HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1372 of 2015

1. Smt. Shanti Bai Wd/o Bhawan Singh Rathore, Aged About 54 Years.
2. Smt. Namesari Bai Wd/o Kaushal Singh Rathore, Aged About 36 Years.
3. Rajsingh S/o Kaushal Singh Rathore, Aged About 17 Years.
4. Ku. Nisha D/o Kaushal Singh Rathore, Aged About 15 Years.
5. Ku. Reena D/o Tameshwar Singh Rathore, Aged About 13 Years.
6. Tameshwar Singh S/o Bhawan Singh, Aged About 35 Years.
   Appellant Nos.3 and 4 are minor through natural guardian mother Smt. Namsari Bai and appellant No.5 also minor through natural guardian father Tameshwar Singh.
   All are R/o Village -Dongaratola-Bhadora, Police Station and Tahsil -Pendra, District -Bilaspur, Chhattisgarh.

---- Appellants/claimants

Versus

1. Kunwar Singh @ Golu Uraon S/o Pawan Singh, Aged About 22 Years, R/o Nagthal Newri, Police Station -Gourela, District -Bilaspur, Chhattisgarh.
2. Suresh Kumar Bhariya S/o Sukhiram Bhariya, Aged About 22 Years, R/o Devrajpara, Sadhwani, Police Station -Gourela, Tahsil -Pendra, District Bilaspur, Chhattisgarh.
3. I.C.I.C.I. Lombard Insurance Company, Branch Office Bilaspur, District Bilaspur, Chhattisgarh.

--- Non-applicant Nos.1 to 3/Respondents

For Appellant	:	Mr. Yogendra Singh, Advocate.
For Respondent Nos.1 and 2	:	None.
For Respondent No.3	:	Mr. Tessy Abraham, Advocate.

(Proceedings through video conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

23/08/2021

1. Claimants-appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of compensation awarded by learned Additional Motor Accident Claims Tribunal, Pendra Road, District – Bilaspur, (CG) (for short 'Tribunal') vide award dated 14.8.2015 in Claim Case No.H-23/2014, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of **Rs.4,02,000/- in** fatal accident case alongwith interest @ 6% per annum and while exonerating Insurance Company from its liability, fastened liability upon non-applicant Nos.1 &

2/driver and owner of offending vehicle to satisfy the amount of compensation.

2. Facts relevant for disposal of this appeal are that on 22.05.2014 when Bhavan Singh was crossing road and returning back to his house, one motorcycle bearing registration No.CG/10/P/7964, (for short, 'offending vehicle'.) driven by non-applicant No.1 rashly and negligently dashed him and caused accident. In the aforementioned accident, he suffered grievous injuries on his head. He was taken to Sanatorium Hospital, Pendra Raod where after providing primary treatment he was referred to Bilaspur for better treatment. On the way to Bilaspur, he succumbed to the injuries.

3. Appellants/claimants, who are widow, daughter-in-law (widow) and grand children of deceased, filed an application under Section 166 of the Act of 1988 seeking total compensation of **Rs.9,50,000/-** pleadings therein that on the date of accident, deceased was aged about 55 years, engaged in business of vegetables selling and agricultural activities thereby earning Rs.6,000/- per month.

4. Non-applicant Nos.1 & 2/driver and owner of offending vehicle did not appear before the Tribunal and they were proceeded ex-parte.

5. Non-applicant No.3/Insurance Company also submitted its reply resisted the claim application. It was further pleaded that amount of compensation claimed is highly exaggerated. On the date of accident non-applicant No.1 was not possessed with valid and effective driving license to drive offending vehicle, hence, crime for the offences under Sections 3/181 and 5/180 of the Act of 1988 were also registered against him.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Bhavan Singh 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 condition was found to be proved. Tribunal allowed application in part, awarded total compensation of **Rs.4,02,000/-** alongwith interest @ **6%** per annum. While exonerating Insurance Company from its liability, fastened liability upon non-applicant Nos.1 & 2/driver and owner of offending vehicle to pay the amount of compensation.

7. Learned counsel for appellants/claimants submits that Tribunal erred in awarding very meager amount of compensation by assessing income of deceased at Rs.3,000/- per month, overlooking date of accident, age of deceased, occupation, pleadings and evidence of appellants that deceased was engaged in business of vegetables selling, thereby earning Rs.6,000/- per month. Tribunal has not awarded any compensation towards future prospects, as held by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**[1], and amount of **Rs.1,05,000/- a**warded under other conventional heads is also on lower side in facts of the case and needs to be enhanced in light of decision of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors**[2]. He further submits that insurance of offending vehicle was not in dispute. Respondent No.3-Insurance Company has been exonerated only on the ground that non-applicant No.1 was not possessed with valid and effective driving license. To protect interest of appellants a direction be issued to insurance company to first deposit

1 (2017) 16 SCC 680
2 (2018) 18 SCC 130.

entire amount of compensation and thereafter recover the same from non-applicants No.1 and 2/driver and owner of offending vehicle.

