NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 769 of 2015

1. Chintamani Dhoke, S/o Late Udaram Dhoke, Aged About 48 Years
2. Smt. Vimla Dhoke, W/o Chintamani Dhoke, Aged About 47 Years
3. Prakash Dhoke, S/o Chintamani Dhoke, Aged About 26 Years
4. Badal Dhoke, S/o Chintamani Dhoke, Aged About 24 Years, All are R/o Sharda Para, Kishan Chowk, Camp-2, Bhilai, Ward No. 23, Durg, Chhattisgarh.

---- Appellants

Versus

1. Mohd. Ikbal, S/o Mohd, R/o Camp-2, Chhoti Masjid, Behind of Ravindra Kirana Store, P.S. Chhawani, Bhilai, District Durg, Chhattisgarh.
2. Manager, National General Insurance Company Limited, Regional Office, Supela Bhilai, District Durg, Chhattisgarh.

---- Respondents

For Appellants	: Shri Vinod Kumar Sharma, Advocate on behalf of Shri Ajay Shrivastava, Advocate
For Respondent No.1	: None
For Respondent No. 2	: Shri Shivendu Pandya, Advocate

(Proceedings through Video Conferencing)

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

05.07.2021

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 Third Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.409 of 2011 whereby learned Claims Tribunal allowed an application filed under

Section 166 of the M.V. Act in part and while exonerating the Insurance Company from its liability, awarded Rs.6,38,400/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal, are that, Deepak Dhoke was doing the business of vegetable selling. On 20.09.2011, Deepak Dhoke after loading his vegetables on Appe Truck Plus bearing No.CG-07/CA/1089 (hereinafter referred to as 'offending vehicle') was going to village Patan, while so, non-applicant No.1/respondent No.1 drove his vehicle rashly and negligently and turned turtle. In the aforementioned accident, Deepak Dhoke suffered grievous injuries over his person, he was taken to the hospital where during the course of treatment, he succumbed to the motor accidental injuries suffered by him.

3. Appellants/claimants, who are parents and siblings of deceased Deepak Dhoke filed an application under Section 166 of M.V. Act seeking compensation of Rs.92,90,000/- on different heads against motor accidental death of late Deepak Dhoke.

4. Non-applicant No.1/respondent No.1/owner-cum-driver of offending vehicle resisted the claim pleading therein that he has not driven the offending vehicle in rash and negligent manner, the accident was due to coming of wheel of the vehicle in a ditch filled with water on road. Offending vehicle

was insured with non-applicant No.2/Insurance Company and he was possessed with valid and effective driving licence, as such, liability to satisfy the amount of compensation, if any, would be upon non-applicant No.2/Insurance Company.

5. Non-applicant No.2/respondent No.2/Insurance Company submitted reply to claim application, denying the pleadings made therein. It was pleaded that deceased was unmarried, hence, the pleading that deceased was maintaining his family is not correct. Non-applicant No.1 was not possessed with valid and effective driving licence; there was no valid permit with offending vehicle, deceased was travelling in goods vehicle along with others, there was breach of policy conditions, hence, Insurance Company is not liable to satisfy the amount of compensation.

6. On appreciation of pleadings, evidence and material brought on record by the respective parties, learned Claims Tribunal held that Deepak Dhoke died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1. It was further held that Insurance Company could not able to prove that driver of offending vehicle was not possessed with valid and effective driving licence, deceased was travelling on goods vehicle with others, more persons were travelling than the seating capacity, there was breach of policy conditions; while

assessing the income of deceased as Rs.4,000/- per month, awarded Rs.6,38,400/- as total compensation and fastened the liability upon non-applicant No.1/respondent No.1 to satisfy the amount of compensation.

7. Shri Vinod Kumar Sharma, learned counsel for the appellants/claimants submits that learned Claims Tribunal erred in awarding meagre amount of compensation. He further submits that learned Claims Tribunal has not considered the income of deceased as pleaded in claim application to be Rs.10,000/- per month from the business of vegetable selling ignoring the oral evidence brought on record. It is contended that learned Claims Tribunal added only 30% towards loss of future prospects, which is contrary to the law laid down by Hon'ble Supreme Court in case of **National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680**. Learned Claims Tribunal erred in applying the multiplier of 13 considering the age of parents of deceased. Under the M.V. Act, multiplier is to be applied for calculating the amount of compensation considering the age of deceased/victim and not the parents of the deceased/victim, appropriate multiplier would be 17. It is further contended that learned Claims Tribunal has not awarded sufficient amount of compensation under other conventional heads as held by Hon'ble Supreme Court in case of **Pranay Sethi** (supra).

