NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1060 of 2015

1. Smt. Girja Bai, Wd/o Late Ashok Yadav, Aged About 28 Years,
2. Ku. Rani, D/o Late Ashok Yadav, Aged About 10 Years,
3. Ku. Annu, D/o Late Ashok Yadav, Aged About 8 Years,
4. Aanand, S/o Late Ashok Yadav, Aged About 6 Years,
5. Aalok, S/o Late Ashok Yadav, Aged About 4 Years,
   No.2 to 5 are minor through his guardian mother Smt. Girja Bai,
6. Smt. Seeta Bai, W/o Maituram Yadav, Aged About 51 Years,
   All are R/o Village/Post Mochh, Thana/Tahsil Takhatpur, District Bilaspur, Chhattisgarh.

---- Appellants

Versus

1. Nakul Ram Verma, S/o Ghasiram Verma, Aged About 34 Years, R/o Village Taregaon Maidan, Thana Bodla, District Kabeerdham, Chhattisgarh.
2. Anuj Chandravanshi, S/o Kejauram Chandravanshi, R/o Kailash Nagar, Kawardha, District Kabeerdham, Chhattisgarh.
3. Branch Manager, I.C.I.C.I. Lombard General Insurance Company Ltd., Branch Office Lalganga Shopping Mall Complex, 3rd Floor, Shop No.304, 306, Near Ghadi Chauk, District Raipur, Chhattisgarh.

---- Respondents

For Appellants	: Shri Samir Singh, Advocate
For Respondents 1 & 2	: None
For Respondent No. 3	: Shri Shailesh Tiwari, Advocate on behalf of Shri Sourabh Sharma, Advocate

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Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

23.09.2021

1. This appeal has been filed by appellants/claimants under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 22.11.2013 passed by the Additional Motor Accident Claims Tribunal (FTC) Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Accident Claim Case No.6 of 2013 whereby learned

Claims Tribunal allowed an application for grant of compensation filed under Section 166 of the M.V. Act in part and awarded Rs.4,47,000/- as total compensation along with interest at the rate of 6% 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 06.06.2012, at about 10.30 P.M. when Ashok Yadav was returning from his shop, situated at Mungeli Takhtpur Road near Bus Stand to his house, one Swaraj Majda vehicle bearing No.CG-04/JB/0518 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the motorcycle of Ashok Yadav and caused accident. In the said accident, Ashok Yadav suffered grievous injuries, he was immediately taken to CIMS Hospital, Bilaspur, where he succumbed to injuries.

3. Appellants/claimants, who are widow, children and father of deceased Ashok Yadav filed an application under Section 166 of M.V. Act seeking total compensation of Rs.13,00,000/- towards loss of life pleading therein that on the date of accident, deceased was running a welding shop in the name and style of 'Sharda Welding', engaged in manufacturing of channel gate, rolling shutter, grill with iron angle and strips and earning Rs.15,000/- per month from his business.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply to claim application denying the facts pleaded therein. There was no negligence on the part of non-

applicant No.1, but it is the deceased himself who was driving his motorcycle under influence of liquor. He was not running a welding shop, but working as helper. Income pleaded is highly exaggerated. 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 to claim application denying the pleadings therein. Non-applicant No.1 was not possessed with valid and effective driving licence and there was breach of the policy condition, hence, Insurance Company is not liable to pay any amount of compensation.

6. On appreciation of pleadings, oral and documentary evidence brought on record by the respective parties, Claims Tribunal held that Ashok Yadav died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1, breach of policy conditions was not proved, computed the amount of compensation assessing income of deceased as Rs.3,000/- per month and awarded total sum of Rs.4,47,000/- as compensation.