8. Learned counsel for respondent No.3-Insurance Company submits that Tribunal has rightly exonerated Insurance Company from its liability as on the date of accident, non-applicant No.1 was not possessed with valid and effective driving license to drive offending vehicle. Appellants have failed to prove income of deceased by placing cogent and reliable piece of evidence on record, hence, Tribunal is justified in assessing income of deceased on notional basis. Amount of compensation awarded to claimant in the facts and circumstances of the case is just and proper, which does not call for any interference.

9.I have heard learned counsel for the parties and perused record of claim case.

10. So far as submission of learned counsel for appellants, with respect to income of deceased assessed by Tribunal is concerned, perusal of record would show that except pleading with regard to income of deceased as Rs.6,000/- per month and oral statement, no admissible piece of evidence is available on record showing income of deceased as pleaded and stated by appellants/claimants. In absence of any reliable piece of evidence with regard to occupation of deceased as business of vegetable selling, income and occupation pleaded by appellant cannot be accepted. In such a situation, Tribunal justified in assessing income of deceased on notional basis, but at the same time Tribunal has not considered the factors like age of deceased, nature of occupation, wage structure and cost of living on the date of accident ie on 22.05.14 and assessed income of deceased as Rs.3,000/- per month. Taking into consideration the

aforementioned factors, I find it appropriate to assess income of deceased as Rs.4,500/- per month instead of Rs.3,000/- per month. It is ordered accordingly.

11. Coming to next argument advanced by learned counsel for appellant that Tribunal erred in not awarding any amount towards future prospects. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that in case deceased, victim of motor accident, was not in permanent employment and was in age group between 50-60 years, an addition of 10% of established income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus :-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

12. Indisputably, in case at hand, on the date of accident, deceased was aged about 55 years and not in permanent employment, therefore there shall be an addition of 10% of established income of deceased towards future prospects to his income for assessing total income for the purpose of calculating compensation.

13. The Tribunal has awarded **Rs.1,05,000/-** under other heads, which in view of ruling of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Nanu Ram** (supra) appears to be on little higher side.

14. For the foregoing reasons, I propose to recompute amount of compensation to be awarded to appellants/claimants.

15. Income of deceased is taken as Rs.4,500/- per month. By adding 10% of established income towards future prospects, total monthly income of deceased comes to Rs.4,950/- (Rs.4,500/- + 10% of 4,500) and annual income as Rs.59,400/- (12 X Rs.4,950/-). Number of dependants on the date of accident were '6', therefore, there will be deduction of 1/4th of the income towards personal and living expenses as per decision of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**[3]. After deducting 1/4th towards personal & living expenses, yearly loss of dependency will come to Rs.44,550/- (Rs. Rs.59,400/- – ¼ of Rs.59,400/-). As on the date of accident deceased was age about 55 years, hence, appropriate multiplier would be ‘11’ instead of ‘9’ as applied by Tribunal. By applying multiplier of '11' total loss of dependency will come to Rs.4,90,050/- (Rs.44,550/- X 11). Apart from this, appellants are also entitled for a sum of Rs.40,000/- towards loss of spousal consortium to appellant No.1 wife of deceased, Rs.40,000/- towards loss of parental consortium to appellant No.6 son of deceased, Rs. 15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate.

16. Now, appellants/claimants is entitled for a total compensation of **Rs.6,00,050/-** (Rs.4,90,050 + Rs.40,000/- + Rs.40,000 + Rs. 15,000/- + Rs.15,000/-) instead **of Rs.4,02,000/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

17. So far as submission of learned counsel for appellants/claimants with regard to issuance of direction of pay and recover against respondent

3 (2009) 6 SCC 121

No.3/Insurance Company is concerned, Hon'ble Supreme Court in case of **Samanna and Anr vs. Divisional Manager, Oriental Insurance Company Limited and Ors**[4] has considered the issue with regard to issuance of direction to Insurance Company to first deposit entire amount of compensation in case where driver of offending vehicle was not possessed with valid and effective driving license on the date of accident.

18. Considering the fact that Insurance Company was exonerated only on the ground that non-applicant No.1 was not possessed with valid and effective driving license and the ruling rendered by Hon'ble Supreme Court in case of **Samanna** (supra), to protect the interest of appellants who lost their bread winner, I find it appropriate to direct respondent No.3 to first deposit the entire amount of compensation alongiwth interest and thereafter to recover the same from non-applicant No.1 and 2/driver and owner of offending vehicle in accordance with law.

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

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-

4 (2018) 9 SCC 650,