8. No one appeared on behalf of respondent No.1, even after service of notice.

9. Per contra, Shri Shivendu Pandya, learned counsel for respondent No.2/Insurance Company submits that impugned award passed by learned Claims Tribunal is just and proper, Insurance Company has rightly been exonerated from its liability to satisfy the amount of compensation.

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

11. This appeal is only for enhancement of amount of compensation. Learned counsel for the appellants has made his submission for the enhancement of the amount of compensation awarded by the Claims Tribunal.

12. So far as the first submission made by learned counsel for the appellants/claimants with regard to income of deceased assessed by learned Claims Tribunal to be on lower side is concerned, perusal of record would show that in the evidence, appellants/claimants have stated that deceased used to earn Rs.10,000/- per month as vegetable seller, but no documentary evidence has been placed on record to prove the income of deceased. In such a situation, the income of deceased is to be assessed on notional basis taking into consideration the nature of occupation, date of accident, price index, wage structure, etc. In the case at

hand, accident is of September 2011 and in absence of specific documents regarding income, other material placed on record is required to be considered. The appellants/claimants have placed on record receipts issued by different whole-sale vegetable sellers of the month of June, August and September 2011 issued in the name of deceased. True, it is that appellants/claimants have not examined any person who has issued the receipts accepting the payment from Deepak Dhoke, but from the receipts and evidence of Mohd. Salman (AW-2) as well as non-applicant No.1/respondent No.1, it is apparent that Deepak Dhoke was engaged in occupation of vegetable selling.

13. In view of above evidence available on record, income of deceased cannot be assessed on notional basis as of the manual labourer, hence, in the opinion of this Court, income of deceased can be assessed as Rs.4,500/- per month and Rs.54,000/- per month instead of Rs.4,000/- per month.

14. So far as the second submission made by learned counsel for the appellants/claimants with regard to award of future prospects is concerned, the issue in this regard is well settled by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) wherein Hon'ble Supreme Court has held that where the deceased is self-employed and less than 40 years of age, there shall be addition of 40% of the established income towards future prospects. It is ordered accordingly.

15. So far as the application of multiplier in case of death of unmarried person is concerned, Hon'ble Supreme Court in case of **Sube Singh and Others v. Shyam Singh (dead) and Others** reported in **2018 (3) SCJ 269** has held that in case of death of unmarried person, age of victim/deceased is to considered for applying the multiplier and not the age of parents. In view of aforementioned law laid down by Hon'ble Supreme Court, learned Claims Tribunal erred in applying multiplier of 13 considering the average age of parents of deceased as 45 years, which is not sustainable and is hereby set aside.

16. On the date of accident, deceased was aged about 28 years and in view of dictum 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 multiplier would be 17 and it is ordered accordingly.

17. Award of amount of compensation on other conventional heads has also been considered by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130.** Claims Tribunal has awarded only Rs.30,000/- towards other conventional heads, which is also required to be enhanced.

18. For the aforementioned reasons and discussions, the amount of compensation awarded by Tribunal to the appellants/claimants requires re-consideration and re-computation, which is as under :

The monthly income of deceased as assessed by this Court is taken as Rs.4,500/- per month and Rs.54,000/- per annum. By adding 40% of income towards future prospects, total annual income of deceased will come to Rs.75,600/- [5,400 + (54,000 x 40%)]. After deducting 50% (1/2) towards personal and living expenses of deceased as the deceased was unmarried, annual loss of dependency of appellants/claimants will come to Rs.37,800/- [75,600 - (75,600 / 2)]. By applying multiplier of 17 to annual loss of dependency, total loss of dependency will come to Rs.6,42,600/- (37,800 x 17). Apart from above, appellants/claimants will be further entitled for a sum of Rs.40,000/- towards filial consortium to parents (payable to the parents because of the death of their son), 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.7,12,600/- (6,42,600 + 40,000 + 15,000 + 15,000) instead of Rs.6,38,400/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of

the claim application till its realization. Other conditions imposed by the learned Claims Tribunal shall remain intact. As the Insurance Company is exonerated from its liability to satisfy the amount of compensation in the impugned award, amount of compensation shall be satisfied by non-applicant No.1/respondent No.1/owner-cum-driver of offending vehicle.

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

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh