

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 577 of 2016

1. Smt. Mithila Mehar W/o Late Sadharam Mehar, Aged About 51 Years
Occupation- House Wife
2. Ku. Sachi Mehar D/o Late Sadharam Mehar, Aged About 27 Years
Occupation- House Work
3. Sishupal Mehar S/o Late Sadharam Mehar, Aged About 22 Years
Occupation- Unemployed
4. Minor Suraj Mehar S/o Late Sadharam Mehar, Aged About 15 Years
Occupation Student, Through Natural Guardian Mother Smt. Mithila Mehar, W/o Late Sadharam Mehar
All are R/o Malipara, Chandrapur, Tahsil- Dabhara, Distt.- Janjgir-
Champa, Chhattisgarh

---- Appellants

Versus

1. Najarius Xaxlo S/o Matiyas Xaxlo, Aged About 28 Years Occupation-
Driver, R/o Village- Farsabahar, Limtoli, Tahsil and Distt.- Jashpur,
Chhattisgarh
2. Nitin Agrawal S/o Suresh Agrawal, Occupation- Vehicle Owner, R/o
Behind Ganga Nursing Home, Jagatpur, Distt. Raigarh, Chhattisgarh
3. The New India Insurance Company Ltd., Through- Branch Manager,
Branch Office- Second Floor, Sattigudi Chowk, Sadar Bazar Road,
Raigarh, Tah. and Distt.- Raigarh, Chhattisgarh

---- Respondents

For Appellants	: Shri Krishna Tandon, Advocate
For Respondents 1 & 2	: None
For Respondent No. 3	: Shri Sourabh Sharma and Shri Shailesh Tiwari, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

21.09.2021

1. Challenge in this appeal is to the impugned award dated 14.10.2015 passed by Motor Accident Claims Tribunal, Raigarh, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.60 of 2014 whereby learned Claims Tribunal allowed application filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') in part, awarded compensation of Rs.5,34,000/- in a fatal accident case.

2. Brief facts for disposal of this appeal are that, on 08.03.2014, Sadhuraam was travelling on his motorcycle bearing No.CG-13/E/9199 along with his daughter Seema Mehar, son Suraj and going to village Gadhumaria, Tahsil Pussor to attend marriage of his relative. While so, when they reached near Patelpali Petrol Pump, one Truck bearing No.CG-12/S/2836 (hereinafter referred to as 'offending vehicle') driven rashly and negligently by non-applicant No.1, dashed the motorcycle of Sadhuraam and caused accident. In the said accident, Sadhuraam and Seema Mehar came under the wheels of offending vehicle, died on spot whereas Suraj suffered grievous head injuries.
3. Appellants/claimants who are widow and children of deceased Sadhuraam filed an application under Section 166 of M.V. Act pleading therein that on the date of accident, deceased was able-bodied person, aged about 52 years, doing business of cloth selling and earning Rs.15,000/- per month. Claimed total compensation of Rs.36,90,000/- on different heads.
4. Non-applicants No. 1 and 2, driver and owner of offending vehicle submitted reply to claim application denying the facts pleaded therein. It was further pleaded that non-applicant No.1 was possessed with valid and effective driving licence; offending vehicle was insured with non-applicant No.3 and accident was a result of negligence on the part of deceased himself, as such, liability, if any, to satisfy the amount of compensation would be upon non-applicant No.3.

5. Non-applicant No.3/Insurance Company submitted reply to claim application, resisting the claim and pleaded that accident was a result of rash and negligent driving of motorcycle by Late Sadharam. On the date of accident, non-applicant No.1 was not possessed with valid licence, as such, there was breach of policy conditions and amount of compensation claimed is highly exaggerated.
6. On appreciation of pleadings and evidence brought on record by the respective parties, learned Claims Tribunal held that Late Sadharam died on account of motor accidental injuries, due to rash and negligent driving of offending vehicle by non-applicant No.1, breach of policy conditions and negligence on the part of deceased were not found to be proved. Learned Claims Tribunal while assessing income of deceased as Rs.3,000/- per month, computed compensation and awarded Rs.5,34,000/- as total compensation on different heads.
7. Shri Krishna Tandon, learned counsel for the appellants/claimants would submit that learned Claims Tribunal erred in awarding meagre sum of compensation to claimants in facts of the case. He further submits that deceased was aged about 52 years and maintaining family of six persons including deceased. It is contended that deceased was engaged in business of clothes selling, but even then, learned Claims Tribunal assessed income of deceased as Rs.3,000/- per month, which is less than the income of manual labourer on the date of accident. It is further contended that learned Claims Tribunal erred in applying deduction of 1/3rd instead of 1/4th as held by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi**

Transport Corporation and another reported in **(2009) 6 SCC 121**.

