

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 17 of 2016**

1. Smt. Sandhya Nag W/o Late Pandeshwar Nag, Aged About 43 Years
2. Jitendra Kumar Nag S/o Late Pandeshwar Nag, Aged About 25 Years
3. Ku. Pramila Nag D/o Late Pandeshwar Nag, Aged About 23 Years
4. Tarun Kumar Nag S/o Late Pandeshwar Nag, Aged About 20 Years
5. Ku. Reeta Nag D/o Late Pandeshwar Nag, Aged About 18 Years

All by caste Muriya, R/o Village Tongpal, Tahsil Chhindgarh, District Sukma Chhattisgarh.

---- Appellants**Versus**

1. Rajan Pandey @ Rajendra S/o Gaurishankar Pandey, Aged About 38 Years R/o Gandhi Nagar, Jagdalpur, Police Station Bodhghat, Jagdalpur Chhattisgarh.
2. Vijaychandra Das S/o Dharma Das, Aged About 35 Years R/o Church Road, Nayamunda Ward, Jagdalpur Chhattisgarh.
3. Branch Manager, The Oriental Insurance Company Limited, Branch Office Hotel Laxman Avenue, Medical College Road, Jagdalpur, District Bastar Chhattisgarh.

---- Respondents

For Appellants	: Shri Subhash Yadav, Advocate
For Respondents 1 & 2	: None
For Respondent No. 3	: Shri T.K. Tiwari, Advocate

(Proceedings through Video Conferencing)**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****13.08.2021**

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 05.10.2015 passed by the Second Additional Motor Accident Claims Tribunal, South Bastar, Dantewada, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case

No.40 of 2014 whereby learned Claims Tribunal allowed an application filed under Section 166 of the M.V. Act in part and awarded Rs.21,59,525/- as total compensation along with interest at the rate of 7% per annum from the date of filing of claim application till its realization in a fatal accident case.

2. Brief facts relevant for disposal of this appeal, are that, on 11.11.2010, Pandeshwar Nag went to Sukma on account of some official work. After completion of official work, he was returning to village Tongpal to meet his family members on Motorcycle bearing registration No.CG-17/B/7010, on the way, one bus bearing registration No.CG-17/F/0676 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the Motorcycle from its back side. In the said accident, Pandeshwar Nag suffered grievous injuries, he was taken to Maharani Hospital, Jagdalpur where he succumbed to the injuries during course of treatment. Accident was reported to concerned Police Station, based upon which, criminal case was registered against non-applicant No.1/driver of offending vehicle.
3. Appellants/claimants, who are widow and children of Late Pandeshwar Nag filed an application under Section 166 of M.V. Act pleading therein that on the date of accident, deceased was aged about 50 years, working as Range

Officer in Forest Department and earning Rs.24,000/- per month as salary. It was further pleaded that claimants were dependent upon income of the deceased and claimed Rs.46,17,000/- as compensation against motor accidental death of Late Pandeshwar Nag.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply resisting the claim pleading therein that deceased met with an accident on account of his own negligence; on the date of accident, owner of offending vehicle was possessed with valid permit, fitness certificate and insurance of offending vehicle. It was further pleaded that on the date of accident, driver of offending vehicle was possessed with valid and effective driving licence, offending vehicle was insured with non-applicant No.3, as such, liability, if any, to satisfy the compensation would be upon non-applicant No.3/Insurance Company.
5. Non-applicant No.3/Insurance Company submitted reply resisting the claim pleading therein that accidental death of Late Pandeshwar Nag was on account of his own negligence; non-applicant No.1 was not possessed with valid and effective licence, offending vehicle was being plied in breach of policy conditions, hence, Insurance Company is not liable to indemnify the insured.
6. On appreciation of pleadings and evidence brought on record by the respective parties, learned Claims Tribunal

held that Pandeshwar Nag died on account of motor accidental injuries on account of rash and negligent driving of offending vehicle by non-applicant No.1, breach of policy conditions was not found to be proved, awarded Rs.21,59,525/- as compensation with interest at the rate of 6% per annum, fastened the liability upon non-applicants jointly and severally to pay the amount of compensation and first liability is being fixed upon non-applicant No.3/Insurance Company.

