

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1019 of 2015

1. Smt. Devkumari Wd/o Keshari @ Keshkumar Sahu, Aged About 34 Years.
 2. Ku. Yogeshwari D/o Late Keshari @ Keshkumar Sahu, Aged About 13 Years.
 3. Ku. Shikha D/o Late Keshari @ Keshkumar Sahu, Aged About 11 Years.
 4. Kailash Kumar S/o Late Keshari @ Keshkumar Sahu, Aged About 9 Years.
- Appellant Nos.2 to 4 are Minor Through Natural Guardian Mother Smt. Devkumari Sahu. All are R/o : village -Semra (D), Post -Dahi, Tahsil and District -Dhamtari Chhattisgarh.

---- Appellants/Claimants

Versus

1. Harnek Singh Aujala S/o Late Mohindar Singh, Aged About 53 Years, R/o Govindpur Kanker, Tahsil and District -Dhamtari, Chhattisgarh. **(Driver)**.
2. Smt. Jaspal Kaur, R/o Gill & Company C-12, Maruti Business Park, G.E. Road, Raipur, District -Raipur, Chhattisgarh. **(Owner)**.
3. Branch Manager, Bharti Axa General Insurance Company Limited, First Floor, Chawla Complex, Devendra Nagar Road, Sai Nagar, Tahsil and District -Dhamtari, Chhattisgarh.

-- Non-applicant Nos.1 to 3/Respondents.

For Appellants	: Shri Anil Gulati, Advocate.
For Respondent No.1 to 3	: None.
For Respondent No.4	: Shri Ghanshyam Patel, Advocate.

(Proceedings through video conferencing)
Hon'ble Shri Parth Prateem Sahu, Judge
Order on Board

13.08.2021

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of compensation awarded by learned Additional Motor Accident Claims Tribunal, Dhamtari, (CG) vide award dated 15.04.2015 passed in Claim Case No.35/2014, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988, awarded total compensation of Rs.5,86,148/- in a fatal accident case.
2. Facts relevant for disposal of this appeal are that on 14.01.2012 at about 5:00 pm Keshari @ Keshkumar Sahu was going Kurud from village -Semra (D) on his bicycle. On the way near Goswami Dhaba at Raipur Dhamtari

Road N.H -30, one Maruti Swift Car bearing registration No.CG-04-KB-1313, (for short, 'Offending Vehicle') driven by non-applicant No.1 rashly and negligently, dashed his bicycle and caused accident. In the said accident, he suffered grievous injuries over his person, he was taken to Community Health Centre, Kurud from where he was referred to higher hospital for better treatment. On 22.06.2013, he succumbed to injuries at Shri Medishine Hospital, Raipur.

3. Claimants/appellants, who are widow and children of deceased, filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.17,81,500/- pleadings therein that on the date of accident, deceased was able bodied person aged about 35 years, working as 'mason', earning Rs.250/- per day and Rs.7,500/- per month. Claimants were dependent upon deceased.
4. Non-applicant Nos.1 & 2/driver and owner of offending vehicle, submitted reply to claim application, denying the fact of accident. It was further pleaded that on the date of accident offending vehicle was insured with non-applicant No.3-Insurance Company. Hence liability, if any, to satisfy amount of compensation would be of Non-applicant No.3-Insurance Company.
5. Non-applicant No.3/Insurance Company submitted its reply to application, denied the pleading made therein. It was further pleaded that accident was not a result of negligence on the part of non-applicant No.1, but self-negligence of deceased. There was breach of policy conditions as on the date of accident, non-applicant No.1 was not possessed with valid and effective driving license.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Keshkumar Sahu died on account of motor-accidental injuries due to rash and negligent driving of offending vehicle by Non-applicant No.1. Breach of Policy condition was not found to be proved. Tribunal allowed application in part, awarded total compensation of Rs.5,86,148/- alongwith interest at the rate of 6% per annum, fastened liability upon non-applicant Nos.1 to 3 to satisfy amount of compensation, jointly and severally.
7. Learned counsel for the appellants/claimants submits that Tribunal erred in awarding very meager amount of compensation. Tribunal assessed income of deceased as Rs.3,000/- per month, overlooking date of incident. On the date of incident ie 14.01.2012 skilled labourer could have earned more than income of Rs.3,000/- per month as assessed by Tribunal. Deceased was working as 'mason', hence, Tribunal ought to have assessed income of deceased as Rs.7,000/- per month. He further submits that Tribunal has not awarded any amount towards future prospects, as held in **National Insurance Company Ltd. vs. Pranay Sethi**¹, and only Rs.30,000/- is awarded under conventional heads which is also on lower side and needs to be enhanced in light of decision of Hon'ble Supreme Court in case of **Pranay Sethi (supra) Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors**².
8. Learned counsel for respondent No.3/insurance Company submits that Tribunal in absence of prove of income, justified in assessing income of deceased as R.3,000/- per month on notional basis, which does not call for

