NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 453 of 2016

1. Smt. Shantabai Patel, Wd/o Late Rangilal Patel, age 32 years
2. Deman Kumar Patel, S/o Late Rangilal Patel, age 18 years.
3. Pawan Kumar Patel, S/o Late Rangilal Patel, age 16 years.
4. Ku. Kusumlata Patel, D/o Late Rangilal Patel, age 14 years.

Appellants No.3 & 4 through natural guardian her mother Smt. Shantabai Patel, Wd/o Late Rangilal Patel.

All R/o Village Charbhata, Tah. Magarload, Civil & Revenue District Dhamtari (CG)

---- Appellants/Claimants

Versus

1. Santosh Kumar Sahu, S/o Shri Dashrath Ram Sahu, aged about 40 years, R/o Village Binouri, Thana Phingeshwar, District Gariyaband (CG) **Non-applicant No.1-Driver**
2. Shankar Shadija, S/o Omprakash Shadija, aged about 31 years, R/o B/25, Phase-2, Aashiyana, Awanti Vihar Colony, Raipur, Dist. Raipur (CG) **Non-applicant No.2-Owner**
3. The Oriental Insurance Comp. Ltd. Mandal Office 1, Madina Building, Jail Road, Raipur, Distt. Raipur (CG)

Non-applicant No.3- Insurance Com.

---- Respondents

For Appellant	:	Miss Monica Singh, Advocate under the authority of Mr. Sanjay Agrawal, Advocate
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Mr. Anumeh Shrivastava, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order On Board

24/9/2021

1. Appellant-claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for brevity 'the Act of

1988') seeking enhancement in amount of compensation awarded by the learned Chief Motor Accident Claims Tribunal, Raipur (for short 'the Claims Tribunal') vide award dated 26.11.2015 in Claim Case No.686/2014 by which the Claims Tribunal allowed application filed by claimants under Section 166 of the Act of 1988 in part, awarded total sum of Rs.6,60,000/- as compensation in a fatal accident case along with interest @ 6% p.a. from the date of filing of application.

2. Facts of the case, in nutshell, are that on 12.8.2014 at about 8:00 p.m. when Rangilal was standing near his house, one truck bearing registration number CG04-JD-7112, driven by non-applicant No.1 in rash and negligent manner, dashed Rangilal as a result he sufferred grievous injuries on various parts of his body and succumbed thereto on spot.

3. Claimants-appellants, who are widow & children of deceased Rangilal Patel, filed an application under Section 166 of the Act of 1988 claiming total amount of Rs.26,00,000/- as compensation under different heads pleading therein that deceased was an able bodied person, he was Bore-well mechanic and earning Rs.400-500/- per day. Deceased was also earning Rs.2,00,000/- p.a. from agriculture activities.

4. Non-applicants No.1 & 2, driver & owner of offending vehicle, filed reply to claim application denying the facts pleaded therein. It was pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3 Insurance Company, hence if any amount of compensation is awarded to

claimants, liability to pay the same would be upon non-applicant No.3 Insurance Company.

5. Non-applicant No.3-Insurance Company also submitted its reply to claim application and denied the facts pleaded therein. It was pleaded that on the date of accident, non-applicant No.1, driver of offending vehicle, was not possessed with valid and effective driving license; there was no valid permit, fitness and registration to ply offending vehicle on public road. Hence, the insurance company is not liable to indemnify the insured.

6. Claims Tribunal upon appreciating pleadings and evidence brought on record by respective parties, held that deceased Rangilal died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No.1-driver and there was no breach of any condition of insurance policy. While assessing monthly income of deceased as Rs.5,000/- (Rs.60,000/- per annum) on notional basis, computed compensation and awarded Rs.6,60,000/- under different heads along with interest @ 6% p.a. from the date of filing of application.

7. Miss Monica Singh, learned counsel for appellants-claimants would submit that the Claims Tribunal awarded meagre amount of compensation. Claimants in claim application have specifically pleaded that deceased was Bore-well Mechanic and earning Rs.400 to 500/- per day. He was also earning Rs.2,00,000/- per annum from agriculture activities. However, the Claims Tribunal ignoring pleadings and evidence of

claimants erroneously assessed monthly income of deceased as Rs.5,000/- on notional basis. She pointed out that application of multiplier of '13' to compute loss of dependency, is also not correct. Deceased was in the age group of '36 to 40 years', therefore, correct multiplier would be '15' as held by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) & other v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. She further contended that Tribunal has not awarded any amount towards future prospects and amount of compensation awarded under other conventional heads is also on lower side. In these circumstances, she prays that amount of compensation may be enhanced suitably.