7. Shri Subhash Yadav, learned counsel for the appellants/claimants would submit that learned Claims Tribunal has awarded meagre amount of compensation. He submits that learned Claims Tribunal overlooking the age of deceased not awarded any amount towards future prospects. Amount of compensation awarded on other conventional heads is on lower side. He places reliance on the judgements of Hon'ble Supreme Court in case of **National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**.
8. No one appeared on behalf of non-applicants No.1 and 2.
9. Per contra, Shri T.K. Tiwari, learned counsel for respondent No.3/Insurance Company supporting the impugned award, would submit that learned Claims Tribunal awarded just

amount of compensation in the facts and circumstances of the case, which does not call for any interference.

10. I have heard learned counsel appearing for the respective parties and perused the record carefully.
11. Short issue is raised in this appeal with regard to non-award of future prospects and award of meagre compensation on other conventional heads. Though income of deceased was pleaded as Rs.24,000/- per month, but from the income certificate (Ex.A/11) issued on 25.07.2015 by Divisional Forest Officer, Sukma salary of deceased prior to his death is shown as Rs.25,002/-. Ex.A/11 is proved by AW-3 G.S. Dhruv, Assistant Conservator of Forest. Income of deceased was proved as Rs.25,002/-.
12. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has considered the issue of award of future prospect to the victim/injured. Hon'ble Supreme Court has categorized the entitlement of addition of different percentage of amount of established income towards future prospects based on the age group. For age group of 50-60 years, Hon'ble Supreme Court has held 15% of established income is to be added towards future prospects where the victim or deceased was in permanent employment, hence, in the present case, there shall be an addition of 15% in the salary of deceased towards future prospects. It is ordered accordingly.

13. Learned Claims Tribunal has awarded Rs.25,000/- towards loss of spousal consortium, Rs.20,000/- towards parental consortium to applicants No.2 to 5 who are children and Rs.5,000/- towards funeral expenses. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has specified the head on which compensation under other conventional heads can be awarded, such as, loss of consortium, funeral expenses and loss of estate and quantified the compensation for each head at Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. Types of 'consortium' has been subsequently explained by the Apex Court in **Nanu Ram Alias Chuhru Ram** (supra), to be of three types; parental consortium (payable to children because of the death of parents); spousal consortium (payable to the surviving spouse because of the death of the partner) and filial consortium (payable to the parents because of the death of children). Hence, in view of the ruling of Hon'ble Supreme Court in aforementioned cases, claimants are entitled for a sum of Rs.40,000/- towards spousal consortium (payable to the spouse because of the death of the partner) and Rs.40,000/- towards parental consortium (payable to children because of the death of parent), Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of funeral expenses.

14. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the claimants requires re-computation, which is as under :

Income of the deceased is taken as Rs.25,000/- per month i.e. Rs.3,00,000/-. By adding 15% of income towards future prospects, total annual income of deceased will come to Rs.3,45,000/- ($3,00,000 \times 15\% = 45,000$ and $3,00,000 + 45,000$). For the purpose of computing compensation, net income is to be taken, which means gross income – income tax. Total income of deceased is assessed as Rs.3,45,000/-. In the financial year 2010-11, income upto 1,60,000/- was exempted from tax, hence, taxable income of deceased will come to Rs.1,85,000/- ($3,45,000 - 1,60,000$). On income exceeding Rs.1,60,000/- upto Rs.5,00,000/-, income tax at the rate of 10% is to be charged. Taxable income of deceased is taken as Rs.1,85,000/-, tax at the rate of 10% on it is Rs.18,500/-. After deduction of income tax of Rs.18,500/- from total annual income, net income of deceased will be Rs.3,26,500/- ($3,45,000 - 18,500$). The deceased was survived by widow and four children, therefore, there shall be deduction of $1/4^{\text{th}}$ towards his personal and living expenses. After deducting $1/4^{\text{th}}$ towards personal and living expenses, annual loss of dependency will be Rs.2,44,875/- ($3,26,500 / 4 = 81,625$ and $326500 -$

81,625). After applying the multiplier of 11, total loss of dependency will come to Rs.26,93,625/- (2,44,875 x 11).

Apart from above amount of compensation towards loss of dependency, claimants are further entitled for a sum of Rs.40,000/- towards spousal consortium, Rs.40,000/- towards parental consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of funeral expenses.

15. Now, appellants/claimants are entitled for total compensation of Rs.28,03,625/- (26,93,625 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.21,59,525/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 7% per annum from the date of filing of the claim application till its realization. Other conditions of the impugned award shall remain intact.
16. 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