7. Shri Samir Singh, learned counsel for the appellants would submit that learned Claims Tribunal overlooking the pleadings and evidence placed on record, erroneously assessed income of the deceased as Rs.3,000/- per month only. He submits that in claim application, it is specifically pleaded that deceased was engaged in occupation of manufacturing of channel gate, rolling shutter, grill with iron angle and strips in his shop running in the name and

style of 'Sharda Welding'. Income assessed by Claims Tribunal as Rs.3,000/- per month is even less if it to be considered for manual labourer on the date of accident. Claimants in support of pleading with respect to occupation and income of deceased, have placed on record cash memo and estimate with regard to purchase of raw material, iron rods and angle etc. from Balaji Sales, Bilaspur They have also placed on record electricity bill in the name of deceased of non-domestic other connection and proved that deceased was engaged in doing business as pleaded, hence, Claims Tribunal ought to have accepted the income of deceased as pleaded in claim application. Claims Tribunal not awarded any amount of compensation towards future prospects and awarded only Rs.50,000/- on other conventional heads, which is also on lower side.

8. Per contra, Shri Shailesh Tiwari, learned counsel for respondent No.3/Insurance Company would submit that amount of compensation awarded by Claims Tribunal is just and proper. Claimants have failed to place on record any admissible piece of evidence to prove income of deceased, hence, Claims Tribunal was justified in assessing income of deceased on notional basis.

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

10. So far as the first submissions made by learned counsel for appellants with regard to erroneous assessment of monthly income of deceased, perusal of pleadings and oral evidence would clearly show that claimants in their claim application have

specifically pleaded that deceased was engaged in business of manufacturing of channel gate, rolling shutter and grill etc. in his shop known as 'Sharda Welding'. Perusal of record would further show that claimants have placed on record cash memo and estimates with regard to purchase of raw material, iron rods strips and angle etc. from Balaji Sales, Bilaspur as Ex.P/13 to P/17. Electricity bills have also been placed on record for the month of July, August, September, October, November and December 2011 as Ex. P/18 to Ex.P/24. In electricity bills, it is specifically mentioned the connection to be non-domestic other connection and bills are in the name of Late Ashok Yadav.

11. From the aforementioned material available in record of claim case, claimants have proved the pleading of his occupation of manufacturing gate, grill etc. for the purpose of seeking compensation under the M.V. Act. Income even if not proved by claimants by placing acceptable evidence, then also income for the purpose of calculating amount of compensation under M. V. Act is to be assessed on notional basis keeping in mind date of accident, age of deceased, his occupation etc. Income of Rs.3,000/- per month assessed by learned Claims Tribunal for accident which took place on June 2012 is on lower side even for the person engaged as manual labourer.

12. Considering the entire material and evidence available on record and aforementioned factors, I find it appropriate to reckon income of deceased as Rs.7,000/- per month. It is ordered accordingly.

13. Learned Claims Tribunal has applied deduction of 1/5th which in view of the 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** is on higher side. True it is number of claimants shown in claim application are seven, but looking to age of Maituram Yadav father of the deceased as 54 years, he cannot be held to be dependent on the income of deceased in the facts of the case. Appropriate multiplier for six dependents as appearing in the record is 1/4th. It is ordered accordingly.

14. Learned Claims Tribunal awarded only Rs.50,000/- on other conventional heads, which is also on lower side and it is to be enhanced as held by 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.**

15. For the aforementioned reasons and discussions, amount of compensation to be awarded to the claimants requires re-computation, which is as under :

Income of deceased as assessed by this Court is Rs.7,000/- per month and Rs.84,000/- per annum. On the date of accident, age of deceased as accepted by Claims Tribunal was in between 35-40 years, hence, there shall be addition of 40% of established income to income of deceased for calculating total income. Upon adding 40% of established income towards future prospects, total annual income of deceased will come to Rs.1,17,600/- (84,000 x 40% = 33,600 and 84,000 + 33,600). After deducting $1/4^{th}$ towards personal and living expenses of deceased, annual loss of dependency will be Rs.88,200/- (1,17,600 / 4 = 29,400 and 1,17,600 – 29,400). Upon applying multiplier of 15 to annual loss of dependency, total loss of dependency will come to Rs.13,23,000/- (88,200 x 15). Besides the amount of compensation towards loss of dependency, appellants/claimants are further entitled for a sum of Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.40,000/- towards loss of filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

16. Now, appellants/claimants are entitled for total compensation of Rs.14,73,000/- (13,23,000 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.4,47,000/- as awarded by learned Claims Tribunal. 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 of award shall remain intact.

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

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh