HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 984 of 2015

1. Smt. Sataya Bai W/o Late Suresh Komre, Aged About 35 Years.
2. Mannuram S/o Somaruram Komre, Aged About 60 Years.
3. Smt. Kuvriya Bai W/o Mannuram, Aged About 55 Years.
4. Ku. Surchitra Komre D/o Late Suresh Komre.
   Appellant No.4 is Minor Through Mother Smt. Sataya. All are R/o Village Donde, Thana and Tahsil -Pakhanjore, Distt -Uttar Bastar Kanker, Chhattisgarh.

---- Appellants

Versus

1. Vinay Rai S/o Hiralal Rai, Aged About 52 Years, R/o Village Satyanand Palli, Thana & Tahsil -Pakhanjore, Distt -Uttar Bastar Kanker, Chhattisgarh. **(Owner).**
2. Shivkumar @ Shivshanker Markam S/o Barju Markam, Aged About 42 Years, R/o Sohgaon, Thana and Tahsil Pakhanjore, Distt -Uttar Bastar Kanker, Chhattisgarh. **(Driver)**.
3. The Oriental Insurance Company Limited Through M.B. Trade Centre Second Floor, Near Ghadi Chowk, Dhamtari, Chhattisgarh.

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

For Appellants	:	Mr. Shalvik Tiwari, Advocate on behalf of Shri Parag Kotecha, Advocate.
For Respondent Nos.1 and 2	:	None.
For Respondent No.3	:	Mr. Sandeep Shrivastava, Advocate.

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

12/08/2021

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, Bhanupratappur, District - Uttar Bastar, Kanker (CG) (for short 'Tribunal') vide award dated 27.3.2015 in Claim Case No.3/2013, whereby Tribunal allowed application in part, awarded total compensation of Rs.4,45,000/- in a fatal accident case together with interest @ 6% p.a. While exonerating Insurance Company from its liability to indemnify insured on the ground of breach of policy condition held non-applicant Nos.1 & 2/owner & driver of offending vehicle, liable to pay entire amount of compensation.

2. Facts relevant for disposal of this appeal are that on 29.06.12 Suresh Komre alongwith his friends Ragunath, Rajendra Jain, Dev Nath & Rajesh Jain was travelling on goods vehicle Tata-709 bearing registration No.CG-04-JC-3253, (for short 'offending vehicle'), after loading maize/corn in offending vehicle. When they were proceeding towards Rajnandgaon from Bande, on the way near village PV 78, Belgaal Square, offending vehicle turned turtle due to rash and negligent driving of offending vehicle by non-applicant No.2. In the aforementioned accident, Suresh Komre suffered grievous injuries and succumbed thereto on spot. Raghunath, Devkumar & Rajendra Jain also suffered grievous injuries.

3. Appellants/claimants, who are widow, minor children and parents of deceased, filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.14,46,000/- mentioning therein that on the date of accident, deceased was an able bodied person, earning Rs.6,000/- per month as labourer.

4. Non-applicant Nos.1 & 2/owner and driver of offending vehicle, submitted reply and resisted the claim. It was further pleaded that non-applicant No.1 employed non-applicant No.2 after perusing his driving licence and looking to his experience. Non-applicant No.2 in discharge of his duty as 'driver' took offending vehicle to various cities but at no point of time Road Transport Officer or any other authority has pointed the driving license possessed by him as fake or false. Non-applicant No.1 was not aware of fact that driving license possessed by non-applicant No.2 is fake and forged. Offending vehicle was insured with non-applicant No.3, hence liability, if any, to pay amount of compensation would be of non-applicant No.3.

5. Non-applicant No.3/Insurance Company also submitted its reply to claim application denying facts pleaded therein. It was further pleaded that on the date of accident non-applicant No.2 was not having valid and effective driving license to drive offending vehicle as such there was breach of policy condition.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Suresh Komre died on account of motor-accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No2. Breach of Policy condition was found to be proved. Accordingly, Tribunal allowed application in part, awarded total compensation of **Rs.4,45,000/-** alongwith interest @ 6% per annum, while exonerating Insurance Company from its liability, fastened liability upon non-applicant Nos.1 & 2, owner & driver of offending vehicle.

7. Learned counsel for appellants/claimants submits that Tribunal erred in awarding very meager amount of compensation. Tribunal assessed income of deceased at Rs.3,000/- per month, overlooking the date of accident. Tribunal ought to have determined income of deceased as Rs.4,500/- per month. He further submits that Tribunal has not awarded any amount towards future prospects, as held by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**[1], and award of Rs.40,000/- under other conventional heads is also on lower side 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 as Tribunal held that there was breach of policy conditions because driver was not having valid and effective driving license on the

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

date of accident, Tribunal ought to have issued direction to the Insurance Company to first deposit entire amount of compensation and then to recover it from the insured.

