appellants

Versus

1. Kornelius Khalkho S/o Mikhyl Khalkho, R/o Village Haldimunda, Post Kunjara, Tahsil Kunkuri, District Jashpur, Chhattisgarh.
2. Dipesh Khalkho S/o Kornelius Khalkho, R/o Village Haldimunda, Post Kunjara, Tahsil Kunkuri, District Jashpur, Chhattisgarh.
3. The Oriental Insurance Company Limited Branch Office Patthalgaon, District Jashpur, Chhattisgarh.
4. Santu Ram S/o Abir Sai, Aged About 40 Years, Caste Khadiya, R/o Village Gariha Dohar, Tahsil Kanshabel, District Jashpur, Chhattisgarh.
5. I.C.I.C.I. Lombard General Insurance Company Limited Ground Floor, Corporate Building Devendra Nagar Road, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellants	: Shri A.K. Prasad, Advocate
For Respondents 1 & 2	: None
For Respondent No.3	: Shri Pankaj Agrawal, Advocate
For Respondent No.4	: None
For Respondent No.5	: Shri Tessy Abraham, Advocate on behalf of Shri Amrito Das, Advocate

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(Proceedings through Video Conferencing)

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

10.08.2021

1. Challenge in this appeal filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') is to the impugned award dated 25.07.2015 passed by the

Additional Motor Accident Claims Tribunal, Jashpur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.31 of 2014 whereby learned Claims Tribunal allowed the application filed under Sections 140 and 166 of the M.V. Act in part and awarded total compensation of Rs.6,01,000/- with interest at the rate of 9% per annum from the date of filing of claim application till its realization and liability to satisfy the amount of compensation is fastened upon non-applicants No.1 to 3.

2. Brief facts relevant for disposal of this appeal are that, on 01.07.2014, Surendra Ram was travelling on Motorcycle bearing No.CG-14/MB/4137 along with his friend Shivkumar and Prashant Dadsena from village Kersai to Kunkuri. On the way, near village Haldimunda, one Bolero Jeep bearing No. CG-14/C/0738 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.2 rashly and negligently, dashed the Motorcycle from its rear side and caused accident. In the said accident, Surendra Ram and other occupants suffered grievous injuries and Surendra Ram succumbed to the injuries on spot.

3. Appellants/claimants, who are parents and siblings of Late Surendra Ram filed an application under Section 166 of the M.V. Act seeking compensation of Rs.24,25,000/- pleading therein that on the date of accident, deceased was able-bodied

person, aged about 21 years, working as Electrician and earning Rs.6,000/- per month.

4. Non-applicants No.1 and 2, owner and driver of offending vehicle submitted reply to claim application, denying the facts pleaded therein. They have denied the fact of accident as well as death of Surendra Ram on account of motor accidental injuries. On the date of accident, offending vehicle was insured with non-applicant No.3 and non-applicant No.2 was possessed with valid and effective driving licence, as such, liability, if any, to pay the amount of compensation would be upon non-applicant No.3.

5. Non-applicant No.3/Insurance Company submitted its separate reply denying all the pleadings made in claim application. Age of deceased as 21 years is denied based on the age of deceased mentioned in postmortem report as 25 years. It was pleaded that Motorcycle was driven in violation of provisions of M.V. Act as three persons were travelling on Motorcycle and driver of Motorcycle has not placed on record valid and effective driving licence, hence, claim against the Insurance Company be dismissed.

6. Non-applicants No.4 submitted reply to claim application. Non-applicant No.4 pleaded that there was no negligence on the part of driver of Motorcycle. Motorcycle was insured with non-

applicant No.5 and insurance of Motorcycle on the date of accident was in existence.

7. Non-applicant No.5/insurer of Motorcycle also submitted reply to claim application pleading therein that accident was a result of rash and negligent driving of offending vehicle by non-applicant No.2, driver of Motorcycle was not possessed with valid and effective driving licence on the date of accident and accident was not within the period of insurance of Motorcycle.

8. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by respective parties held that Surendra Ram died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.2, breach of policy condition and contributory negligence were not found to be proved. Learned Claims Tribunal upon assessing the income of deceased as Rs.4,000/- per month; deducting 1/3rd towards personal and living expenses; calculated the amount of compensation as Rs.6,01,000/- and fastened liability to satisfy the amount of compensation upon non-applicants No.1 to 3.

9. Shri A.K. Prasad, learned counsel for the appellants would submit that accident took place on 01.07.2014. Claimants have specifically pleaded in claim application that on the date of accident, deceased was working as Electrician and earning Rs.6,000/- per month, but Claims Tribunal has not considered

the pleadings and evidence brought on record to this effect without assigning any reason. He further submits that deceased who was working as Electrician in rural area could not have maintained the accounts of his income, hence, learned Claims Tribunal ought to have accepted the income of deceased as pleaded in claim application and stated by witnesses in their oral evidence. It is contended that learned Claims Tribunal has not awarded any amount towards future prospects overlooking the age of deceased as 21 years on the date of accident. He submits that award of future prospects has been considered by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and looking to the facts and circumstances of the case, learned Claims Tribunal ought to have awarded 40% of established income towards future prospects for calculating total income of deceased on the date of accident. It is further contended that learned Claims Tribunal has not awarded just amount of compensation on the head of other conventional heads and Rs.25,000/- only has been awarded towards funeral expenses. He pointed out that Hon'ble Supreme Court in case of **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130** has considered the award of compensation under the head of 'loss of consortium' to the parents under the head of 'filial consortium' and according to the aforementioned ruling, appellants are entitled for Rs.40,000/- towards loss of filial consortium as well as Rs.15,000/- each on the head of 'loss of estate' and 'funeral expenses' as held by Honible Supreme Court in case of **Pranay Sethi** (supra).

