NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 893 of 2015

1. Smt. Shanti Agrawal Wd/o Late Anand Agrawal, Aged About 35 Years,
2. Ku. Anshika D/o Late Anand Agrawal, Aged About 16 Years,
3. Ku. Akanksha D/o Late Anand Agrawal, Aged About 13 Years,
4. Chandan Agrawal S/o Late Anand Agrawal, Aged About 08 Years,
5. Smt. Banarsi Devi Agrawal W/o Late Navrang Lal Agrawal, Aged About 60 Years,

   Appellants No.2 to 4 are minor hence impleaded through their natural guardian mother i.e. appellant No.1, Smt. Shanti Agrawal Wd/o Late Anand Agrawal, aged about 35 years.

   All R/o Green Beli, Near C.G. Hotel, G.E. Road Raipur, District- Raipur, Chhattisgarh.

---- Appellants

Versus

1. Shyam Shukla S/o Dashrath @ Dineshwar Shukla, Aged About 30 Years, Permanent Add: Village Vishnupur, Pipra, P.S. Rajapakad, District- Vaishali, (Bihar).

   Presently R/o Through Bengal- Maharashtra Road Lines Tatibandh Raipur, District- Raipur, Chhattisgarh.
2. Hariram Singh S/o Satya Narayan Singh, Aged About 32 Years, R/o 76/B, GT Road, Bang Khal Risra P.S. Risra, District- Hugli, (W.B.).
3. I.C.I.C.I. Lombard General Insurance Company Ltd. Through Legal Manager, Vanijya Bhawan Devendra Nagar Raipur.

---- Respondents

For Appellants	: Shri Amiyakant Tiwari, Advocate
For Respondents 1 & 2	: None
For Respondent No. 3	: Shri Sourabh Sharma, Advocate

(Proceedings through Video Conferencing)

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

02.09.2021

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 17.12.2014 passed by Chief Motor Accident Claims Tribunal, Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in

Claim Case No.61 of 2012 whereby learned Claims Tribunal allowed an application filed under Section 166 of the M.V. Act in part and awarded Rs.18,92,000/- 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 11.08.2011, Anand Agrawal was travelling on his Motorcycle and reached near Santoshi Tempel, Saraipali, at that relevant time, one Truck bearing No.WB/15-A/6207 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the Motorcycle and caused accident. In the said accident, Anand Agrawal succumbed to motor accidental injuries.

3. Appellants/claimants, who are widow, children and old aged mother of Late Anand Agrawal filed an application under Section 166 of M.V. Act claiming compensation of Rs.26,25,000/- pleading therein that on the date of accident, deceased was able-bodied person, aged about 39 years and earning Rs.2,00,000/- per annum from his business.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle even after service of notice did not choose to appear before Claims Tribunal and were proceeded *ex parte.*

5. Non-applicant No.3/Insurance Company submitted reply to the claim application, denying the pleadings made therein. It was further pleaded that on the date of accident, non-

applicant No.1/driver of the offending vehicle was not possessed with valid and effective driving licence, there was no valid permit and fitness of the offending vehicle, as such, there was breach of policy conditions. There was contributory negligence on the part of driver of Motorcycle i.e. Anand Agrawal.

6. On appreciation of pleadings and evidence brought on record by the respective parties, learned Claims Tribunal held that Anand Agrawal died on account of motor accidental injures due to rash and negligent driving of offending vehicle by non-applicant No.1, breach of policy conditions was not found to be proved and upon assessing income of deceased as Rs.2,00,000/- per annum, awarded Rs.18,92,000/- as total compensation.

7. Shri Amiyakant Tiwari, learned counsel for the appellants/claimants would submit that learned Claims Tribunal though accepted income of deceased pleaded in claim application as Rs.2,00,000/- per annum, but has not applied the proper deduction and multiplier. He further submits that Claims Tribunal has not awarded any amount of compensation towards future prospects in the facts of the case and awarded meagre amount on other conventional heads. It is contended that amount awarded is on lower side and submits that compensation be suitably enhanced. He places reliance on the judgments 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, 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. Per contra, Shri Sourabh Sharma, learned counsel for respondent No.3/Insurance Company supporting the impugned award, would submit that learned Claims Tribunal accepted the income as pleaded by claimants and awarded just amount of compensation in the facts and circumstances of the case, which does not call for any interference.

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

10. Learned counsel for the appellants raised four grounds for enhancement of amount of compensation i.e. improper application of deduction and multiplier, non-awarding of future prospects and awarding lesser amount of compensation on other conventional heads.

11. So far as deduction of amount from the income of deceased towards personal and living expenses is concerned, Hon'ble Supreme Court in case of **Sarla Verma (Smt.)** (supra), issued guidelines for application of deduction, to be based on number of dependents and held that where the dependents are 1 to 3, appropriate deduction would be $1/3^{rd}$ of income and where dependents/claimants are 4 to 6 in

number, there shall be deduction of 1/4th of income. In the case at hand, total number of dependents are 5, hence appropriate deduction in view of ruling of Hon'ble Supreme Court in **Sarla Verma (Smt.) (supra)**, would be 1/4th. It is ordered accordingly.

12. Application of multiplier is also considered by Hon'ble Supreme Court in case of **Sarla Verma (Smt.)** wherein Hon'ble Supreme Court made different age groups for applying the multiplier and held multiplier of 15 for the age group of 36 to 40. In the instant case, age of deceased in postmortem report (Ex.P/5) was recorded as 40 years, hence, in absence of any specific proof with regard to age of deceased, age mentioned in postmortem report (Ex.P/5) can be taken into consideration as 40 years. In view of ruling of Hon'ble Supreme court in case of **Sarla Verma (Smt.)** (supra), I find it appropriate to apply multiplier of 15 instead of 14 as applied by Claims Tribunal. It is ordered accordingly.

13. 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. For age group of 40-50 years, victim not in permanent employment, Hon'ble Supreme Court has held 25% of established income to be added towards future prospects,

hence, in the present case, there shall be an addition of 25% of established income in the income of deceased towards future prospects. It is ordered accordingly.

14. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has specified the head on which compensation under other conventional heads to be awarded, such as, loss of consortium, funeral expenses and loss of estate, further quantified the compensation for each head as 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; (i) spousal consortium (payable to the surviving spouse because of the death of the partner), (ii) parental consortium (payable to children because of the death of parents); (iii) and filial consortium (payable to the parents because of the death of children). Hence, appellants will be entitled for the compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.

15. 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.2,00,000/- per annum. By adding 25% of income towards future prospects, total annual income of deceased will come to Rs.2,50,000/-

(2,00,000 x 25% = 50,000 and 2,00,000 + 50,000). Upon deducting 1/4th towards personal and living expenses, annual loss of dependency will be Rs.1,87,500/- (2,50,000 / 4 = 62,500 and 2,50,000 – 62,500). Upon applying the multiplier of 15 to annual loss of dependency, total loss of dependency of claimants will come to Rs.28,12,500/- (1,87,500 x 15).

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.40,000/- towards filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

16. Now, appellants/claimants are entitle for total compensation of Rs.29,62,500/- (28,12,500 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.18,92,000/- as awarded by 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 of the impugned award shall remain intact.

17. 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