8. There is no representation on behalf of respondent Nos.1 & 2 despite service of notice.

9. Learned counsel for respondent No.3-Insurance Company submits that Tribunal has rightly exonerated Insurance Company from its liability. He pointed out that not only license of respondent No.2 was found to be fake but there was another breach of policy condition. Admittedly, deceased was traveling on goods vehicle as loader alongwith other loaders. The loaders were not the employees of insured. No premium was paid by insured for covering risk of labourer engaged for loading and unloading of goods. The deceased was gratuitous passengers, his risk was not covered under the policy, there was no contractual liability of respondent No.3 with the insured to cover risk of the deceased. In the given facts and circumstances of case, Tribunal has rightly exonerated insurance company from its liability. He further submits that Tribunal perfectly justified in not issuing direction of “pay and recover’. Amount of compensation awarded to claimant in the facts and circumstances of the case is just and proper.

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

11. So far as the submission of learned counsel for appellants, with respect to income of the deceased assessed by Tribunal is concerned, perusal of record would show that in claim application claimants have pleaded occupation of deceased as ‘labourer'. Deceased was resident of rural

area of Tahsil Pakhanjur, North Bastar Kanker. Except pleading with respect 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 claimants. In such a situation, Tribunal was justified in assessing income of deceased on notional basis, but at the same time the 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 29.6.2012. In the year 2012 an ordinary manual labourer could have earned more than what is assessed by Tribunal. Taking into consideration the aforementioned factors, I find it appropriate to assess income of deceased as Rs.4,000/- per month instead of Rs.3,000/- per month. It is ordered accordingly.

12. 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 below the age of 40 years, an addition of 40% of establish 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.”

13. Indisputably, in case at hand, on the date of accident, deceased was aged about 38 years and not in permanent employment, therefore, this Court is of the considered opinion that there shall be an addition of 40% of

established income towards future prospects to income of deceased for assessing total income for the purpose of calculating compensation.

14. Tribunal has deducted 1/4th towards personal and living expenses of deceased and applied multiplier of 15, which is proper and do not call for any interference.

15. Tribunal has awarded Rs.10,000/- towards loss of consortium to claimant-wife, Rs.10,000/- towards loss of love and affection to parents, Rs.10,000/- towards loss of parental love to claimant-daughter, Rs.5,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. In case of **Pranay Sethi** (supra) Hon'ble Supreme Court has specified the heads for awarding compensation on other conventional heads and also quantified the amount for those heads. The heads on which compensation is to be awarded are loss of consortium, loss of estate and loss of funeral expenses. In case of **Nanu Ram** (supra), Hon'ble Supreme Court has explained the types of consortium and held that there are three types of consortium ie loss of spousal consortium to wife or husband, loss of parental consortium to children and loss of filial consortium to parents of deceased.

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

17. Income of deceased is taken as Rs.4,000/- per month. By adding 40% of established income towards future prospects, total monthly income of deceased comes to Rs.5,600/- (Rs.4,000 + 40% of 4,000) and annual income as Rs.67,200/- (12 X 5600). Number of dependants on the date of accident were '4', 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.50,400/- (Rs.67,200/ – ¼ of Rs.67,200/-). By applying multiplier of 15 to annual loss of dependency, total loss of dependency will come to Rs.7,56,000/- (Rs.50,400/- X 15). Apart from this, appellants are also entitled for a sum of Rs.40,000/- towards loss of spousal consortium to wife, Rs.40,000/- towards loss of filial consortium to parents, Rs.40,000/- towards loss of parental consortium to child, Rs. 15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate. Now, appellants/claimants will be entitled for a total compensation of Rs.9,06,000/- (Rs.7,56,000/- + Rs.40,000/- + Rs.40,000/- + Rs.40,000/- + Rs. 15,000/- + Rs.15,000/-) instead **of Rs.4,45,000 /-** 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.

18. So far as submission of learned counsel for appellants-claimants with regard to issuance of direction of pay and recover against respondent No.3 is concerned, perusal of Insurance Policy placed on record as Ex.D-1 would show that offending vehicle was a goods vehicle. Under the Schedule of premium, apart from premium towards basic 3rd party cover, premium of Rs.100/- was paid towards 'personal accident cover' for owner & driver; Rs.50/- towards legal liability for paid driver, conductor & cleaner. No premium is paid towards labourers/loaders. One of the occupants of vehicle and labourer/loader traveling on offending vehicle alongwith deceased was examined as AW-2 who admitted in his evidence that he was sitting on top of vehicle, they were not the workers engaged by owner

3 (2009) 6 SCC 121

of vehicle but they were the workers of owner of goods, they were not permanent labourer/employees of owner of vehicle. Thus, it is clear that deceased was a ‘gratuitous passenger’ traveling in goods vehicle, he was not an employee of the insured, hence, risk of deceased was not covered under the policy.

19. In the light of aforementioned facts, evidence of AW-2 and submission made by learned counsel for respondent No.3 that no premium was paid for covering risk of deceased, deceased was a gratuitous passenger and risk of deceased was not covered under the policy, prayer made by learned counsel for the appellants for issuance of direction of pay and recovered is not sustainable and it is hereby rejected.

20. In result appeal is allowed in part and impugned award stands modified to the extent as indicated above. Liability to satisfy amount of compensation shall be upon non-applicant Nos.1 and 2.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-