8. On the other hand, Mr. Anumeh Shrivastava, learned counsel for respondent No.3 Insurance Company supports the impugned award and submits that except pleadings in claim application with respect to occupation and income of deceased and oral statement of appellant No.1, claimants have not adduced any admissible piece of evidence to establish occupation and income of deceased. They have also not filed any document showing that deceased was possessing any agriculture land in his name or doing any agriculture activity. In this situation, Tribunal justified in assessing income of deceased on notional basis. Hence, quantum of compensation calculated and awarded by Claims Tribunal does not call for any interference.

9. I have heard learned counsel for the parties and perused the

record of the Claims Tribunal.

10. So far as submission of learned counsel for appellants with respect to assessment of monthly income of deceased is concerned, perusal of claim application would reveal that in claim application, claimants have pleaded that deceased was earning Rs.400 to 500/- per day from his work of 'Borewell Mechanic'. He was also earning Rs.2,00,000/- per annum by doing agriculture activities. In support of aforementioned pleadings, claimants have examined Claimant No.1-widow of deceased, as AW-1. Statement of AW-1 is identical to pleadings made in Para-4 of claim application. To prove income and occupation of deceased as also earning from agriculture activities, no documentary or any other admissible evidence is brought on record by claimants. In absence of any admissible piece of evidence establishing occupation and income of deceased, as pleaded in claim application, Claims Tribunal assessed income of deceased on notional basis and thereby not committed any mistake. However, while assessing notional income Tribunal failed to consider relevant factors like nature of occupation, date of accident and wage structure prevailing during that particular period. Admittedly, the accident is of the year 2014. On a specific query being put to learned counsel for respondent No.3 with regard to wage structure prevailing in the year 2014, he submits that on the date of accident minimum wage for skilled labourer was prescribed as Rs.5,910/- per month.

Taking into consideration nature of occupation of deceased i.e. Borewell Mechanic, as pleaded and stated by claimants, and wage structure prevailing at the time of accident, I find it appropriate to reckon income of deceased on notional basis as Rs.6,000/- per month in place of Rs.5,000/- as assessed by Claims Tribunal. It is ordered accordingly.

11. Perusal of impugned award would show that the Claims Tribunal has not awarded any compensation towards future prospects. Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** has held that where deceased was below 40 years of age and was not in permanent job, claimants shall be entitled for addition of 40% of established income of deceased towards future prospects. In case at hand, on the date of accident deceased was 38 years of age, as mentioned in post-mortem report (Ex.P-7) and was not in permanent job, hence there shall be addition of 40% of established income to income of deceased. It is ordered accordingly.

12. So far as application of multiplier of '13' by Tribunal for calculating total loss of dependency is concerned, perusal of record would show that on the date of accident, deceased was 38 years of age. Hon'ble Supreme Court in case of Sarla Verm (supra) has held multiplier of '15' for the age group of 36 to 40 years. As such, in case at hand multiplier of '15' would apply and not of '13' as applied by the Claims Tribunal. It is ordered accordingly.

13. As regards award of amount of compensation under other conventional heads. In case of **Pranay Sethi (supra)** Hon'ble Supreme Court considered issue of award of compensation under other conventional heads, wherein not only specified heads under which compensation is to be awarded but also quantified amount of compensation on those heads. Award of compensation under other conventional heads is further considered by Hon'ble Apex Court in case of **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130.** in which types of consortium is explained i.e. spousal, filial and parental consortium. Perusal of impugned award would show that Claims Tribunal awarded total sum of Rs.75,000/- under other conventional heads i.e. Rs.50,000/- for loss of consortium and loss of love & affection; and Rs.25,000/- towards funeral expenses, which is on lower side. Claimants shall be entitled for compensation on other conventional heads as per the law laid down in aforementioned rulings.

14. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to claimants/ respondents No.1 to 5 herein.

15. As discussed above, income of deceased is taken as Rs.6,000/- per month. Upon adding 40% towards future prospects to income, total income would come to Rs.8,400/- (6000+2400) and annual income as Rs.1,00,800/-(8400x12). Out of total annual income, one-fourth is to be deducted

towards personal & living expenses of deceased, as deducted by Claims Tribunal. After deducting one-fourth, annual loss of dependency comes to Rs.75,600/- (100800-25200). By applying multiplier of 15 to annual loss of dependency, total loss of dependency comes to Rs.11,34,000/- (75600x15). Besides this, appellant No.1-widow of deceased is entitled for a sum of Rs.40,000/- for spousal consortium, appellant Nos.2 to 4, minor children of deceased, are entitled for a sum of Rs.40,000/- for parental consortium. In addition to aforesaid amount, claimants/ appellants will also be entitled for Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Thus, total amount of compensation comes to Rs.12,44,000/-. Now claimants/appellants will be entitled for total amount of compensation of Rs.12,44,000/- in place of Rs.6,60,000/-, as awarded by Claims Tribunal. This amount of compensation shall carry simple interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants/ appellants as compensation shall be adjusted from the total amount of compensation to be paid to claimants.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-