1 (2017) 16 SCC 680

2 (2018) 18 SCC 130

any interference. Amount of compensation awarded in the facts and circumstances of the case is just and proper.

9. There is no representation on behalf of respondent Nos.1 & 2 despite service of notice.

10. Heard learned counsel for the parties and perused the record of claim case.

11. Tribunal apart from compensation on account of death has awarded Rs.1,24,148/- towards medical bills for which, claimants are entitled for.

12. So far as submission of learned counsel for appellants that income of deceased as assessed by Tribunal is on lower side is concerned, perusal of record would show that in claim application claimants have pleaded occupation of deceased as 'mason' (skilled labour). Except pleading with respect to income of deceased as Rs.7,500/- per month and oral statement, there is no admissible piece of documentary evidence available on record showing income of deceased as pleaded and stated by claimants. In such a situation, Tribunal was justified in assessing income of deceased on notional basis, but at the same time Tribunal has not considered the factors like age of deceased, nature of occupation, wage structure and cost of living prevailing on the date of accident and thereby committed mistake in assessing income of deceased as Rs.3,000/- per month. Taking into consideration the aforementioned factors, I find it appropriate to assess income of deceased as Rs.4,500/- instead of Rs.3,000/- per month. It is ordered accordingly.

13. Coming to next argument advanced by learned counsel for appellants/ claimants that Tribunal erred in not awarding any amount towards future

prospects. Hon'ble Supreme Court in case of **Pranay Sethi** (supra), has held that in case deceased, victim of motor accident, was not in permanent employment and below the age of 40 years, an addition of 40% of established 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. Indisputably, in case at hand, on the date of accident, deceased was aged about 35 years and not in permanent employment, therefore, this Court is of the considered opinion that appellants/claimants is entitled for an addition of 40% of established income of deceased towards future prospect.
15. Tribunal has deducted 1/4th towards personal and living expenses of deceased and applied multiplier of 16, which in the considered opinion of this court is proper and do not call for any interference.
16. Tribunal awarded Rs.5,000/- towards loss of consortium, Rs.5,000/- each towards love and affection to appellant Nos.2 to 4/children, Rs.5,000/- towards loss of estate, Rs.5,000/- towards funeral expenses. Total Rs.30,000/- has been awarded on other conventional heads, which in the opinion of this Court is on lower side and the same is required to be enhanced in view of the decision of Supreme Court in the case of **Pranay Sethi** (supra) & **Magma General Insurance Company** (supra).
17. For the foregoing reasons, I propose to recompute the amount of compensation awarded by Tribunal.

18. Income of deceased is taken as Rs.4,500/- per month as assessed above.

Upon adding 40% of established income towards future prospects, total monthly income of deceased comes to Rs.6,300/- (Rs.4,500 + 40% of 4,500) and accordingly yearly income comes to Rs.75,600/- (12 X 6,300). Number of claimants on the date of accident were '4', therefore, there will be deduction of 1/4th of income towards personal and living expenses as per decision of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**³. After deducting 1/4th towards personal & living expenses, yearly loss of dependency would come to Rs.56,700/- (Rs.75,600 – ¼ of Rs.75,600). By applying multiplier of 16, total loss of dependency will come to Rs.9,07,200/- (Rs.57,000 X 16).

19. Apart from this, appellants are also entitled for a sum of Rs.40,000/- towards spousal consortium, Rs.40,000/- towards parental consortium, Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate & Rs.1,24,148/- towards medical expenses as awarded by Tribunal.

20. Now the appellants/claimants will be entitled for a total compensation of **Rs.11,41,348/-** (Rs.9,07,200 + Rs.40,000 + Rs.40,000 + Rs.15,000 + Rs.15,000 + Rs.1,24,148) instead of **Rs.5,86,148/-** as awarded by Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of conditions of impugned award shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-