Claims Tribunal not awarded any amount of compensation towards future prospects in the facts of the case as held by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and submits that claimants be awarded suitable amount of compensation in the facts and circumstances of the case.

8. Per contra, Shri Sourabh Sharma, learned counsel for respondent No.3/Insurance Company submits that claimants have failed to prove nature of occupation and income of deceased by placing admissible piece of evidence on record, in absence of cogent evidence, Claims Tribunal rightly assessed the income of deceased on notional basis. He further submits that learned Claims Tribunal has already awarded excess amount of compensation on other conventional heads i.e. Rs.2,70,000/- whereas in the facts of the case, claimants would not be entitled for amount more than Rs.70,000/-. It is contended that considering entirety of facts and circumstances of the case, amount of compensation awarded by learned Claims Tribunal cannot be said to be on lower side, hence, impugned award does not call for any interference.
9. I have heard learned counsel for the respective parties and perused the record carefully.
10. Perusal of record of claim case would show that accident was of 08.03.2014 and on the date of accident, deceased was shown to be 52 years of age as per postmortem report (Ex.P/7). Occupation of

deceased has been pleaded and stated by Smt. Mithila Mehar (AW-1), business of cloth selling in village market. Claimants in their pleadings and evidence have stated the occupation of deceased to be a businessman. Income assessed by Claims Tribunal of Rs.3,000/- per month in the facts of the case appears to be on lower side. On the date of accident, wages of manual Labourer could have been much more than what is assessed by Claims Tribunal. Taking into consideration the date of accident, age of deceased, cost of living, price index and wage structure, I find it appropriate to assess income of deceased as Rs.5,000/- per month and Rs.60,000/- per annum.

11. Hon'ble Supreme Court in case of **Sarla Verma (Smt.)** (supra), laid down the guidelines for applying deduction and multiplier, wherein it is held that where the claimants are 4 to 6 in number, there shall be deduction of $\frac{1}{4}^{\text{th}}$ towards personal and living expenses, wherein in the case at hand, Claims Tribunal applied deduction of $\frac{1}{3}^{\text{rd}}$, which is not sustainable and it is hereby set aside. It is ordered that deduction shall be $\frac{1}{4}^{\text{th}}$. Claims Tribunal rightly applied the multiplier of 11.
12. Tribunal not awarded any amount of compensation towards future prospects. Hon'ble Supreme Court has settled the issue of awarding future prospects in case of **Pranay Sethi** (supra) wherein it has been held that where victim/deceased was in between the age group of 50-60 years and not in permanent employment or self employment, then there shall be addition of 10% of established income for assessing total monthly/yearly income of deceased on the date of accident,

hence, in the case at hand where deceased was aged in between 50-60 years, there shall be an addition of 10% in income of deceased. It is ordered accordingly.

13. The amount of compensation awarded on other conventional heads of Rs.2,70,000/- is on higher side as held by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**.
14. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has specified the head on which compensation under other conventional heads is 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) and (iii) filial consortium (payable to the parents because of the death of children). Hence, appellants will be entitled for compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.
15. As this Court is considering enhancement of amount of compensation, I proposed to recompute the amount of compensation to be awarded to the claimants as under:

Income of deceased is reckoned as Rs.5,000/- per month i.e. Rs.60,000/- per annum. Upon adding 10% of the income towards future prospects, total annual income of deceased will come to Rs.66,000/- ($60,000 \times 10\% = 6,000$ and $60,000 + 6,000$). There shall be deduction of $\frac{1}{4}^{\text{th}}$ towards personal and living expenses, which makes annual loss of dependency of claimants to Rs.49,500/- ($66,000 / 4 = 16,500$ and $66,000 - 16,500$). By applying multiplier of 11 to annual loss of dependency, total loss of dependency will come to Rs.5,44,500/- ($49,500 \times 11$). Besides, the compensation towards loss of dependency, appellants/claimants will be further entitled for a sum of Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

16. Now, the appellants/claimants are entitled for total compensation of Rs.6,54,500/- ($5,44,500 + 40,000 + 40,000 + 15,000 + 15,000$) instead of Rs.5,34,000/- as awarded by learned Claims Tribunal. Amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions of award passed by learned Tribunal shall remain intact.
17. In the result, appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
Judge