

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1634 of 2015**

1. Omprakash Meshram S/o Vasudev Meshram, aged about 45 Years
2. Smt. Durga Meshram W/o Omprakash Meshram, aged about 43 Years

Both are R/o Nayamunda Para Ambedkar Ward Jagdalpur District Bastar, Chhattisgarh

---Appellants/ Claimants**VERSUS**

1. Shrawan Yadav S/o Vakil Yadav, aged about 25 Years R/o Gangamunda Ward, Near Gandhi School Post Bodhghat Jagdalpur District Bastar, Chhattisgarh.

-----Driver

2. Vinod Kumar Yadav S/o Nathuni Prasad Yadav, R/o Gandhi Nagar Ward Jagdalpur, District- Bastar, Chhattisgarh

-----Owner

3. Bharati Axa General Insurance Co. Through Branch Manager Chawala Complex First Floor Devendra Nagar Sai Nagar Road Raipur Post Raipur District Raipur, Chhattisgarh

----Respondents

For Appellant	:	Mr. P.K. Tulsyan, Advocate
For Respondent 1& 2	:	Mr. A.L. Singroul, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**ORDER ON BOARD****09/09/2021**

1. Challenge in this appeal is to the award dated 13.10.2015 passed by Learned Second Additional Motor Accident Claims Tribunal, Bastar, Jagdalpur C.G. (for short "Claims Tribunal") in claim case no. 53/2015, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 (for short "Act of 1988") in part, awarded Rs.6,02,000/- as total compensation in a death case.

2. Facts relevant for disposal of this appeal are, that on 20.09.2014 at about 10:00 p.m. Abhishek Meshram was travelling on motor cycle along with his friends and going to Jagdalpur from Keshloor. On the way one truck bearing registration no. CG17 GA 8615 (henceforth "offending truck") coming from opposite direction dashed the motor cycle of Abhishek and caused accident. In the said accident, Abhishek suffered grievous injuries over his person. He was taken to Ambedkar Hospital, Raipur for treatment where he succumbed to injuries during course of his treatment.
3. Claimants who are parents of the late Abhishek Meshram filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs. 19,93,000/- pleading therein that on the date of accident, deceased was doing business ie. work of computer job and mobile repairing and earning Rs. 7000/- per month from his work.
4. Non-applicants 1 and 2 submitted reply to the claim application denying the facts pleaded therein, it was further pleaded that driver of motor cycle late Pawan Rai @ Pintu was not having valid and effective driving licence on the date of accident to drive motor cycle. More persons than the seating capacity of motor cycle were travelling at the time of accident. Accident was on account of contributory negligence on the part of driver of motor cycle. Non-applicant 1/ driver of offending truck was possessed with valid and effective driving licence, offending truck was insured with non-applicant 3/ Insurance Company, as such, liability to pay the amount of compensation, if any, would be of Insurance Company.
5. Non-applicant 3/ Insurance Company of offending truck submitted its reply, resisting the claim, it was further pleaded that owner and

insurer of the motor cycle was not impleaded as party non-applicants. As there was accident between two motor vehicles, there was contributory negligence on the part of driver of motor cycle as well. On the date of accident, non-applicant 1 was not possessed with valid and effective driving licence.

6. Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties held that late Abhishek Meshram died on account of motor accidental injuries due to rash and negligent driving of offending truck by its driver non-applicant 1. Breach of policy conditions and contributory negligence were not found to be proved. Learned Claims Tribunal upon assessing income of deceased as Rs. 3000/- per month, deducting 50% towards personal and living expenses and applying multiplier of 18, awarded total compensation of Rs. 6,02,000/- including medical expenses of Rs. 2,38,000/-.
7. Mr. P.K. Tulsyan, learned counsel for appellants would submit that learned Claims Tribunal erred in assessing income of deceased as Rs. 3000/- per month only overlooking the date of accident. He submits that even if Claims Tribunal came to the conclusion that appellants failed to prove income by producing admissible piece of evidence and that too deceased is to be treated as manual labourer then also his wage could be more than Rs. 3000/- as assessed by learned Claims Tribunal. He submits that considering the date of accident, wage structure prevailing at the time of accident, price index; income of deceased to be taken as Rs. 5000/- per month. Tribunal has not awarded any amount towards future prospects and meagre amount of compensation is awarded on other conventional heads.

8. Mr. A.L. Singroul, learned counsel for Respondents 1 and 2 submits that the amount of compensation awarded by the Claims Tribunal in the facts and circumstances of the case is just and proper which does not call for any interference.
9. Notice of this appeal was sent to Responent 3 by registered post but no vakalatnama is filed on their behalf. On 05.11.2020 when the case was listed for hearing, Mr. Bhavesh Acharya, Advocate who normally appears for the Insurance company appeared and submitted that he would seek instructions and took time to file vakalatnama. But till date no vakalatnama on behalf of Insurance Company has been filed. In view of the above, Court proceeded to decide the case in absence of counsel for Insurance Company.
10. This appeal is for enhancement of amount of compensation awarded by learned Claims Tribunal.
11. So far as the first ground raised by learned counsel for appellants with regard to assessment of income of deceased, learned Claims Tribunal in absence of any clinching piece of evidence to proof of income has assessed income of deceased on notional basis. For assessing income of any person/ deceased on notional basis, factors like date of accident, age of deceased, nature of occupation, wage structure, cost of living etc. are to be kept in mind. Considering the aforementioned factors and the date of accident, ie. 20.09.2014, in my considered opinion, learned Claims Tribunal erred in assessing income of deceased as Rs. 3000/- per month which requires to be enhanced. Considering the facts and circumstances of the case, age, occupation of deceased, I find it appropriate to assess his income as Rs. 4500/- per month.

12. For the foregoing reasons, amount of compensation to be awarded to claimants/ appellants requires recomputation which is as under.
13. Income of deceased is assessed as Rs. 4500/- per month ie. Rs. 54,000/- p.a. Upon adding 40% of the established income towards future prospects as held by Hon'ble Supreme Court in case of **National Insurance Company Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**, total annual income will come to Rs. 75,600/-. Upon deducting $\frac{1}{2}$ towards personal and living expenses as deceased was unmarried person, loss of dependency will come to Rs. 37,800/-. By applying multiplier of 18 to annual loss of dependency, total loss of dependency will come to Rs. 6,80,400/- [Rs.37800x18]. Besides loss of dependency, claimants/ appellants are further be entitled for Rs. 40,000/- towards loss of filial consortium, Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses. Apart from it, appellants-claimants will further be entitled for Rs. 2,38,000/- towards medical expenses and Rs. 15,000/- towards conveyance, attendant and mental pain and agony as awarded by Claims Tribunal.
14. Now, appellants-claimants shall be entitled for total sum of **Rs.10,03,400/-** [Rs.6,80,400+ Rs.40,000+ Rs.15,000+ Rs.15,000+ Rs.2,38,000+ Rs.15,000] as compensation instead of Rs. 6,02,000/-. Aforesaid amount of total compensation shall carry interest @ 9% p.a. from the date of filing of claim application till its realization. Liability to satisfy the amount of compensation will be upon non-applicants 1 to 3 jointly and severally. Other conditions imposed by learned Claims Tribunal shall remain intact.

15. Resultantly, appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Pawan