10. Per contra, Shri Pankaj Agrawal, learned counsel for respondent No.3 would submit that learned Claims Tribunal in absence of any admissible piece of evidence, assessed the income of deceased on notional basis as Rs.4,000/- per month and awarded just amount of compensation, which does not call for any interference. In alternate, he submits that learned Claims Tribunal has applied deduction of 1/3rd towards personal and living expenses even when deceased was unmarried. In the facts of the case, as per ruling of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, appropriate deduction would be 1/2 instead of 1/3rd.

11. Shri Tessy Abraham, learned counsel for respondent No.5 would submit that liability to satisfy the amount of compensation is upon respondents No.1 to 3 and award passed by learned Claims Tribunal is just and proper, which does not call for any interference.

12. I have heard learned counsel for the respective parties and perused the record carefully.

13. So far as first ground raised by learned counsel for the appellants with regard to income of deceased is concerned, claimants in their claim application have pleaded occupation of deceased as Electrician and his income as Rs.6,000/- per month. To prove income of the deceased, claimants have examined claimant No.1 Ijharu Ram as AW-1 and one Shivkumar Ram as AW-2. Shivkumar Ram (AW-2) in his evidence has stated that Surendra Ram was working as Electrician and earning Rs.6,000/- per month. However, in support of oral evidence with regard to income of deceased, claimants have not produced any documentary evidence. Claimants have shown their address in claim application as resident of village Makribandha, Tahsil Duldula, District Jashpur, (C.G.) which is rural area. The statements and pleadings made by claimants and evidence of independent witness Shivkumar Ram (AW-2) with regard to occupation of deceased cannot be overlooked.

14. In view of material and evidence available on record, I find it appropriate to hold the occupation of deceased as Electrician. The accident was of 01.07.2014 and on the date of alleged accident, even the manual labourer could have earned more than what learned Claims Tribunal assessed on notional basis. True, it is that in absence of any admissible piece of evidence to show the income of deceased, learned Claims Tribunal justified in assessing income on notional basis. For assessing

income of victim on notional basis, date of accident, age of deceased, nature of occupation, wage structure, price index, cost of living etc. are to be kept in mind. Learned Claims Tribunal has not considered the aforementioned factors for assessing the income of deceased. As deceased has been shown to be skilled labourer, I find it appropriate to assess the monthly income of deceased on the date of accident as Rs.5,000/- per month i.e. Rs.60,000/- per annum. It is ordered accordingly.

15. Award of future prospects has been considered in case of **Sarla Verma** (supra) and **Pranay Sethi** (supra). In the instant case, on the date of accident, deceased was shown to be 21 years of age i.e. below 40 years, hence, in view of ruling of Hon'ble Supreme Court in case of **Pranay Sethi** (supra), there shall be addition of 40% in the established income of deceased towards future prospects. It is ordered accordingly. For assessing total income of deceased on the date of accident, application of multiplier of 18 is correctly applied by learned Claims Tribunal.

16. So far as the submission made by learned counsel for respondent No.3 with regard to deduction towards personal and living expenses is concerned, Hon'ble Supreme Court in case of **Sarla Verma** (supra) has considered this issue in detail. Deceased on the date of accident was unmarried. In view of above, I find it appropriate to deduct 1/2 towards

personal and living expenses of the deceased instead of 1/3rd. It is ordered accordingly.

17. Learned Claims Tribunal awarded only Rs.25,000/- towards funeral expenses. Hon'ble Supreme Court has fixed the heads, on which, compensation to be awarded towards other conventional heads and also quantified the compensation on those heads. Appellants shall be entitled for the compensation as per ruling of the Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Nanu Ram Alias Chuhru Ram** (supra) towards other conventional heads.

18. In view of above, amount of compensation awarded by learned Claims Tribunal requires re-consideration and re-computation, which is as under :

As discussed above, income of deceased is taken as Rs.5,000/- per month i.e. Rs.60,000/- per annum. By adding 40% of the income towards future prospects, total annual income of deceased will come to Rs. 84,000/- (60,000 x 40% = 24,000 and 60,000 + 24,000). Upon deducting 1/2 towards personal and living expenses, yearly loss of dependency of claimants will come to Rs.42,000/- (84,000 / 2 = 42,000). By applying the multiplier of 18, amount of compensation will come to Rs.7,56,000/- (42,000 x 18). Apart from above, claimants will further be entitled for a sum of Rs.40,000/-

towards filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

19. Now, the appellants/claimants are entitled for total compensation of Rs.8,26,000/- (7,56,000 + 40,000 + 15,000 + 15,000) instead of Rs.6,01,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 9% per annum from the date of filing of claim application till its realization. The liability to satisfy the amount of compensation would be upon respondents No.1 to 3 as held by learned Claims Tribunal. Other conditions of award passed by learned Claims Tribunal shall remain intact.

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

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh